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Lawsuit Alleges FDA Has Unduly Delayed Response to PFAS Petition

Article By:

Food and Drug Law at Keller and Heckman

- Last month a lawsuit filed by plaintiffs including the Tucson Environmental Justice Task Force (TEJTF) filed suit against FDA and now former FDA commissioner Robert Califf alleging that FDA had unduly delayed in responding to a petition filed by TEJTF in 2023 which had requested that FDA set tolerances for 30 types of PFAS in lettuce and blueberries and 26 types of PFAS in bread, milk, eggs, salmon, clams, and corn silage.
- The lawsuit argues that FDA has unduly delayed because it has not acted consistent with its statutory mandate to "promote public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner" (21 USC § 393) and the delay allegedly is to the determinant of the public health. The lawsuit argues that prior decisions holding that courts should defer to FDA on whether to promulgate tolerances is no longer good law post-*Chevron* and that the "only discretion FDA may exercise for such chemicals [harmful substances] is the level of tolerance to be set."
- We will continue to monitor and report on the regulation of PFAS and other chemicals, including any changes in approach that may be implemented by the new administration.

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