

Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND ACCOUNTABILITY

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September 30, 2024

The Honorable Thomas J. Vilsack
Secretary
U.S. Department of Agriculture
1400 Independence Ave., SW
Washington, D.C. 20250

Dear Secretary Vilsack:

The Committee on Oversight and Accountability (Committee) is conducting oversight of the Department of Agriculture’s (USDA) development of the 2025 Dietary Guidelines for Americans (Dietary Guidelines), specifically its participation in the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD) study of alcohol intake and health, which is intended to inform the 2025 Dietary Guidelines and is duplicative of a study conducted by the National Academies of Sciences, Engineering, and Medicine (NASEM).¹ We are concerned that the process implemented by the Biden-Harris Administration for developing the Dietary Guidelines may not be fully in accordance with federal law. Specifically, the Consolidated Appropriations Act, 2023² and the National Nutrition Monitoring Act require the Dietary Guidelines to be “based on the preponderance of the scientific and medical knowledge which is current at the time the report is prepared”—and that the Secretary of Agriculture and Secretary of Health and Human Services (HHS) approve of such guidance.³ But here, it appears a subagency, the ICCPUD, has been delegated that authority by USDA. Additionally, this authority has been delegated to ICCPUD despite NASEM completing a congressional directive to study the same topic—the relationship between alcohol intake and health—for consideration of the Dietary Guidelines.⁴ It is imperative that USDA be actively involved in the formulation of the Dietary Guidelines through the statutory Dietary Guidelines Advisory Committee (DGAC)

¹ See Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability & Hon. Lisa McClain, Chairwoman, Subcomm. on Health Care & Fin. Servs. to Hon. Thomas J. Vilsack, Sec’y, U.S. Dep’t of Agriculture (Apr. 4, 2024); see also Interagency Coordinating Comm. on Preventing Underage Drinking Study on Alcohol Intake and Health Study on Alcohol Intake and Health, Background (“In February of 2022, two members of the ICCPUD (the Office of the Assistant Secretary for Health (OASH) representative and the US Department of Agriculture representative) requested that the ICCPUD undertake a study on alcohol consumption and health to provide greater input on the Dietary Guidelines for Americans related to alcohol.”), available at <https://www.stopalcoholabuse.gov/research-resources/alcohol-intake-health.aspx>.

² Consolidated Appropriations Act of 2023, Pub. L. No. 117-328 § 772, 136 Stat. 4508 (Dec. 29, 2022).

³ National Nutrition Monitoring and Related Research Act of 1990, Pub. L. No. 110-445 § 301, 104 Stat. 1042 (Oct. 22, 1990).

⁴ *Supra*, n.2.

process, base such guidelines on rigorous, sound, and objective scientific evidence, efficiently steward taxpayer dollars, and adhere to congressional intent.

The Committee's oversight is essential to determine whether legislation is necessary to address federal agencies' authority to remove topics of study from the purview of an interagency Federal Advisory Committee and delegate their authority to a subagency or federal workgroup, like ICCPUD, not subject to the Federal Advisory Committee Act (FACA).⁵ Potential Committee legislation may explore additional guardrails to FACA to prevent agencies from subverting the transparency of Federal Advisory Committees and congressional oversight as they develop important federal recommendations, policies, and regulations for the American people. Additional oversight may help prevent federal agencies from developing duplicative studies that waste taxpayer dollars.

In February 2022, the HHS Office of the Assistant Secretary for Health and USDA requested that ICCPUD study alcohol intake and health to inform the Dietary Guidelines.⁶ Subsequently, HHS published a notice in the Federal Register of the scientific questions to be considered by the 2025 DGAC, none of which included questions regarding the relationship between health outcomes and the consumption of alcoholic beverages.⁷ Unlike the DGAC, ICCPUD does not publish information or provide access to meeting materials per FACA requirements. Therefore, the study of the correlation between alcohol intake and health to inform the Dietary Guidelines outside the DGAC lacks transparency and oversight typical of the Dietary Guidelines.

Congress clearly stated its intent for NASEM to study alcohol intake and health. In the Consolidated Appropriations Act, 2023, Congress allocated \$1.3 million for NASEM to study the relationship between alcohol consumption and health outcomes, such as cancer, obesity, and heart disease to inform the 2025 Dietary Guidelines.⁸ In preparing for the 2020 Dietary Guidelines, the DGAC did not complete its alcohol review and only answered one research question regarding the relationship between alcohol use and all-cause mortality.⁹ Therefore, Congress determined it was necessary to direct NASEM to study the relationship between alcohol consumption and all types of health outcomes, in addition to all-cause mortality, for the 2025 Dietary Guidelines.¹⁰

⁵ Federal Advisory Committee Act, Pub. L. No. 92-463, 86 Stat. 770 (Oct. 6, 1972).

