UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE ADMINISTRATOR

In re FIFRA Section 6(b) Notice of Intent to Cancel Pesticide Registrations for Chlorpyrifos Products	)	**Docket No. FIFRA-HQ-2023-0001**
Gharda Chemicals International, Inc. and Red River Valley Sugarbeet Growers Association, et al.,	)	
Petitioners	)	

VERIFIED WRITTEN STATEMENT OF WITNESS DR. MARY ELISSA REAVES IN SUPPORT OF RESPONDENT'S NOTICE OF INTENT TO CANCEL

I. Background

I, Dr. Mary Elissa Reaves, declare under penalty of perjury that the following statements are true and correct to the best of my knowledge and belief and that they are based upon my personal knowledge, information contained in the records of Respondent, the United States Environmental Protection Agency ("EPA"), and/or information supplied to me by EPA employees under my supervision and in other EPA offices. *See* 28 U.S.C. § 1746.

I am currently the Director of the Pesticide Re-evaluation Division ("PRD") in EPA's Office of Pesticide Programs ("OPP"). I have worked for EPA for about 19 years. Since coming to the Agency in August 2003, I have served in various positions within OPP, including as Acting Branch Chief of the Risk Management and Implementation Branch IV ("RMIB4") of PRD from January 2011 to May 2011 and as Branch Chief of the Risk Assessment Branch IV of the Health Effects Division ("HED") from October 2011 to March 2015. I was the Acting Associate Director of the Antimicrobials Division ("AD") from March 2015 until September

2015 and was the Associate Director of HED from December 2016 until June 2019. I was the Acting Director of PRD from June 2019 until December 2020, and have been the Director of PRD since December 2020.

PRD is the division within OPP assigned with the responsibility to develop EPA's regulatory position regarding the reevaluation of conventional pesticides that are currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136-136y ("FIFRA"). Part of PRD's responsibility includes overseeing the periodic "registration review" of conventional pesticides as required by section 3(g) of FIFRA, 7 U.S.C. § 136a(g). Within PRD, Risk Management and Implementation Branch 1 ("RMIB1") is responsible for reevaluating chlorpyrifos and taking associated actions that stem from that reevaluation.

This verified statement is filed in support of EPA's December 14, 2022 Notice of Intent to Cancel ("NOIC") the registrations of three pesticide products containing the insecticide chlorpyrifos pursuant to section 6(b) of FIFRA, 7 U.S.C. § 136d(b), which identifies Petitioner Gharda Chemicals International, Inc. ("Gharda") as the registrant for the products subject to the NOIC. Chlorpyrifos; Notice of Intent to Cancel Pesticide Registrations, 87 Fed. Reg. 76,474 (Dec. 14, 2022). This verified statement constitutes my direct statement as a fact witness in the hearing prompted by a Request for Hearing and Statement of Objections and Request for Stay filed by Petitioner Gharda on January 13, 2023 ("Gharda's Objections") and a Request for Hearing and Statement of Objections filed by a collection of grower groups ("Grower Petitioners") on January 13, 2023 ("Grower Petitioners' Objections"), pursuant to the Presiding Officer's June 5, 2023 Order Scheduling Hearing and Prehearing Procedures ("Scheduling Order").

II. EPA's Registration Review of Chlorpyrifos

FIFRA generally requires EPA approval of pesticides prior to their distribution or sale and establishes a registration regime for regulating the use of pesticides. 7 U.S.C. § 136a(a). EPA approves an application for pesticide registration if, among other things, the pesticide will not cause unreasonable adverse effects on the environment. *Id*. at § 136a(c)(5). The pesticide chlorpyrifos (0,0-diethyl-0-3,5,6-trichloro-2-pyridyl phosphorothioate) is a broad-spectrum, chlorinated organophosphate ("OP") insecticide that has been registered for use in the United States since 1965. The OPs are a group of closely related pesticides that affect functioning of the nervous system. Pesticide products containing chlorpyrifos have been registered for use on many agricultural crops, including, but not limited to, corn, soybeans, alfalfa, oranges, wheat, and walnuts. Additionally, chlorpyrifos products are registered for use on nonfood sites such as ornamental plants in nurseries, golf course turf, and as wood treatment. There are also public health uses including aerial and ground-based mosquito adulticide fogger treatments, use as fire ant control in nursery stock grown in USDA-designated quarantine areas, and for some tick species that may transmit diseases such as Lyme disease.

