

Congress of the United States

Washington, DC 20515

November 4, 2022

The Honorable Michael S. Regan
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Ave, N.W.
Washington, D.C. 20460

Dear Administrator Regan:

We are continuing oversight of the U.S. Environmental Protection Agency's (EPA) August 18, 2021, final rule revoking all tolerances for chlorpyrifos on food products.¹ On September 20, 2022, in response to an inquiry by U.S. Representative Vicky Hartzler and Republican members of the Missouri delegation,² U.S. Department of Agriculture (USDA) Secretary Thomas Vilsack broke with the EPA's controversial decision to ban the critical crop protection tool. In a response to Congress, Secretary Vilsack wrote: "USDA-Pest Management Policy (OPMP) scientists believe EPA could retain certain chlorpyrifos uses that meet EPA's safety standard, based on the EPA's proposed interim decision (PID)."³ This answer and other answers in Secretary Vilsack's response to lawmakers raise questions about the EPA's commitment to use the best science in its regulatory decisions—questions Oversight Committee Republicans have raised previously.⁴ As such, we seek information about EPA's scientific and regulatory process when evaluating chlorpyrifos.

The EPA's controversial decision to revoke all tolerances for chlorpyrifos on food products has left distributors and growers in a precarious financial position which would normally prompt interagency review for a regulation costing over \$100 million dollars.⁵ However, EPA has refused to label the revocation as an economically significant regulation, making the final rule exempt from the Office of Management and Budget (OMB)'s interagency review. By EPA's own estimates, the economic value of chlorpyrifos to the U.S. economy reaches over \$130 million annually,⁶ and public comments suggest the number is even higher

¹ *Chlorpyrifos: Tolerance Revocations*, 86 Fed. Reg. 48315 (Aug 30, 2021) (codified at 40 C.F.R. pt. 180); see EPA, Press Release, *EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health* (Aug. 18, 2021).

² Letter from Vicky Hartzler, Member of Congress, et al., to Michael S. Regan, Administrator, EPA, and Thomas J. Vilsack, Sec'y, U.S. Dep't of Agric. (July 11, 2022).

³ Letter from Thomas J. Vilsack, Sec'y, U.S. Dep't of Agric., to Vicky Hartzler, Member of Congress (Sept. 20, 2022).

⁴ See Letter from James Comer, Ranking Member, H. Comm. on Oversight and Reform, et al., to Michael Regan, Administrator, EPA (Sept. 20, 2021); Letter from James Comer, Ranking Member, H. Comm. on Oversight and Reform, et al., to Michael Regan, Administrator, EPA (Dec. 23, 2021).

⁵ Exec. Order 12866, 58 Fed. Reg. 51735 (October 4, 1993).

⁶ EPA Memorandum, *Revised Benefits of Agricultural Uses of Chlorpyrifos* (PC# 059101) (Nov. 18, 2020), at 5.

when taking into account growers without alternative options.⁷ Due to the cost of this rule, over 30 subsets of the U.S. agricultural industry, including retailers, applicators, manufacturers, processors, cooperatives, and crop consultants, have raised serious economic hardship concerns with the EPA regarding this action.⁸

In addition, OMB guidance has been clear to direct the EPA to seek interagency review when EPA actions make pesticide tolerances “more stringent.”⁹ Because of the economic hardship and supply chain impacts associated with EPA’s final rule, the tolerance revocation should be labeled as a “more stringent” regulation requiring the EPA to seek interagency review. Ignoring OMB guidance and the economic impact of such a sweeping and costly regulation indicates interagency review was warranted prior to the final rule. Republicans are concerned about the validity of EPA’s scientific and regulatory process.

In order to better understand the USDA’s response to lawmakers and the EPA’s internal scientific and regulatory process, please provide the following documents and information by November 18, 2022:

1. All documents and communications from January 20, 2021, to present, between OPMP and EPA referring or related to the August 18, 2021, pre-published Chlorpyrifos: Tolerance Revocation Final Rule.
2. All documents and communications provided by OPMP to EPA referring or relating to the August 18, 2021, pre-published Chlorpyrifos: Tolerance Revocation Final Rule.
3. All documents and communications provided by OPMP to EPA on the benefits of chlorpyrifos to growers in the August 18, 2021, pre-published Chlorpyrifos: Tolerance Revocation Final Rule.
4. All documents and communications provided by OPMP to EPA regarding EPA’s consideration of any continued uses of chlorpyrifos.

Additionally, please make arrangements to schedule a briefing with Republican Committee staff on this matter. Please schedule the briefing no later than November 11, 2022. To schedule the briefing or ask any follow-up questions, please contact Committee on Oversight and Reform Republican staff at (202) 225-5074.

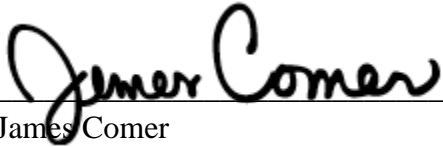
⁷ *Gharda Chemicals International, Inc.’s Objections to the Final Rule Revoking All Tolerances for Chlorpyrifos*, at 51.

⁸ Letter from James Comer, Ranking Member, H. Comm. on Oversight and Reform, et al., to Michael Regan, Administrator, EPA (Sept. 20, 2021); Letter from Agricultural Retailers Ass’n et al., to Michael Regan, Administrator, EPA, *on file with committee staff*. (Sept. 1, 2021).

⁹ OMB Memorandum for Heads of Executive Departments and Agencies, and Independent Regulatory Agencies, *Guidance for Implementing E.O. 12866*, at 15 (October 12, 1993).

The Committee on Oversight and Reform is the principal oversight committee of the U.S. House of Representatives and has broad authority to investigate “any matter” at “any time” under House Rule X. Thank you in advance for your cooperation with this inquiry

Sincerely,



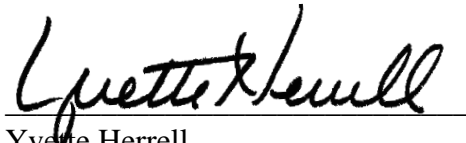
James Comer
Ranking Member
Committee on Oversight and Reform



Frank Lucas
Ranking Member
Committee on Science, Space, and
Technology



Glenn ‘GT’ Thompson
Ranking Member
Committee on Agriculture



Yvette Herrell
Ranking Member
Subcommittee on Environment
Committee on Oversight Reform

cc: The Honorable Carolyn B. Maloney, Chairwoman
Committee on Oversight and Reform

The Honorable Ro Khanna, Chairman
Subcommittee on Environment

The Honorable David Scott, Chairman
Committee on Agriculture

The Honorable Eddie Bernice Johnson, Chairwoman
Committee on Science, Space, and Technology

The Honorable Thomas J. Vilsack, Secretary
U.S. Department of Agriculture

Kimberly Nesci, Director
Office of Pest Management Policy, U.S. Department of Agriculture