MAHA is Coming for Ultra-Processed Foods and Other Food Reforms; Red and Some Blue States are Answering

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The Make America Healthy Again (MAHA) movement is reshaping state and federal regulatory priorities. At the state level, legislatures are advancing measures targeting ultra-processed foods (UPFs), including restrictions on UPFs in schools, statewide bans, and front-of-package labeling requirements. Federally, Health and Human Services (HHS) Secretary Robert F. Kennedy Jr. has directed the Food & Drug Administration (FDA) to explore potential rulemaking to modify the longstanding Generally Recognized as Safe (GRAS) self-affirmation framework and require mandatory submission of GRAS notices for the use of human and animal food substances considered GRAS. The MAHA movement has also led to states seeking waivers in connection with the Supplemental Nutrition Assistance Program (SNAP) to limit the purchase of "non-nutritious" items using federal benefits. And the federal government has previewed increased enforcement of direct-to-consumer pharmaceutical advertising laws and the development of potential guidelines to limit the marketing of certain foods to children.

Collectively, these actions signal a shift toward more aggressive regulation and enforcement in consumer health and nutrition markets. For businesses, MAHA's influence is creating new compliance and litigation risks, particularly for food and beverage manufacturers, pharmaceutical companies, retailers, and digital advertisers. Companies may face heightened scrutiny over product formulation, labeling, and marketing practices, as well as operational challenges tied to SNAP waiver programs or evolving and differing definitions of "healthy" and "ultra-processed foods." Legally, these developments raise questions of federal preemption, administrative authority, and consistency across state regimes, issues that are likely to shape both regulatory strategy and enforcement trends moving forward.

Ultra-Processed Foods Legislation

Defining Ultra-Processed Foods

There is currently no federally recognized definition of "ultra-processed foods." Although the FDA, in conjunction with the US Department of Agriculture (USDA), has issued a Request for Information (RFI) seeking input to help develop a uniform definition (and has announced a series of measures to phase out various color additives from the nation's food supply), the agency has not yet proposed a definition of UPFs. In the absence of a federal standard, states have adopted their own approaches. Some states have proposed or enacted legislation that creates state-specific definitions of UPFs, while others avoid defining UPFs altogether and instead impose bans on the sale of certain additives.

Specifically, Arizona and California have defined UPFs, with California providing a more functional definition based on the presence of certain ingredient types and Arizona providing a definition based on the use of certain additives. Other states, including Louisiana, Utah, Virginia, and West Virginia, have passed legislation that do not define UPFs but restrict the offering of certain additives in schools. West Virginia has gone further and passed a state-wide ban on the sale of foods containing certain additives, while Texas and Louisiana have imposed package labeling requirements for foods containing certain additives. The chart below provides an overview of passed UPF legislation and/or legislation restricting the use of certain additives associated with UPFs.

While the above statutes generally avoid defining UPFs or define it with reference to specific additives or types of additives, at the National Association of Attorneys General (NAAG) Fall Consumer Protection Conference in Washington DC on October 23, 2025, a representative from the West Virginia's Attorney General's Office offered a more holistic potential definition of UPFs, explaining that UPFs are "products made from formulations of ingredients that undergo intensive industrial processing" and that typically contain additives (such as preservatives, emulsifiers, flavorings, or colorings) that have little or no use in traditional cooking. Panelists also pointed out that UPFs are often "ready to eat or drink," have long shelf lives, and use eye-catching packaging.

Thus, while food and beverage manufacturers and retailers should review their product formulations for the existence of additives targeted by UPF and related legislation, they will also need to review their product formulations and packaging more generally as well to evaluate potential regulatory or litigation risks, as discussed more below. The lack of a uniform definition presents obvious compliance challenges for food manufacturers and sellers seeking to stay out of the crosshairs of the MAHA movement.

Legal Challenges

West Virginia's HB 2354 is the first UPF-related legislation to face legal challenge. On October 6, 2025, the International Association of Colour Manufacturers filed a lawsuit alleging that HB 2354 "arbitrarily" bans dyes in the state without scientific evidence, violating the U.S. and West Virginia constitutions. We expect additional challenges to be filed in other states, particularly where states seek to ban UPFs sales statewide.

Enforcement Authority & Potential Legal Actions

Many of these statutes grant enforcement authority to their respective state attorneys general and authorize civil penalties. For example, Texas's SB 25 explicitly grants enforcement authority to the Texas Attorney General and provides for civil penalties of up to $50,000 per day "for each distinct food product in violation" of the statute. Although we have not yet seen any enforcement actions brought specifically under a UPF statute, it is important to remember that states already have tools that arguably allow them to pursue UPF-related actions. For example, the Texas Attorney General recently announced settlements with two international consumer packaged goods manufacturers alleging that they violated the state's unfair and deceptive acts and practices (UDAP) statute by referring to certain cereals containing artificial dyes as "healthy." Accordingly, while future effective dates of most recently enacted UPF legislation means that state AGs cannot yet enforce most laws, it is possible, if not likely, that state AGs will pursue actions in the meantime pursuant to their general UDAP authority. These actions are more likely where products are held out expressly or impliedly as healthy or nutritious.

Businesses should also be aware that state AGs and other regulators and enforcers may choose to simply file suit against businesses making allegedly misleading claims relating to UPFs or other food

products instead of sending a subpoena or civil investigative demand and conducting a pre-suit investigation. For example, in a separate but related context, the Texas Attorney General sued Johnson & Johnson and Kenvue on October 28, 2025 for "deceptively marketing Tylenol to pregnant mothers despite knowing that early exposure to acetaminophen … leads to a significantly increased risk of autism and other disorders." This lawsuit came only a month after Secretary Kennedy announced updated guidance discouraging pregnant women from taking acetaminophen due to risks associated with autism.