FIFRA also requires that EPA periodically review every registered pesticide every 15 years to determine whether the pesticide continues to meet the standard for registration. 7 U.S.C. § 136a(g); 40 C.F.R. § 155.40. On March 18, 2009, EPA opened a public docket to initiate registration review of chlorpyrifos. RX 53. The registration review of chlorpyrifos has raised numerous novel and complex scientific issues. Reflecting that complexity, the Agency has engaged in extensive and ongoing analyses of the available science since initiating registration review in 2009, including multiple human health risk assessments and drinking water assessments, development of a new model for deriving points of departure to assess risks of chlorpyrifos, development of a framework for incorporating human epidemiology information

into risk assessments as well as conducting an in-depth epidemiology and literature review, and in the process convening the FIFRA Science Advisory Panel at least six times.

In December 2020, EPA released the Proposed Interim Decision for the Registration Review of Chlorpyrifos ("2020 PID") for a 60-day public comment period. PX 41. The 2020 PID concluded that "[w]hen considering all currently registered agricultural and non-agricultural uses of chlorpyrifos, aggregate exposures are of concern." PX 41 at 19. However, the 2020 PID also noted that if one considered only the uses that result in estimated drinking water concentrations ("EDWCs") below the drinking water level of comparison ("DWLOC"), then aggregate exposures would not be of concern. *Id*. Accordingly, the 2020 PID proposed to limit applications of chlorpyrifos in this country to only 11 uses in certain regions of the United States and with reduced application rates, which were the uses for which the EDWCs were below the DWLOC. This proposed path forward was intended to offer to stakeholders a way to mitigate the aggregate risk from chlorpyrifos.

In connection with the release of the 2020 PID, EPA also invited comments on several assessments, including, but not limited to, Chlorpyrifos: Third Revised Human Health Risk Assessment for Registration Review (Sept. 15, 2020), PX 38; Updated Chlorpyrifos Refined Drinking Water Assessment for Registration Review (Sept. 15, 2020), PX 39; Chlorpyrifos Usage and Benefits Assessment for Non-crop Uses (Nov. 9, 2020), RX 54; and Revised Benefits of Agricultural Uses of Chlorpyrifos (PC# 059101) (Nov. 18, 2020), PX 40. EPA subsequently extended the 60-day comment period by 30 days, which then closed on March 7, 2021. Comment Period Extension for Chlorpyrifos (Feb. 4, 2021), RX 55. The Agency received 144 public comments on the 2020 PID and supporting assessments, which the Agency intends to consider as

part of the registration review process. EPA intends to issue an interim decision on or before 2026.

III. Ninth Circuit Litigation Regarding Chlorpyrifos

On April 29, 2021, following the release of the 2020 PID in which EPA indicated that it had found aggregate exposures of chlorpyrifos associated with registered uses to be unsafe but provided a possible path forward for mitigating risks from chlorpyrifos, the Ninth Circuit Court of Appeals issued a decision in a case concerning the longstanding challenge from a petition on the chlorpyrifos tolerances. *See League of United Latin Am. Citizens (LULAC) v. Regan*, 996 F.3d. 673 (9th Cir. 2021). In September 2007, Pesticide Action Network North America ("PANNA") and Natural Resources Defense Council ("NRDC") submitted to EPA a petition (the "2007 Petition") seeking revocation of all chlorpyrifos tolerances under FFDCA section 408 and cancellation of all chlorpyrifos pesticide product registrations under FIFRA due to alleged safety concerns.

