States Join FDA in the MAHA War on Food Ingredients

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Food and food ingredient manufacturers take note: it's not just the U.S. Food and Drug Administration (FDA) advancing "Make America Healthy Again" (MAHA) priorities. States are increasingly involved, as well. Several have enacted MAHA-inspired legislation about food and food additives, many others are considering such legislation, and at least one is investigating food companies for compliance with past voluntary commitments to remove color additives and related marketing statements.

Affected companies should take action now by:

1. Confirming that their house is in order (complying with both legal requirements and previous commitments to remove certain ingredients).
2. Taking advantage of public comment opportunities.
3. Ensuring that the company's concerns are heard in both federal and state legislative forums considering MAHA-type legislation and at FDA.
4. Reviewing products in light of the rapidly changing food chemical environment and consider appropriate actions.

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1. What is MAHA?

For years, advocates have raised concerns about the use of certain food ingredients, such as artificial colors and preservatives. One of the leading advocates has been Robert F. Kennedy, Jr., now Secretary of the U.S. Department of Health and Human Services (HHS). The MAHA initiative began officially on February 13, 2025, following President Trump's Executive Order 14212, "Establishing the President's Make America Healthy Again Commission." Among other things, the order established the MAHA Commission, an inter-agency body chaired by Secretary Kennedy, and directed that Commission first prepare an assessment within 100 days on topics including "the threat that potential over-utilization of … certain food ingredients … pose to children with respect to chronic inflammation or other established mechanisms of disease," and then to issue a strategy for achieving the goals identified in the assessment within 180 days (by August 12). For more background on MAHA, see our alert. The Commission delayed its MAHA strategy's publication, but a draft has been leaked. See our alert on the draft MAHA strategy.

The Commission issued its Assessment on May 22 (and reissued it on May 28). It asserted that "America's children are facing an unprecedented health crisis," driven by their exposure to environmental chemicals, consumption of ultra-processed foods, their "pervasive technology use," and overmedication. Ultra-processed foods received particular focus, due in part to their inclusion of certain food ingredients and a shift from "minimally processed animal-based sources [of fats] like butter and lard" to "industrial fats from refined seed oils, such as soybean, corn, safflower, sunflower, cottonseed, and canola." See our alert.

2. Federal Actions

As the federal agency directly charged with ensuring the safety of food, FDA has recently taken or made plans to take action to address food chemicals.

- In January, FDA revoked its approvals to use the synthetic color additive FD&C Red Dye No. 3 in all food products after January 15, 2027. It also approved a naturally derived color additive, myoglobin, for use in certain ground meat and poultry analogue products.
- In March, Secretary Kennedy directed FDA to explore rulemaking to eliminate the self-affirmation pathway (also known as "GRAS self-affirmation") for determining whether a food ingredient is generally recognized as safe (GRAS). See our alert. Under current law, GRAS ingredients may be added to food products without FDA's review or approval. This process has been the subject of criticism. The MAHA Assessment subsequently called for "GRAS Oversight Reform: Fund independent studies evaluating the health impact of self-affirmed GRAS food ingredients, prioritizing risks to children and informing transparent FDA rulemaking."
- In April, FDA and HHS announced a series of new measures to phase out all petroleum-based synthetic dyes from the nation's food supply, largely through food companies' voluntary actions. These color additives are FD&C Red No. 40, FD&C Yellow No. 5, FD&C

Yellow No. 6, FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, Orange B, and Citrus Red No. 2. See our alert.

- In May, FDA approved three food color additives derived from natural sources: calcium phosphate (white), butterfly pea flower extract (dark blue), and galdieria extract (blue). FDA published updates to these approvals on August 21, 2025.
- In June, FDA announced plans to update its food safety post-market chemical review program to increase transparency and accelerate its evaluation of chemicals already in the U.S. food supply. See our alert.
- In July, FDA and the U.S. Department of Agriculture (USDA) published a joint request for information (RFI) to help develop a uniform definition of ultra-processed food (comments are due September 23).
- In July, FDA issued a "Dear Manufacturer" letter encouraging voluntary removal of FD&C Red No. 3 "as soon as is practically possible," notwithstanding the January 15, 2027 regulatory deadline.
- Also in July, FDA released an Expanded Decision Tree chemical toxicity and risk screening tool to support the evaluation of the safety of chemicals in food based on their structure and estimated toxicity.
- In August, FDA updated its list of select chemicals currently under the agency's review to provide more insight into the status of the FDA's post-market assessments of chemicals in the food supply. In doing so it added six additional chemicals: butylated hydroxyanisole (BHA), butylated hydroxytoluene (BHT), azodicarbonamide (ADA), FD&C Blue No. 1, FD&C Blue No. 2, FD&C Green No. 3, FD&C Red No. 40, FD&C Yellow No. 5, and FD&C Yellow No. 6. It also said that it was expediting its review of chemicals included in previous updates like phthalates, propylparaben, and titanium dioxide.

