

FDA Issues Request for Food Packaging PFAS Data

JULY 25, 2022

On July 20, 2022, the [FDA](#) opened a docket to seek data regarding the presence of [per- and polyfluoroalkyl substances \(PFAS\)](#) in food containers that may migrate into consumers' food.^[1] Electronic or written comments and scientific data and information must be submitted by October 18, 2022.

The FDA seeks “to ensure that [it has] current information to support [its] review of the use of fluorinated polyethylene containers used in food contact applications to help ensure that this use continues to be safe.”^[2] The FDA “may use information submitted ... to update dietary exposure estimates and safety assessments for the authorized food contact use of fluorinated polyethylene.”^[3]

Under current FDA regulations, fluorinated polyethylene containers may be used with food contact applications at times. The FDA's authorization of a food-contact substance requires that available data and information demonstrate that there is a reasonable certainty of no harm under the intended conditions of use.

The FDA's announcement stated it was spurred on by recent EPA testing of non-food pesticide containers. The EPA says tests showed that PFAS may form in some containers and then migrate into the pesticide within the containers. The FDA wrote, “Although EPA's testing was of containers not intended to contact food, it raises questions about the potential for PFAS to form and migrate from fluorinated polyethylene containers that are intended for food contact use.”^[4] To that end, the FDA is seeking information in several categories—such as manufacturing processes, surface functionalities, and consumer exposures—to inform its safety analyses.

For those in the food industry and its supply chain, the FDA's actions and investigation warrant close tracking. There has already been litigation about PFAS in food packaging against consumer-facing businesses using such packaging, like fast-food chains. For more information, please see [Plaintiffs Sue Over Nondisclosure of PFAS As Regulators Scrutinize Safety](#).

For further information or questions about regulation of PFAS and potential impacts on your business, please contact Jonathan D. Brightbill (Partner, White Collar, Regulatory Defense, and Investigations/Environmental Litigation), or your Winston relationship attorney.

^[1] [Fluorinated Polyethylene Containers for Food Contact Use; Request for Information](#), 87 Fed. Reg. 43274 (July 20, 2022).

2 *Id.*

3 *Id.*

4 *Id.*

2 Min Read

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