

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND REFORM

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September 20, 2021

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

Dear Administrator Regan,

We are conducting oversight of the U.S. Environmental Protection Agency's (EPA) August 18, 2021 final rule revoking the use of chlorpyrifos on food.¹ Committee Republicans are concerned about the process that EPA used to promulgate this rule and the impact that the action will have on growers, who are left with no guidance on how to proceed after February 2022 when the ban is effective. It is critical that EPA ensures the American people and the agricultural community that it is using the best science in its regulatory decisions. Unfortunately, in this case, instead of following the science, it appears EPA leveraged a Ninth Circuit ruling to ban a product to appease liberal activists without considering the impacts on the agricultural community.²

EPA has maintained a record of inconsistent views on chlorpyrifos throughout the years. Before this final rule, EPA was in the midst of a registration review of chlorpyrifos, releasing a proposed interim decision on December 3, 2020, concluding that there were "agricultural uses that the agency has determined will not pose potential risk of concern" either from food residues or drinking water concentrations.³ Despite the ongoing scientific review in the registration process, it appears that a ruling from the Ninth Circuit Court of Appeals in April 2021 has given EPA a convenient off-ramp to take extreme action and ban the use of chlorpyrifos. In following the court's arbitrary deadline, instead of working to show the scientific record under review in the registration process, EPA has decided to subvert that process and issue a final rule banning

¹ 40 C.F.R. § 180, available at <https://www.regulations.gov/document/EPA-HQ-OPP-2021-0523-0001>. See EPA, Press Release, *EPA Takes Action to Address Risk from Chlorpyrifos and Protect Children's Health* (Aug. 18, 2021), available at <https://www.epa.gov/newsreleases/epa-takes-action-address-risk-chlorpyrifos-and-protect-childrens-health>.

² League of United Latin Am. Citizens v. Regan, No. 19-71982 CJS, (9th Cir. Apr. 29, 2021).

³ U.S. Environmental Protection Agency. December 3, 2020. Chlorpyrifos Proposed Interim Registration Review Decision Case Number 0100. PA-HQ-OPP-2008-0850. P. 40.

the product. Further scrutiny of this action is necessary given that EPA did not submit the rule to the Office of Management and Budget for interagency review in accordance with Executive Order 12866.⁴ This decision not only leaves the agricultural industry in a difficult position as they try to recover from the global pandemic but also leaves the American people in scientific doubt.

EPA's action will also have drastic economic consequences, including a major impact on the U.S. food supply chain. As you are aware, 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 EPA regarding this action.⁵ These important industries have been left with no guidance from EPA on how to comply with food stuffs that may contain chlorpyrifos residue after the February 2022 effective date – a true concern given that some crops may be treated before that date but sold or frozen after that time.

In order to better understand EPA's internal scientific and regulatory process underpinning this rule, please provide the following documents and information by October 4, 2021:

- (1) All documents and communications from January 20, 2021 to present, between Dr. Michal Freedhoff, Assistant Administrator for the Office of Chemical Safety and Pollution Prevention, and Environmental Protection Agency officials and employees, related to the August 18, 2021, pre-published Chlorpyrifos: Tolerance Revocation Final Rule.
- (2) All documents and communications between or among the Office of Management and Budget, including but not limited to the Office of Information and Regulatory Affairs, and the Environmental Protection Agency referring or relating to the August 18, 2021, pre-published Chlorpyrifos: Tolerance Revocation Final Rule.

Additionally, please make arrangements to schedule a briefing with Republican Committee staff on this matter. Please schedule the briefing no later than September 27, 2021. To schedule the briefing or ask any follow-up questions, please contact Committee on Oversight and Reform Republican staff at (202) 225-5074. 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.

⁴ Exec. Order No. 12866, 58 Fed. Reg. 190 (Oct. 4, 1993).

⁵ Letter from Agricultural Retailers Ass'n et al., to Michael Regan, Adm'r, EPA, *on file with committee staff*. (Sept. 1, 2021).

Administrator Michael S. Regan

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Sincerely,



James Comer
Ranking Member
Committee on Oversight and Reform



Ralph Norman
Ranking Member
Subcommittee on Environment

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

The Honorable Ro Khanna, Chairman
Subcommittee on Environment