Ultimately, EPA denied the 2007 Petition in full on March 29, 2017, and then denied objections to the March 2017 denial order. *See* Chlorpyrifos; Order Denying PANNA and NRDC's Petition To Revoke Tolerances, 82 Fed. Reg. 16,581 (April 5, 2017) (the "2017 Order Denying Petition"), RX 56; Chlorpyrifos; Final Order Denying Objections to March 2017 Petition Denial Order, 84 Fed. Reg. 35,555 (July 24, 2019) ("2019 Objections Denial"), RX 57. Neither the 2017 Petition Denial nor the 2019 Objections Denial contained a determination concerning the safety of chlorpyrifos to support leaving the tolerances in place.

Finding that EPA could not leave tolerances in place without making the requisite safety finding under the FFDCA, the Ninth Circuit court concluded that EPA's actions on chlorpyrifos violated the FFDCA and ordered EPA to: (1) grant the 2007 Petition; (2) issue a Final Rule

within 60 days of the issuance of the mandate that either revokes all chlorpyrifos tolerances or modifies chlorpyrifos tolerances under FFDCA section 408(d)(4)(A)(i), provided that such modification is supported by a safety finding; and (3) modify or cancel related FIFRA registrations for food use in a timely fashion. Since the mandate was issued on June 21, 2021 (RX 58), the deadline for issuing the Final Rule was August 20, 2021, less than four months from the date the Ninth Circuit court issued its decision.

Despite the court's conclusion that EPA's actions, based on the record before the court, were a "total abdication of EPA's statutory duty", the court recognized that EPA might have additional information that would allow EPA to make a safety finding for modified tolerances. *See*, *e.g.*, the 2020 PID. Given the limited window for issuing the Final Rule and the Ninth Circuit's directive not to engage in additional fact-finding or further delay, the Agency focused on whether the 2020 PID and the completed 2020 HHRA and 2020 DWA were adequate to support a safety finding for the chlorpyrifos tolerances.

As stated above, EPA had concluded that aggregate exposures to chlorpyrifos from registered uses were unsafe. PX 41 at 19. However, the Agency recognized that the 2020 PID proposed a subset of uses that might result in exposures below the Agency's level of concern if several uses were eliminated and significant changes to the labels were made, including use cancellations and geographic limitations, among others. *Id*. at 40. EPA had conducted additional analyses of certain limited uses considered to have high benefits to chlorpyrifos users to determine whether those uses might be safe if certain restrictions were in place and other uses were cancelled. In particular, EPA examined whether the concentrations of chlorpyrifos and its oxon metabolite in drinking water would exceed safe levels in certain geographic areas of the country if chlorpyrifos was only registered for the 11 uses evaluated. PX 39. The analysis

assumed that all other uses contributing to aggregate exposure would be cancelled, which means that the proposed findings would only support such geographically limited 11 uses if all other contributing uses were cancelled.

IV. Discussions with Petitioner Gharda

In order to determine if modification of tolerances was a viable option in accordance with the proposal in the 2020 PID, EPA initiated discussions with Petitioner Gharda, and other chlorpyrifos registrants (Corteva, Adama, and Drexel), each of which held technical registrations of chlorpyrifos, in a good-faith effort to determine if the safety issues identified in EPA's record on chlorpyrifos by the Ninth Circuit could be sufficiently resolved in a timely manner to allow for the modification of tolerances by the Court's imposed timeline. EPA held several meetings with each of the technical registrants, including Petitioner Gharda, to discuss their interests and concerns as EPA considered its response to the Court's directive to issue the Final Rule. The meetings with Petitioner Gharda occurred on May 27, June 3, June 17, June 24, July 14, and August 16, 2021.