But states are not waiting for FDA to complete its actions. Instead, some have already enacted food chemical legislation, and about 21 states are considering legislation, or were prior to the end of their legislative sessions. Texas has also announced investigations into multiple food companies for MAHA-related concerns.

3. State Statutes Already Enacted

States have long exercised their police powers to supplement FDA regulation of food and food chemicals. See the state-by-state labeling regulatory guidance compiled by the Association of Food and Drug Officials here.

Recently, however, state food legislation has focused on MAHA concerns about ultra-processed foods. Five states have enacted bans on certain food chemicals, with a particular focus on protecting children:

- In September 2023, California banned food products that contain brominated vegetable oil, potassium bromate, propylparaben, or FD&C Red No. 3, starting January 1, 2027. See our alert.
- In September 2024, California banned FD&C Red No. 40, FD&C Yellow No. 5, FD&C Yellow No. 6, FD&C Blue No. 1, FD&C Blue No. 2, and FD&C Green No. 3 from school lunches, beginning December 31, 2027.
- In March 2025, West Virginia banned these same color additives (also FD&C Red No. 3) from school lunches starting August 1, 2025, and from food sold in the state beginning January 1, 2027.
- In April 2025, Arizona banned ultra-processed food from school lunches beginning with the 2026-2027 school year. It defined "ultra-processed" to mean food that contains any of 11 listed ingredients.
- In May 2025, Texas banned 17 listed ingredients from school lunches beginning with the 2026-2027 school year.
- In June 2025, Louisiana banned 15 listed ingredients from school lunches beginning with the 2028-2029 school year.

In June 2025, Texas and Louisiana also enacted laws to require warning labels for 44 food ingredients (the lists of 44 ingredients differ). See our alert.

- Beginning January 1, 2027, the Texas law will require food sold in that state containing any of the listed ingredients to bear a label stating, "WARNING: 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."
- Beginning January 1, 2028, Louisiana's law will require food containing any of the listed ingredients to bear a QR code and a label stating "NOTICE: This product contains [insert ingredient here]. For more information about this ingredient, including FDA approvals, click HERE." In addition, by the same date, any food service establishment preparing food using seed oil must display a notice saying, "Some menu items may contain or be prepared using seed oils."

4. Additional State Legislation

According to a July 2025 tally, 21 state legislatures introduced legislation this year additional food chemical restrictions. Some bills would prohibit PFAS and other chemicals in food packaging. Many others would ban multiple food chemicals, including, without limitation, those in the enacted statutes mentioned above, either in any food or specifically used in school lunches.

Florida's H.B. 641 would require food containing certain artificial color additives to display the following statement: "WARNING: This product contains synthetic colors, which may have an adverse effect on activity and attention in children."

Several other bills would define "ultra-processed foods," but their definitions differ, as noted in the FDA/USDA RFI on defining "ultra-processed food." Some would define the term to mean foods that include substances intended to have a certain effect on food (such as stabilizers, thickeners, or coloring or flavoring agents). Others would define it to mean foods that have undergone certain processing steps (such as hydrogenation of oils or hydrolysis of proteins). Still others would define it to mean foods that include one of anywhere between 10 and 15 listed ingredients, with differing lists from state to state.

Many states' legislative sessions, including Florida's, have already closed for the year. However, bills not acted on in the states' 2025 sessions may be reintroduced next session.

In short, there is a real risk that states will drive both a regulatory patchwork and public confusion regarding food ingredient safety and labeling over the coming years. The Federal Food, Drug, and Cosmetic Act (FFDCA) does not expressly preempt state-imposed bans, limitations, or safety warning requirements for food ingredients, additives, or colorants, though some state restrictions may be subject to federal conflict preemption.

5. State Investigations and Orders

State executives are not leaving the action to the legislators. Texas Attorney General Ken Paxton, who claims to be "fighting alongside Secretary Kennedy and President Trump to help Americans get healthier by holding accountable big food companies who violate the law and deceive consumers about their ingredients," announced multiple investigations of food companies over their marketing claims:

- In April, an investigation of Kellogg's for potentially violating Texas consumer protection laws. The announcement asserted that Kellogg's cereals sold in the U.S. such as Froot Loops and Apple Jacks contain artificial colors (despite a previous voluntary commitment to removing such ingredients) while being marketed as "healthy").
    - In July, Kellogg's committed to remove artificial colors from its cereals.
- In May, a similar investigation, including a Civil Investigation Demand, of General Mills for marketing cereals such as Trix and Lucky Charms as "healthy," "nutritious," and a "good source" of vitamins and minerals, while those products contain artificial color additives. The announcement highlights a 2015 voluntary commitment by the company to remove artificial dyes from its cereals, which it allegedly followed through with but, two years later, reintroduced the additives.
    - In June, Paxton announced that General Mills had agreed to remove artificial dyes from its products. That commitment is available here.
- In July, an investigation, including a Civil Investigation Demand, of Mars, In for alleged deceptive and illegal practices with respect to candy products such as M&M's and Skittles. The announcement asserted the Mars must fulfill its 2016 voluntary pledge to remove all artificial colors from its U.S. food products, and that the company had falsely claimed that "artificial colors pose no known risks to human health or safety."

