From MAHA to Market: FDA and Some Retailers Announcing New Policies on Colors

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The Make America Healthy Again (MAHA) movement has already prompted notable changes in federal and state food policy and has prompted regulators, plaintiff's lawyers, manufacturers, retailers, and consumers to take a fresh look at how products are formulated and marketed. These efforts include soliciting information to potentially define and regulate "ultra processed foods," phasing out petroleum based synthetic food dyes, approving new natural color additives, and reconsidering the self affirmed "Generally Recognized as Safe" process. FDA has also increased enforcement of direct to consumer prescription drug advertising laws, including actions targeting violations by social media influencers and DTC telehealth companies.

FDA Announces New Policy Regarding "No Artificial Colors" Claims

Most recently, and as we discussed yesterday here, FDA recently introduced a significant policy change as part of broader MAHA driven efforts to reduce the use of petroleum based synthetic dyes in the food supply. In a notice to industry, the agency stated that it does not intend to take enforcement action against "no artificial color" and similar claims, provided the product does not contain FD&C certified synthetic colors, even if it uses naturally derived or other non certified color additives.

Practically speaking, this permits products to be labeled as containing "no artificial colors" when the coloring ingredients are natural or plant based. This represents a substantial departure from prior policy, which allowed such claims only when a product contained no added color of any kind, natural or synthetic. As part of the same announcement, FDA expanded the list of naturally sourced color additives, including approval of beetroot red and broader permissible uses of spirulina extract, further supporting industry movement away from certified petroleum based dyes.

FDA emphasized, however, that this policy reflects only how the agency will exercise enforcement discretion. It does not alter the statutory definition of "artificial color" and does not create a safe harbor for labeling claims. Because the underlying legal standard under the Federal Food, Drug, and Cosmetic Act remains the same, plaintiffs may still argue that "no artificial colors" is misleading if a product contains any added color, including naturally derived or non certified ones.

Target Accelerates Pledge to Remove Cereals Containing Synthetic Food Dyes

Following FDA's announcements related to artificial and synthetic colors, major manufacturers and retailers have begun adopting their own restrictions on synthetic colors, forcing food and beverage manufacturers to choose between reformulating products or risking loss of shelf space. Companies must now consider not only regulatory and litigation risk but also how formulation decisions affect retailer relationships.

For example, Target recently announced that it will stop selling breakfast cereals containing synthetic colors by the end of May, effectively removing petroleum based dyes from an entire high volume category across nearly 2,000 stores. In the announcement, Target noted that its consumer insights show a long term trend toward products made without artificial additives, especially in children's foods.

Target's accelerated timeline may place pressure on manufacturers whose current commitments extend further out. FDA began publishing an "industry tracker" that catalogs pledges by various industry groups, manufacturers, and retailers related to the removal of petroleum-based dyes.

What This Means for Manufacturers

Reformulating products is time intensive and meeting evolving retailer expectations may become increasingly challenging as MAHA driven priorities accelerate regulation and enforcement at the federal and/or state level.

Industry should also be closely tracking private litigation as plaintiff's lawyers continue to creatively plead UDAP claims based on new theories and/or new legislation, even if the legislation is not yet effective or does not have a private right of action.

Manufacturers should closely track regulatory developments, retailer policies, and litigation trends. Proactive steps in formulation, labeling, and marketing can help companies meet retailer requirements, maintain shelf presence, and better manage compliance and litigation risks.