In addition to meeting with EPA, Petitioner Gharda corresponded with EPA, proposing terms for Gharda's voluntary cancellation of certain chlorpyrifos uses. Petitioner Gharda's first letter, dated May 12, 2021 ("First Gharda Letter"), stated that Petitioner Gharda was "willing to work with EPA to negotiate the voluntary cancellation of many currently approved uses of chlorpyrifos on mutually acceptable terms and in a manner that minimizes disruption on growers and other users." The First Gharda Letter further stated that Petitioner Gharda was "willing to negotiate and execute an agreement with EPA containing at least" nine separate terms, including further discussion of the geographic restrictions proposed in the 2020 PID as to the 11 high-benefit crops identified therein, allowing use on several crops in addition to the 11 uses in the

2020 PID, phase-out schedules that would allow some uses to continue until 2026, additional existing stocks orders that would allow additional time for phase-out, and retention of all import tolerances for chlorpyrifos. EPA could not accept Petitioner Gharda's proposed terms for several reasons. Specifically, there was no basis to support a safety determination for uses beyond those proposed for retention in the 2020 PID. Moreover, EPA had concerns about the extended phase-out and existing stocks requests and retention of all tolerances to cover residues in imported commodities, due to underlying safety concerns with the pesticide.

Following further discussions between EPA and Petitioner Gharda, as discussed above, Petitioner Gharda submitted a second letter, dated June 7, 2021 (the "Second Gharda Letter"). The Second Gharda Letter stated that Petitioner Gharda "commits to voluntarily cancel all currently approved agricultural uses of chlorpyrifos other than uses for the 11 high-benefit agricultural crops in select regions that the Agency identified in the [2020 PID] . . . subject to [nine] conditions." These conditions included allowing use of chlorpyrifos on cotton in Texas in addition to the 11 uses identified in the 2020 PID, a proposal that EPA and Petitioner Gharda "reach mutually agreeable provisions" allowing for the sale of all finished Gharda technical product in the United States and overseas to be processed and sold for all registered uses, retention of all import tolerances for chlorpyrifos, and agreement that all products lawfully treated with chlorpyrifos be permitted to clear the channels of trade, pursuant to 21 U.S.C. § 346a(l)(5). EPA also could not accept the terms proposed in the Second Gharda Letter, given the continued concern about lengthy existing stocks provisions, retention of import tolerances, and lack of a safety determination for uses beyond what was proposed in the 2020 PID.

Following still further discussions between EPA and Gharda, Petitioner Gharda emailed PRD on July 6, 2021 (the "July 2021 Gharda Email"). The July 2021 Gharda Email stated that

Petitioner Gharda was "willing to accept" certain voluntary cancellations, including the complete cancellation of some of the 11 uses identified in the PID (i.e., strawberry, asparagus, cherry (tart), and cotton) and cancellation of selected application methods for other crops (e.g., cancellation of the air blast method of application for tree fruit crops). However, Petitioner Gharda also stated that "in return for Gharda agreeing [to] certain voluntary cancellations," Petitioner Gharda requested that EPA "allow for continued use on alfalfa, soybean, sugar beet, wheat (summer and winter), apple, citrus and peach in select states as outlined in the December 2020 PID," and that EPA allow the formulation and distribution of end use products for all then-current uses through the end of June 2022 instead of February 2022, and the use of existing stocks through June 2023 instead of August 2022, as EPA had suggested. As with the First Gharda Letter and Second Gharda Letter, EPA was unable to accept the terms proposed in the July 2021 Gharda Email, given its continued concern about Petitioner Gharda's extended phase-out and existing stocks requests and lack of a safety determination beyond what was proposed in the 2020 PID. Although discussions continued with Petitioner Gharda throughout July 2021, ultimately, Gharda did not propose terms by which EPA could make a safety determination to leave chlorpyrifos tolerances in place.

V. Standard for Voluntary Cancellation Requests

Section 6(f) of FIFRA provides that "[a] registrant may, at any time, request that a pesticide registration of the registrant be canceled or amended to terminate one or more pesticide uses." 7 U.S.C. § 136d(f)(1)(A). To implement a voluntary product cancellation or use termination, the registrant would submit a letter to EPA (specifically, to the product manager or chemical review manager) requesting voluntary cancellation of the product or use(s). To cancel one or more uses, while retaining other use(s), the registrant also needs to submit a revised label

with the changes highlighted.