⁶ Interagency Coordinating Comm. on Preventing Underage Drinking Study on Alcohol Intake and Health, Background, *available at* <https://www.stopalcoholabuse.gov/research-resources/alcohol-intake-health.aspx>.

⁷ U.S. Dep't of Health & Human Servs., Request for Comments on Scientific Questions To Be Examined To Support the Development of the Dietary Guidelines for Americans, 2025-2030, 87 Fed. Reg. 22540 (Apr. 15, 2022); Dietary Guidelines for Americans - Scientific Questions, *available at* <https://www.dietaryguidelines.gov/scientific-questions>.

⁸ *Supra*, n. 2.

⁹ U.S. Dep't of Health & Human Servs. & U.S. Dep't of Agric., NASEM Committee: Review of Evidence on Alcohol and Health Sponsor Briefing, 8, *available at* <https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/DCFB6F841AF48C802906589338CEED3333591F80E75?noSaveAs=1>.

¹⁰ *Supra*, n. 2.

In Section 773 of the Consolidated Appropriations Act, 2024, Congress reaffirmed its intent by again directing the Secretaries of USDA and the HHS to “consider the findings and recommendations of the NASEM report in the development of the 2025 Dietary Guidelines for Americans” and reiterated that the Dietary Guidelines “shall be based on the preponderance of scientific and medical knowledge consistent with” 7 U.S.C. § 5341.¹¹

Despite USDA’s shared responsibility for formulating the Dietary Guidelines and NASEM’s directive to study alcohol intake and health, HHS appears to be taking improper authority over the development of the alcohol consumption guidelines and delegating it to ICCPUD.¹² During the NASEM Review of Evidence on Alcohol and Health committee meeting, a representative of ICCPUD, led by HHS’ Substance Abuse and Mental Health Services Administration (SAMHSA), presented documents to support SAMHSA’s intention to study the relationship between alcohol-related mortality and alcohol consumption and use ICCPUD’s findings to inform the 2025 Dietary Guidelines.¹³

The Committee is alarmed that HHS appears to be attempting to remove alcohol review from the DGAC and “delegate” it to ICCPUD,¹⁴ despite the National Nutrition Monitoring Act directing the Secretaries of HHS and USDA to issue the Dietary Guidelines, not interagency committees such as ICCPUD.¹⁵ As a result, both NASEM and ICCPUD are undertaking duplicative studies of the relationship between alcohol consumption and health to inform the Dietary Guidelines.

On April 4, 2024, the Committee initially requested documents and information related to HHS setting up a separate, parallel process to the DGAC, the content of ICCPUD meetings, potential conflicts of interest among ICCPUD participants, and any attempts by either USDA or HHS to interfere with NASEM’s congressionally mandated review of alcohol and health.¹⁶ It has been 179 days since that request. Despite repeated efforts by the Committee to obtain compliance, USDA has only provided 46 responsive pages of documents out of the 394 pages of documents it produced, devoid of any internal documents or communications that would provide transparency to alleviate the Committee’s concerns about the delegation of USDA’s authority to ICCPUD.¹⁷

¹¹ Consolidated Appropriations Act of 2024, Pub. L. No. 118-42 § 773 (Mar. 9, 2024).

¹² Interagency Coordinating Comm. on Preventing Underage Drinking, 2023 Comprehensive Plan for Preventing and Reducing Underage Drinking, 12, 17 (Apr. 6, 2022), *available at* https://www.stopalcoholabuse.gov/media/ReportToCongress/2023/report_main/ICCPUD_2023_Comprehensive_Plan.pdf.

¹³ *See* Nat’l Academies Review of Evidence of Alcohol and Health, Meeting 1B (Jan. 25-26, 2024), 6-7, *available at* <https://www.nationalacademies.org/documents/embed/link/LF2255DA3DD1C41C0A42D3BEF0989ACAECE3053A6A9B/file/D36C7490DF2904B73F7E8BD588907E1E7D2B39294A3F?noSaveAs=1>.

¹⁴ Dietary Guidelines for Americans, Projects Related to the *Dietary Guidelines* – Alcoholic Beverages and Health, *available at* <https://www.dietaryguidelines.gov/related-projects>.

¹⁵ *Supra*, n. 3.