Finally, food manufacturers and sellers should also be mindful of litigation risks by private litigants under state laws authorizing class actions for UDAP violations. While UPF laws like California's are seemingly limited in scope, both in requiring further action by California's Department of Public Health to adopt formal regulations identifying "UPFs of concern" and limiting applicability to schools, it is possible that plaintiff's lawyers will attempt to seize on the broad definition of UPFs in the law to support UDAP actions in federal and state court.

State	Bill	Definition of "Ultra-Processed Food"?	Prohibition on Selling UPFs in Schools?	Labeling Requirement?	Statewide Ban on Selling UPFs or Certain Additives?
Arizona	HB 2164	Yes, refers to any food or beverage that contains one of 11 specified additives.	Yes, prohibits serving or selling UPFs on school campuses during the school day, effective the 2026-2027 school year.	No.	No.
California	AB 1264	Yes, defines UPF as foods containing certain additives and high amounts of fat, sodium, or sugar.	Yes, phased out by July 1, 2035.	No.	No.
Louisiana	SB 14	No, but defines "prohibited ingredient" as any of 15+ additives.	Yes, prohibits serving foods or beverages containing prohibited ingredients on school campuses, effective June 25, 2025.	Yes, warning labels required for products containing one of 44 additives, effective January 1, 2028.	No.
Texas	SB 25	No.	No.	Yes, warning labels required for products containing one of 44 additives, effective January 1, 2027.	No.

Utah	HB 402	No.	Yes, prohibits serving foods with any of nine additives during the school day, effective May 7, 2025.	No.	No.
Virginia	HB 1910	No.	Yes, prohibits serving foods containing seven additives during the school day, effective July 1, 2027.	No.	No.
West Virginia	HB 2354	No.	Yes, bans serving or selling foods with any of seven additives on school campuses, effective August 1, 2025.	No.	Yes, bans the sale of foods containing those additives statewide beginning January 1, 2028.

Other MAHA Initiatives

FDA Reconsideration of GRAS Process

In March 2025, Secretary Kennedy directed the FDA to explore rulemaking to eliminate or amend the "Generally Recognized as Safe" (GRAS) framework. The current GRAS framework is voluntary, allowing manufacturers to determine, with consultation with qualified experts, the GRAS status of food ingredients or additives without notifying the FDA. Secretary Kennedy characterized the current GRAS process as "a loophole that has allowed new ingredients and chemicals, often with unknown safety data, to be introduced into the U.S. food supply without notification to the FDA or the public."

In September 2025, the Trump administration disclosed in its September 2025 "Make Our Children Healthy Again" Strategy Report that an FDA Notice of Proposed Rulemaking (NPRM) is forthcoming relating to the GRAS process. The report explained that, in line with Secretary Kennedy's directive, the proposed rule would require entities to notify the FDA before designating food ingredients and additives as GRAS. The Spring 2025 edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions provided an estimated timeframe of October 2025 for the GRAS NPRM, although those estimates are regularly missed and likely impacted by the federal government shutdown.

Given the lack of clear statutory authority to overhaul the GRAS process, the proposed rule would likely be subject to legal challenge. The proposed rule also raises questions about whether the FDA has the manpower to timely respond to GRAS notifications.

SNAP Waivers

The United States Department of Agriculture (USDA) is urging states to request SNAP waivers to prohibit the purchase of "non-nutritious items" using SNAP benefits. Because the USDA did not define "non-nutritious items," states have independently defined the term in their waiver requests, with most states requesting to restrict a combination of soft drinks, candy, energy drinks, and other sweetened beverages. In a statement in August 2025, Secretary Kennedy said, "For years, SNAP has used taxpayer dollars to fund soda and candy, products that fuel America's diabetes and chronic

disease epidemics. These waivers help put real food back at the center of the program and empower states to lead the charge in protecting public health." Food and beverage retailers operating in states with SNAP waivers should consider ways to identify and restrict UPFs at the point of sale.

Direct-to-Consumer Pharmaceutical Advertising

The White House's September 2025 "Make Our Children Healthy Again" Strategy Report also directs the FDA, HHS, Federal Trade Commission (FTC), and Department of Justice (DOJ) to "increase oversight and enforcement under current authorities for violations of direct-to-consumer (DTC) prescription drug advertising laws." These laws generally require DTC prescription drug advertising to be truthful, not misleading, and to include a fair balance of risks and benefits. DTC prescription drug advertising must also avoid exaggerating benefits, not create a misleading overall impression, properly disclose financial relationships, and include information regarding major side effects and contraindications.

The Strategy Report states that "egregious violations" demonstrating consumer injury will be prioritized, including those by "social media influencers" and "DTC telehealth companies." Businesses and advertisers promoting prescription drugs to consumers, including through social media, should be mindful of this increased enforcement risk and review advertising copy and influencer practices accordingly.

Guidelines to Limit the Direct Marketing of Certain Foods to Children

The 2025 Strategy Report also explains that the HHS and FTC, along with other relevant agencies, will "explore the development" of potential industry guidelines to "limit the direct marketing of certain unhealthy foods to children, including by evaluating the use of misleading claims and imagery." Food and beverage retailers and manufacturers should be on the lookout for such guidance, and be aware that, given this directive, there is a heightened risk of investigations relating to "healthy" claims.

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