After receipt of the voluntary cancellation letter, EPA will publish a notice in the Federal Register with a comment period of at least 30 days. 7 U.S.C. 136d(f)(1)(B). FIFRA provides for a 180-day comment period for certain actions. *Id*. at § 136d(f)(1)(C)(ii). However, the registrant may request that the Agency waive the longer comment period in favor of a 30-day comment period, which speeds up the approval process. *Id*. At the conclusion of the comment period, unless there are substantive comments or the registrant rescinds the cancellation request, EPA typically will publish the final cancellation order and, for products with retained uses, approve the revised label to the extent consistent with FIFRA. If EPA has received substantive comments, EPA may modify or reconsider the cancellation as appropriate. The voluntary cancellation process is described in detail on EPA's website. See U.S. EPA, Voluntary Cancellation of a Pesticide Product or Use (last viewed August 1, 2023), RX 59.

Typically, as part of registration review, when EPA identifies risks that need to be mitigated, PRD would indicate in a Registration Review Decision document that the pesticide would not meet the FIFRA registration standard without certain mitigation measures being added to labels and/or certain uses or registrations being cancelled or modified, thereby requiring registrants to submit such requests or amendments. Subsequently, PRD would receive label amendment applications and voluntary cancellation requests from pesticide registrants consistent with the terms of the Agency's regulatory determination. Often, registrants submit voluntary cancellation requests or label amendments that conform to the Agency's required amendments or mitigations. But in other instances, a registrant may want to negotiate different terms for label amendments or existing stocks for use or product cancellations. Submissions that include additional terms or conditions that have not been agreed to by the Agency cannot be accepted as

voluntary cancellation requests for which notice publication is required by EPA. Requests including such terms or conditions are instead considered by EPA to be proposals to be used to facilitate further discussion between the Agency and the requestor regarding the scope and terms of a voluntary cancellation. This is because, under section 6(a)(1) of FIFRA, EPA may allow the sale and use of existing stocks only to the extent consistent with FIFRA. 7 U.S.C. § 136d(a)(1). Importantly, if a voluntary cancellation request is conditioned upon continued sale and distribution of existing stocks that would be inconsistent with FIFRA, the Agency could not issue a cancellation order including those existing stocks terms, which might, in turn, impact the registrant's interest in submitting the voluntary cancellation request to the Agency.

VI. Petitioner Gharda's Proposals for Further Negotiation

Because the First Gharda Letter, Second Gharda Letter, and July 2021 Gharda Email included a number of terms and conditions beyond the scope of the 2020 PID, as discussed above, EPA considered this correspondence to constitute proposals to be used for further negotiation between the Agency and Petitioner Gharda, rather than actual voluntary cancellation requests.

Moreover, at the time that EPA was determining whether modification of tolerances was an option in response to the Ninth Circuit's decision, neither the First Gharda Letter, Second Gharda Letter, nor July 2021 Gharda Email were accompanied by applications to amend the labels to reflect the more limited set of uses that would correspond with the voluntary cancellation request. As a result, EPA did not consider this correspondence as official requests for amendments to the terms and conditions of Gharda's registration. Rather, due to Petitioner Gharda's additional terms for consideration, including extended phase-out periods for existing stocks, EPA considered the correspondence to be proposals for potential future voluntary

cancellation rather than actual voluntary cancellation requests.