¹⁶ *Supra*, n. 1 at 3-4.

¹⁷ E-mail from USDA Staff to Committee Staff (Jul. 3, 2024), *on file with Committee staff*; E-mail from USDA Staff to Committee Staff (Sept. 19, 2024), *on file with Committee staff*.

The Committee's April 4 request for documents and communications was intended to enable oversight of USDA's duty to develop the Dietary Guidelines for Americans and participation in the ICCPUD Subcommittee for Alcohol Intake and Health.¹⁸ The Committee's request set deadlines for USDA to provide a staff briefing by April 11 and to produce the requested information by April 18. USDA, however, did not schedule the briefing or produce any documents or communications by those dates.

On April 11, Committee staff requested that USDA provide dates for the requested briefing,¹⁹ to which USDA replied, "I'm checking in with our subject matter experts later today to discuss your request. I'll loop back with you after I have a better sense of schedules and availability."²⁰ Absent further updates, on April 18, Committee staff again asked to schedule the briefing "as soon as possible" but received no response from USDA.²¹ Subsequently, on April 23, Committee staff again requested a briefing and the documents, noting that the deadline had passed for both.²² Later that day, USDA responded, stating it intended to schedule a joint briefing with a separate federal agency, which was noncompliant with the Committee's request.²³

On April 30, USDA agreed to comply with the Committee's request for a single briefing with both the agency and Committee staff²⁴ on May 14.²⁵ After the briefing, Committee staff again requested that USDA establish a production schedule for submitting responsive documents, as no documents had been received.²⁶ USDA did not reply, and Committee staff followed up on May 29 to reiterate the request for documents.²⁷

Following additional back and forth between Committee staff and USDA, on June 12, Committee staff and USDA spoke by phone, and the Committee agreed to accept rolling document productions and prioritize certain requests to expedite document delivery. Two weeks later, Committee staff asked whether USDA would deliver the first round of documents by the end of the week of June 24.²⁸ USDA replied the following day, stating "Candidly, early next week is more likely" because it did not "want to overpromise and underdeliver" but that it "[h]ope[d] to start sending documents your way as soon as possible..."²⁹

On July 3, USDA produced 321 pages of documents consisting of 275 pages of public facing materials almost entirely unresponsive and largely unrelated to the Committee's requests for information on the ICCPUD Subcommittee on Alcohol Intake and Health.³⁰ USDA Bates-

¹⁸ *Supra*, n. 1 at 1.

¹⁹ E-mail from Committee Staff to USDA Staff (Apr. 11, 2024), *on file with Committee staff*.

²⁰ E-mail from USDA Staff to Committee Staff (Apr. 11, 2024), *on file with Committee staff*.

²¹ E-mail from Committee Staff to USDA Staff (Apr. 18, 2024), *on file with Committee staff*.

²² E-mail from Committee Staff to USDA Staff (Apr. 23, 2024), *on file with Committee staff*.

²³ E-mail from USDA Staff to Committee Staff (Apr. 23, 2024), *on file with Committee staff*.

²⁴ E-mail from USDA Staff to Committee Staff (Apr. 30, 2024), *on file with Committee staff*.

²⁵ E-mail from USDA Staff to Committee Staff (May 7, 2024), *on file with Committee staff*.

²⁶ E-mail from Committee Staff to USDA Staff (May 14, 2024), *on file with Committee staff*.

²⁷ E-mail from Committee Staff to USDA Staff (May 29, 2024), *on file with Committee staff*.

²⁸ E-mail from Committee Staff to USDA Staff (Jun. 24, 2024), *on file with Committee staff*.

²⁹ E-mail from USDA Staff to Committee Staff (Jun. 25, 2024), *on file with Committee staff*.

³⁰ E-mail from USDA Staff to Committee Staff (Jul. 3, 2024), *on file with Committee staff*.

Stamped and transmitted the following publicly available documents: meeting agendas and summaries of the 2025 DGAC,³¹ the ICCPUD 2023 Comprehensive Plan for Preventing and Reducing Underage Drinking,³² and 15 academic articles related to the study of dietary patterns—but not germane to the Committee’s request.³³

For over two months, USDA did not provide any additional productions, despite Committee staff attempts to obtain additional information.³⁴ After USDA’s continued failure to produce the requested documents, the Committee wrote again on September 5, reiterating its outstanding requests for documents and information and noting that “[i]f USDA continues to withhold documents and communications on this matter, the Committee will consider other means, including compulsory process.”³⁵ USDA acknowledged receipt of the letter on September 11.³⁶

