



March 11, 2013

Via E-Mail

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**Re: Request for Reconsideration of Information Quality Act Request for Correction
Regarding Impacts of Biofuel Mandates on Global Hunger and Mortality**

I. Introduction

The Competitive Enterprise Institute and ActionAid USA hereby ask that EPA reconsider its December 12, 2012 denial of their Request for Correction of information under the Data Quality Act (also known as the Information Quality Act).¹

Our October 13, 2011 Request for Correction was aimed at correcting EPA's erroneous downplaying of the impact of biofuel programs on world hunger. As we pointed out, a peer-reviewed study by Indur M. Goklany, Ph.D.² had found that by increasing food prices, biofuel mandates have caused "chronic hunger" in developing countries, with an estimated death toll of 192,000 deaths annually.

¹ Section 515(a) of the Treasury and General Government Appropriations Act for Fiscal Year 2001, P.L. 106-554; 44 U.S.C. § 3516 (notes); Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies, 67 Fed. Reg. 8452 (Feb. 22, 2002).

² Goklany, Indur M., *Could Biofuel Policies Increase Death and Disease in Developing Countries?* Journal of American Physicians and Surgeons, Volume 16, Number 1, pp. 9-13 (Spring 2011). ("Goklany Study") (<http://www.jpands.org/vol16no1/goklany.pdf>). Goklany is an author and researcher who has been associated with the Intergovernmental Panel on Climate Change since its inception in 1988 as an author, expert reviewer, and U.S. delegate to that Organization.

Although EPA did not point to any flaws in that study -- which was rather conservative in its estimate of the death toll from biofuel mandates -- EPA nonetheless denied our Request for Correction after over 14 months of delay.

EPA conceded that “biofuel production may give rise to several undesirable developments, including the possibility” of “higher food prices and possibly more malnutrition.” But it dismissed our request by drawing a stark distinction between the effects of global biofuel policies and U.S.-specific biofuel policies. EPA argued that because “the Goklany study analyzes the impacts of *global* biofuel policies on poverty and morbidity/mortality, whereas EPA’s analyses were focused on the effects of the incremental increase in biofuel production based on” U.S. requirements, the Goklany study was of little import. Thus, “assessing effects on global poverty levels and resulting morbidity and mortality was appropriately beyond the scope of our analysis.”

II. EPA Wrongly Focused on Just the Incremental Effects of U.S. Biofuel Mandates Viewed In Isolation

EPA’s narrow focus – which took into account only the “incremental” effects of EPA’s own policies, ignoring the ramifications of such policies being followed on a global scale – is contrary to EPA’s own asserted global leadership role, longstanding agency practice, and federal court rulings.

In setting policy, EPA has long been cognizant of the fact that policies and “adverse impacts” should be addressed from a vantage point³ that looks beyond “national boundaries” to embrace principles of “global environmental stewardship” and the potential for “international partnerships” in promoting “environmental and human health goals.”⁵ As EPA has explained many times, including in its information guidelines themselves, “the United States plays a leadership role in working with other nations to protect the global environment.”⁶ EPA does not look just at the “domestic implications” of a policy in deciding whether to adopt it.⁷

³ See, e.g., *U.S. Environmental Protection Agency Policy Statement on Climate-Change Adaptation*, at pg. 1, <http://epa.gov/climatechange/Downloads/impacts-adaptation/adaptation-statement.pdf>.

⁵ *FY 2011-2015 EPA Strategic Plan Cross-Cutting Fundamental Strategy: Strengthening State, Tribal, and International Partnerships* at pg. 2, available at http://www.epa.gov/planandbudget/annualplan/Strategy_4_FY_2013_Action_Plan.pdf.

⁶ *Guidelines for Ensuring Maximizing the Quality, Objectivity, Utility, and Integrity, of Information Disseminated by the Environmental Protection Agency*, EPA/260R-02-008 (October 2002). (“EPA Guidelines”), at pg. 5, § 2.1, *EPA’s Mission and Commitment to Public Access* http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf; see also *EPA’s International priorities*, <http://www.epa.gov/international/priorities-cc.html> (“The Environmental Protection Agency has a long history of international collaboration on a wide range of global environmental issues. In recent years, EPA’s bilateral and multilateral partnerships have taken on new significance in the face of shared environmental and governance challenges”); *EPA’s 2011-2015 Strategic Plan*, at pg. 34 (EPA will “strengthen” its “international partnerships to achieve our mutual environmental and human

Moreover, as EPA has emphasized in the past, a problem need not be limited to the U.S., or caused solely by it, to merit corrective “action” by the EPA, nor is it “necessary” for a petitioner to show that a change in U.S. policy will result in the problem being “entirely solved”:

However, as the U.S. Supreme Court has noted in decisions as recently as *Massachusetts v. EPA*, regarding the problem of climate change, it is not necessary to show that a problem will be entirely solved by the action being taken, nor that it is necessary to cure all ills before addressing those judged to be significant.⁸

Similarly, the courts have rejected the argument that an agency like EPA can refuse to act because its policy has only an “incremental” effect on overall global biofuel production. For example, the Supreme Court rejected EPA’s argument that it could refuse to regulate greenhouse gases because it could only control U.S. greenhouse gas emissions, not “greenhouse gas emissions from developing nations” that were “likely to offset any marginal domestic decrease” that could be achieved through EPA regulation.⁹ As the Supreme Court explained, that argument

rests on the erroneous assumption that a small incremental step, because it is incremental, can never be attacked . . . Yet accepting that premise would doom most challenges to regulatory action. Agencies, like legislatures, do not generally

health goals”) (available at <http://www.epa.gov/planandbudget/strategicplan.html>); *EPA’s Draft Climate Change Adaption Plan*, <http://www.epa.gov/climatechange/pdfs/EPA-climate-change-adaptation-plan-final-for-public-comment-2-7-13.pdf>, at pp. 9, 39 (“Partnerships will be forged that include multiple levels of government, . . . internationally. . . .Lessons will be . . . shared across the Agency and with its partners at home and abroad”; “decision-support” for “international partners”); Regulatory Impact Analysis, <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-OAR-2005-0161-3238>.