Consequently, the First Gharda Letter, Second Gharda Letter, and July 2021 Gharda Email did not provide a sufficient basis for EPA to conclude that aggregate exposures to chlorpyrifos would be limited to the 11 geographically limited uses identified in the 2020 PID. Moreover, since no other registrant submitted a request for voluntary cancellation of the uses (and applications to amend labels for products) beyond the 11 geographically limited uses identified in the 2020 PID, EPA did not have a basis at the time it issued the Final Rule to conclude that aggregate exposures would be limited consistent with the proposal in the 2020 PID. The proposed mitigation in the PID was just a proposal on which several entities submitted comments. For example, multiple groups submitted comments disagreeing with EPA's proposed subset of 11 uses in the 2020 PID. Some, including cranberry and banana growers, argued that their uses should be included among the 11 considered uses; others, including advocacy and environmental groups, argued that EPA's safety determination supporting even those limited 11 uses was not supported by the available science. *See, e.g.*, Comment submitted by Cranberry Institute (Mar. 4, 2021), RX 60; Comment submitted by Augura, Columbian Banana Association (Feb. 8, 2021), RX 61; Farmworker and Conservation Comments on Chlorpyrifos Revised Human Health Risk Assessment (Mar. 4, 2021), RX 62.

Consequently, without acceptable voluntary cancellation requests and applications for label amendments providing a basis to conclude that modified tolerances would be safe (as proposed in the 2020 PID), EPA concluded that it was unable to determine that the chlorpyrifos tolerances were safe. Given the limited time permitted by the Ninth Circuit, EPA based its determination on the information before the Agency as of April 29, 2021, and taking into consideration the registered uses for chlorpyrifos at the time, the Agency concluded that the

aggregate exposures to chlorpyrifos exceeded safe levels. JX 3. Therefore, EPA issued the Final Rule revoking all tolerances for chlorpyrifos contained in 40 CFR 180.342. *Id*.

Gharda has since submitted applications for approval of amended labels that remove all food uses other than the 11 uses identified in the 2020 PID, limited to those geographic areas identified in the PID and using the application rates that EPA assessed in the 2020 DWA. *See* JX 9, 10, 11. Nevertheless, EPA's regulations allow approval of labeling that bears directions for use on food only if all necessary tolerances have been issued, but at this time, all tolerances for residues of chlorpyrifos have been revoked. *See* 40 C.F.R. § 152.112(g).

VII. Impact Analysis

FIFRA requires EPA to consider in determining whether to issue a NOIC, "the impact of the action proposed in such notice on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy." 7 U.S.C. § 136d(b). FIFRA requires EPA to provide the analysis of that impact to the U.S. Department of Agriculture (USDA) when providing a copy of a draft of the NOIC to USDA for review. *Id*. Moreover, FIFRA requires EPA to consider "[i]n taking any final action under this subsection, … restricting a pesticide's use or uses as an alternative to cancellation and shall fully explain the reasons for these restrictions, and shall include among those factors to be taken into account the impact of such final action on production and prices of agricultural commodities, retail food prices, and otherwise on the agricultural economy, and the Administrator shall publish in the Federal Register an analysis of such impact." *Id*.

As discussed in the NOIC itself, EPA determined that cancellation of uses for a pesticide that already cannot be used on food due to the lack of tolerances would not have any impacts on the agricultural economy because any potential economic impact had already been directly

caused by the tolerance revocation. JX 1 at 76,478-79.

Prior to issuing the Final Rule revoking tolerances, EPA assessed the estimated benefits of the use of chlorpyrifos in agricultural settings. PX 40. However, such benefit or economic impact information is not a permissible factor to consider in determining whether to establish, modify, or revoke tolerances under the FFDCA. The FFDCA allows EPA to consider only whether aggregate exposure to the pesticide will be safe—which is a human health risk-only standard—and for any unsafe tolerances, the Agency must revoke or modify those tolerances, regardless of economic impacts or the benefits of those tolerances. 21 U.S.C. § 346a(b)(2). Because EPA may not consider benefits or economic impact information under FFDCA, EPA did not consider the findings of benefits analysis in its revocation of the chlorpyrifos tolerances.

