

Azer, Buchman, Trigg, Letourneau and Nguyen in Food Safety Magazine: Ultra-Processed Foods — Running for Cover(age)

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Haynes Boone attorneys [Adrian Azer](#), [Barry Buchman](#), [Suzie Trigg](#), [Reese Letourneau](#) and [Luke Ngyuen](#) authored an article for Food Safety Magazine reviewing developments in the food industry and suggesting strategies to seek potential insurance coverage.

Read an excerpt below.

Barely two months after an American teenager filed a first-of-its-kind lawsuit against major food manufacturers arguing that such manufacturers should be liable for decades worth of development, marketing, and sale of ultra-processed foods (UPFs) that harm children, President Trump released an Executive Order (EO)¹ establishing the President's Make America Healthy Again (MAHA) Commission.

Within days of the EO establishing the MAHA Commission, Deputy Commissioner for Human Foods Jim Jones announced his departure from the U.S. Food and Drug Administration (FDA), creating additional uncertainty for industry. Such actions also followed the 2025 scientific report,² which was released on December 10, 2024 by the Dietary Guidelines Advisory Committee (DGAC). The 2025 report included a new question regarding the effects of UPF on growth, body composition, and risk of obesity, but failed to recommend a reduction in UPF consumption. Companies that have long marketed processed foods must now navigate a rapidly changing landscape.

The EO to Establish the MAHA Commission

The EO establishing the MAHA Commission cites an increase in the diagnoses of diseases such as autism, fatty liver disease, and Attention Deficit Hyperactivity Disorder (ADHD) among young people. The EO calls upon the MAHA Commission to develop a federal policy to "...aggressively combat challenges facing our citizens, including the rising rates of mental health disorders, obesity, diabetes, and other chronic diseases."¹

Under this policy, among other efforts, "...agencies shall work with farmers to ensure that United States food is the healthiest, most abundant, and most affordable in the world."¹ The MAHA Commission is led by the Secretary of the Department of Health and Human Services (DHHS), Robert F. Kennedy Jr. In addition to Kennedy, the Commission will consist of leaders from several other federal agencies, including the Food and Drug Administration (FDA), the National Institutes of Health (NIH), the Centers for Disease Control and Prevention (CDC), and the Environmental Protection Agency (EPA). The Director of the Office of Management and Budget (OMB) will also sit on the MAHA Commission.

The EO states, "[t]he initial mission of the Commission shall be to advise and assist the President

on how best to exercise his authority to address the childhood chronic disease crisis."¹ In particular, the Commission will study "potential contributing causes" to chronic diseases, ranging from "the American diet" and "food production techniques" to "government policies" and "corporate influence."¹ Further, the MAHA Commission is tasked with assessing the impact of certain food ingredients and chemicals on childhood health. In advising the President, the MAHA Commission is given authority to consider a wide range of sources, such as conducting public hearings, roundtables, and meetings; evaluating current methodologies and data on childhood health in the U.S.; and comparing policies and data from other countries.

The EO sets a 100-day deadline for the MAHA Commission to submit an initial assessment to the President. Based on this assessment, the Commission must finalize a strategy and present it to the President within 180 days of the EO's date of February 13, 2025.

On February 17, 2025, Jim Jones, Deputy Commissioner for Human Foods at FDA, resigned. As rationale, Deputy Commissioner Jones communicated to the Acting FDA Commissioner that significant losses of personnel—including ten personnel who were recently hired to strengthen food chemical oversight—would make it "fruitless" for him to continue in his role. While Kyle Diamantas was recently announced as Acting Deputy Commissioner for Human Foods, it is expected that Dr. Marty Makary, if confirmed, will represent FDA on the MAHA Commission.

The DGAC's Scientific Report

The Dietary Guidelines Advisory Committee releases a scientific report every five years to assist the U.S. Department of Agriculture (USDA), now led by Brooke Rollins, and the HHS in developing the Dietary Guidelines for Americans. The referenced 2025 report² was issued in preparation for Dietary Guidelines for Americans, 2025–2030, set to be published in late 2025.

The 2025 report answers certain scientific questions developed because of federal and public interest, and because of their importance to public health. The 2025 report was the first report to consider a question solely related to UPFs.

To read the full article in Food Safety Magazine, click [here](#).