FDA WEIGHS IN ON MICROPLASTICS AND NANOPLASTICS IN FOOD

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US Policy and Regulatory Alert

In a development that is expected to complicate many litigation challenges alleging that the presence of low levels of microplastics in food is inherently unsafe, officials from the US Food and Drug Administration (FDA or Agency) have publicly noted that "[C]urrent scientific evidence does not demonstrate that levels of microplastics or nanoplastics detected in food pose a risk to human health." This statement was recently published on a new webpage on the FDA's website entitled "Microplastics and Nanoplastics in Food," which describes "microplastics" as being less than five millimeters in size in at least one dimension and "nanoplastics" as being less than one micron in size (i.e., 1/70th of the diameter of a single human hair).

According to the webpage, this conclusion was made after a comprehensive review of the available scientific data concerning alleged concentrations of microplastics and nanoplastics in various food products and in human tissues, as well as the results of safety assessments evaluating the resulting health effects of microplastics exposures.

In reaching its conclusion, FDA officials have highlighted the limitations associated with current methods used for the assessment of this broad class of materials. In particular, FDA notes that an appropriate regulatory risk assessment for this broad class of substances is not currently feasible due to the lack of standardized definitions, reference materials, sample collection and preparation procedures, and appropriate quality controls. Nevertheless, in the FDA's opinion, the review of available information does not demonstrate a human health concern. The FDA position may complicate a plaintiff's arguments in microplastics litigation concerning products ranging from bottled water to sippy cups and baby bottles.

Future Agency updates on the state of the science surrounding microplastics research and risk assessment are expected to be added to the webpage as developments arise. We are able to advise clients on microplastics litigation risk and analysis.

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