On September 19, USDA produced 73 non-Bates Stamped pages of meeting agendas and summaries of the 2025 DGAC, including 15 pages of duplicative meeting documents that were transmitted in the first production to the Committee.³⁷ These documents were not only available online but also nonresponsive to the Committee’s requests for information pertaining to the ICCPUD Subcommittee on Alcohol Intake and Health, including its meeting minutes and notes.³⁸

It has now been 179 days since the Committee’s initial request, and USDA has produced only 46 non-publicly available documents. As a result, the attached subpoena is being issued pursuant to the authority delegated to the Chairman of the Committee under Rule XI, clause

³¹ Enclosures to *Id.*, marked USDA-HCOA-DGA-000001- USDA-HCOA-DGA-000015, also available at <https://www.dietaryguidelines.gov/get-involved/attend-virtual-meetings>.

³² Enclosures to *Id.*, marked USDA-HCOA-DGA-000036-000068, also available at https://www.stopalcoholabuse.gov/media/ReportToCongress/2023/report_main/ICCPUD_2023_Comprehensive_Plan.pdf.

³³ Enclosures to *Id.*, marked USDA-HCOA-DGA-000001-000243, also available at <https://pubmed.ncbi.nlm.nih.gov/34224561/>, <https://pubmed.ncbi.nlm.nih.gov/30982868/>, <https://pubmed.ncbi.nlm.nih.gov/30982864/>, <https://pubmed.ncbi.nlm.nih.gov/30445449/>, <https://pubmed.ncbi.nlm.nih.gov/30624593/>, <https://pubmed.ncbi.nlm.nih.gov/30982869/>, <https://pubmed.ncbi.nlm.nih.gov/30982863/>, <https://pubmed.ncbi.nlm.nih.gov/30982866/>, <https://pubmed.ncbi.nlm.nih.gov/30982876/>, <https://pubmed.ncbi.nlm.nih.gov/30982873/>, <https://pubmed.ncbi.nlm.nih.gov/30982878/>, <https://pubmed.ncbi.nlm.nih.gov/24452234/>, <https://pubmed.ncbi.nlm.nih.gov/37019363/>, <https://pubmed.ncbi.nlm.nih.gov/38522617/>, <https://pubmed.ncbi.nlm.nih.gov/33693925/>.

³⁴ E-mail from Committee Staff to USDA Staff (Jul. 23, 2024), *on file with Committee staff*; E-mail from Committee Staff to USDA Staff (Jul. 30, 2024), *on file with Committee staff*; E-mail from USDA Staff to Committee Staff (Jul. 31, 2024), *on file with Committee staff*; E-mail from Committee Staff to USDA Staff (Aug. 8, 2024), *on file with Committee staff*; E-mail from Committee Staff to USDA Staff (Aug. 23, 2024), *on file with Committee staff*.

³⁵ See Letter from Hon. James Comer, Chairman, H. Comm. on Oversight & Accountability & Hon. Lisa McClain, Chairwoman, Subcomm. on Health Care & Fin. Servs. to Hon. Thomas J. Vilsack, Sec’y, U.S. Dep’t of Agriculture at 2 (Sept. 5, 2024).

³⁶ E-mail from USDA Staff to Committee Staff (Sept. 11, 2024), *on file with Committee staff*.

³⁷ See *supra*, n.42.

³⁸ Enclosures to E-mail from Committee Staff to USDA Staff (Sept. 19, 2024), *on file with Committee staff*, also available at <https://www.dietaryguidelines.gov/get-involved/attend-virtual-meetings>.

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2(m)(1)(B) of the Rules of the House of Representatives and Rule 12(g) of the Committee's Rules.

The Committee has oversight jurisdiction and “may at any time conduct investigations of any matter” under House Rule X, clause 4(c)(2), notwithstanding concurrent jurisdiction maintained by another standing committee. Additionally, House Rule X, clause 1(n)(1), (6), (10) charges the Committee with legislative jurisdiction over “[f]ederal civil service, including intergovernmental personnel...”, “[o]verall economy, efficiency, and management of government operations and activities” and “[p]ublic information and records.”

As Chairman of the Committee, I urge you to cooperate speedily and in good faith with this subpoena. If you have any questions regarding this subpoena, please coordinate with Oversight Committee staff at (202) 225-5074.

Sincerely,

A handwritten signature in black ink that reads "James Comer". The signature is written in a cursive style and is positioned above a horizontal line.

James Comer
Chairman
Committee on Oversight and Accountability