Having determined that the chlorpyrifos tolerances were not safe based on the risks posed by registered food uses, EPA revoked all tolerances for residues of chlorpyrifos on food. That revocation meant that any future applications of chlorpyrifos without tolerances in place would render food containing chlorpyrifos residues adulterated, making it illegal to distribute such food in interstate commerce. *See* 21 U.S.C. §§ 331(a), 342(a)(2)(B), 346a(a)(1). That revocation had the effect of prohibiting farmers from continuing to use chlorpyrifos on agricultural crops, since such application would result in food that could not be sold or distributed. To the extent impacts on the agricultural economy are occurring, they are being experienced now as a result of the tolerance revocation, since farmers have not been able to apply chlorpyrifos to crops since February 27, 2022. *See* U.S. Food and Drug Administration, Questions and Answers Regarding Channels of Trade Policy for Human Food Commodities with Chlorpyrifos Residues: Guidance for Industry (Feb. 2022), RX 46. The continued registration of these uses has not eased the economic burden on any farmers or the agricultural economy to date nor will cancellation of

these uses cause any additional economic impacts on production and prices of agricultural commodities, retail food prices, or the agricultural economy because growers already cannot use the pesticide. The cancellation is merely an administrative action by the Agency to ensure that these registered products do not continue to violate FIFRA and to comply with the 9th Circuit's directive to cancel or modify registrations associated with the revoked tolerances in a timely fashion. Doing so also helps to provide clarity to the regulated community and sends a consistent regulatory message about the status of these products to help prevent abuse.[1] Cancellation of uses that already cannot be used presents no impact to the agricultural economy.

Costs to registrants from loss of inventory, sales, or investment if a pesticide is cancelled does not constitute an impact on production or prices of agricultural commodities, retail food prices, or the agricultural economy and thus EPA is not required to consider it under FIFRA section 6(b). Nor does EPA consider those costs to registrants in its typical assessment of benefits because FIFRA requires consideration of "economic, social, and environmental costs and benefits of the *use* of any pesticide", not of the sale or distribution of the pesticide. 7 U.S.C. § 136(bb)(1).

Petitioner Gharda's suggestion that EPA consider as an alternative to cancellation the leaving in place of uses on food for which no tolerances exist is not viable, especially in light of the Ninth Circuit's order to cancel associated food uses in a timely fashion. There are no tolerances to support those uses; thus, those uses, which would result in adulterated food, are impermissible and inconsistent with FIFRA. As a general matter, when EPA identifies a risk

[1] On July 27, 2023, Maine Public Radio reported that a large broccoli farm in Maine had admitted to applying chlorpyrifos to its crop after it had been banned in Maine and after EPA essentially prohibited use on food in 2022. State regulators required the crop to be destroyed due to the violative chlorpyrifos residues. Maine Public, "Caribou broccoli farm will have to destroy crops after illegal pesticide is detected" (July 25, 2023), https://www.mainepublic.org/environment-and-outdoors/2023-07-25/caribou-broccoli-farm-will-have-to-destroy-crops-after-illegal-pesticide-is-detected (RX 63).

concern or a problem with a pesticide for which mitigation measures are necessary to avoid cancellation, EPA will look for alternatives that would be permissible under FIFRA, not alternatives that are inconsistent with FIFRA; EPA should not be compelled to conduct an impact analysis of alternatives that would be inconsistent with FIFRA. EPA did indicate in the NOIC that as part of the final action taken following this proceeding, that it could consider alternatives to cancellation of the whole product registrations, for example, amendments of the registrations that allow uses to remain that would not violate FIFRA, i.e., non-food uses, which are not contingent upon the existence of a tolerance. Those non-food uses would continue to be evaluated under registration review along with the rest of the remaining chlorpyrifos non-food uses that are the subject of that registration review case.

Even if EPA conceded all the economic impacts alleged by the Petitioners' various witness statements on the agricultural economy, which it does not, that would still not support retaining the uses; labels cannot include directions for use on food when doing so would cause a violation of the FFDCA.

VII. Conclusion

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Respectfully submitted,

Dated: 08/03/2023

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