- In August, an investigation of Gerber and Plum Organics, including a Civil Investigation Demand, for allegedly deceptively advertising and selling infant formula products that contain dangerous levels of heavy metals.

Separately, on June 26, Oklahoma Governor J. Kevin Stitt signed an executive order directly acknowledging the MAHA Initiative and establishing a parallel Make Oklahoma Healthy Again Initiative and Advisory Council. The executive order primarily focuses on two comprehensive reviews: one for water fluoridation and another for the use of artificial food coloring, with a focus on FD&C Red. No. 40. This order may soon drive further action in Oklahoma.

6. Commitments to Remove Artificial Colors

In response to these developments, several major food companies or food trade associations have announced commitments to remove artificial colors from their products by a certain date. In addition to the commitments noted above, they include the following, among others:

- In June, Kraft Heinz committed to remove artificial colors by the end of 2027.
- In June, Nestlé USA announced that it would remove artificial colors by mid-2026.
- In June, Conagra announced that it will remove artificial colors from its frozen foods by the end of this year.
- In June, J.M. Smucker committed to remove artificial colors from all consumer food products by the end of 2027.
- In June, Hershey said it would remove artificial dyes from its snacks by the end of 2027, according to a report by *Bloomberg*.
- In July, the Consumer Brands Association, which represents the packaged goods industry, pledged on behalf of its members to remove artificial colors from their food products by December 31, 2027.
- In July, the International Dairy Foods Association announced that the dairy industry will eliminate artificial colors from their ice creams by 2028.

7. More Detailed Recommendations for Food and Food Ingredient Manufacturers

For food manufacturing, "the times they are a-changin'." Manufacturers of targeted food ingredients and their customers should consider several actions.

- Understand which products contain one or more of the targeted ingredients.
- Review the current science about the effects of the targeted ingredients used in the company's products. That science may have changed since FDA approved the use of those ingredients, often decades ago.

- Stay abreast of federal and state legislative and regulatory developments related to food ingredients.
- Track the timelines for required federal and/or state phaseouts of those food ingredients.
- Ensure that products—including ingredients, packaging, and marketing claims—comply with both federal and state food requirements, and that employees and contractors receive proper compliance training and, as needed, certifications. Virtually all the state-targeted food ingredients are currently approved by FDA, but in the coming years, they may no longer be permitted in food served in schools, sold in certain states, or sold anywhere in the U.S.
- Check for any commitments to remove targeted food ingredients from company products and the extent to which those ingredients have been removed. If the ingredients have not been removed, understand the reasons why.
- Follow news reports of new commitments by other food companies or trade associations to remove targeted ingredients.
- Compare the usage of targeted ingredients in the company's products sold in the U.S. against those in its products sold outside the U.S., including those in the European Union and Canada. Understand past efforts made to remove those ingredients in products sold outside the U.S.
- Determine the work needed to remove the targeted ingredients and replace them with other ingredients (e.g., replacing artificial colors with natural colors), including the timelines and costs required for that work.
- Ensure that the company's viewpoints and current scientific findings are heard before FDA and both federal and state legislators. There are substantial differences of opinion about the risks of targeted food ingredients. For example, despite the current focus on artificial colors, FDA's website includes the 2023 statement, "Color additives are safe when used properly."
- Take advantage of opportunities for public comment on food ingredient proposals, such as the FDA/USDA RFI on a uniform definition of "ultra-processed foods."
- Consider pushback on efforts to ban targeted ingredients. For example: The National Confectioners Association posted a statement in April saying, "FDA and regulatory bodies around the world have deemed our products and ingredients safe, and we look forward to working with the Trump Administration and Congress on this issue. We are in firm agreement that science-based evaluation of food additives will help eliminate consumer confusion and rebuild trust in our national food safety system."
- Consider offering consumers a choice of ingredients. For example, despite the ongoing investigation in Texas, Mars has said it will continue to use artificial colors in "treats," as opposed to "dinner foods." Nevertheless, in July, it announced that, starting in 2026, it plans to offer "options" of products such as Skittles, M&M's, and Starburst with and without artificial colors.

- Consider the likely consumer reaction to any decision to remove or retain targeted ingredients.

Beveridge & Diamond's FDA practice helps clients in the food, cosmetics, and related chemical industries—or whose products subject them to food regulation—understand and comply with FDA and other regulations; chemical, pesticide, and biotechnology statutes; environmental, health, and safety issues; and voluntary product stewardship measures. For more information, contact the authors.

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