⁷ *Regulatory Impact Analysis: Renewable Fuel Standard Program*, at pg. 221 (looking at the purported “global” emissions-reduction benefits of biofuel mandates, not just their “domestic implications”), <http://www.regulations.gov/#!documentDetail:D=EPA-HQ-OAR-2005-0161-3238>.

⁸ *National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units: Proposed Rule*, 76 Fed. Reg. 24976, 24978 (May 3, 2011), citing *Massachusetts v. EPA*, 549 U.S. 497, 525 (2007).

⁹ *Massachusetts v. EPA*, 594 U.S. 497, 524 (2007).

resolve massive problems in one fell regulatory swoop.¹⁰ . . . They instead whittle away at them over time.¹¹

Focusing just on the marginal effects of U.S. policies is an untenable approach that would, if adopted by other nations, effectively let every nation off the hook in addressing global environmental problems. Moreover, EPA's focus on marginal effects here is contrary to its general approach in analyzing health risks, such as toxic hazards.¹⁵

III. U.S. Biofuel Mandates Have a Huge Impact, and There Is Nothing Marginal About Their Effect on Food Prices and World Hunger

In any event, there is nothing marginal or incremental about the U.S. role in ethanol production and corn production, or its effect on food prices at home and abroad. The U.S. produces most of the world's ethanol, and has for several years.¹⁶ And the U.S. is by far the world's largest corn producer, producing a third of the world's corn all by itself.¹⁷ Researchers have estimated that the "U.S. biofuel mandate caused a 30% increase in the price of agricultural commodities in 2008."¹⁸

As the Congressional Budget Office has noted, "the upswing in the demand for corn to be used in producing domestic ethanol raised" the price of corn "between April

¹⁰ *Id.*, citing *Williamson v. Lee Optical of Okla., Inc.*, 348 U. S. 483, 489 (1955) ("[A] reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind").

¹¹ *Id.*

¹⁵ See, e.g., *Ethyl Corp. v. EPA*, 541 F.2d 1, 30-31 (D.C. Cir. 1976) (in assessing risks, EPA does not limit its consideration to the danger presented by lead additives "in and of themselves," but rather considers their cumulative impact along with other sources of exposure to lead; where problem "is caused by multiple sources," Congress "did not mean for 'endanger' to be measured only in incremental terms").

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¹⁶ U.S. Department of Energy, Alternative Fuels Data Center, *Global Ethanol Production* http://www.afdc.energy.gov/data/tabc/all/data_set/10331 (graph showing U.S. produced 13.90 billion gallons out of world total of 22.36 billion in 2011; 13 billion gallons out of 23.01 billion total in 2010; and majorities of world output in 2009 and 2008).

¹⁷ See Whitney McFerron, *Corn Production Forecast Cut to 838 Million Tons by IGC*, Bloomberg News, Aug. 23, 2012 (www.bloomberg.com/news/2012-08-23/global-corn-output-forecast-lowered-to-838-million-tons-by-igc.html) ("Corn production in the U.S., the world's biggest grower and exporter, may total 275 million tons, down from 300 million estimated last month, the IGC said."; "Farmers across the world will harvest 838 million metric tons of corn in the 2012-13 crop year").

¹⁸ Timothy A. Wise, *The Cost to Mexico of U.S. Corn Ethanol Expansion*, at pg. 5 (Tufts Univ., May 2012) (<http://ase.tufts.edu/gdae/Pubs/wp/12-01WiseBiofuels.pdf>), citing, e.g., Michael J. Roberts, et al., *Identifying Supply and Demand Elasticities of Agricultural Commodities: Implications for the US Ethanol Mandate*, NBER Working Paper (National Bureau of Economic Research 2010).

2007 and April 2008” by “between 28 percent and 47 percent of the increase in the price of corn.”¹⁹ This “growing use of corn for ethanol accounted for about 10 percent to 15 percent of the increase in” the general food prices paid by U.S. consumers over that period.²⁰ The CBO notes that consumer price increases due to ethanol will naturally be even larger overseas than in the U.S.; the “impact of higher prices for food will probably be greater in other countries than in the United States because the percentage of households’ income that is spent on food in those other nations is larger and the value of commodities makes up a bigger share of the cost of food,” especially in poor countries like India.²¹

Similarly, according to a study by Purdue University economists, “U.S. ethanol policy was responsible for roughly 1/4 of the large corn price increases experienced in 2008 and has continued to have a significant impact since. A 2009 discussion paper by the Federal Reserve Board also attributed more than 22 percentage points of the 2006-08 corn price increases to US biofuels expansion.”²² A 2012 study by the New England Complex Systems Institute estimated that 27% of the price increases in 2004-2011 were the result of “U.S. ethanol expansion.”²³ Another 2012 study estimated that U.S. ethanol expansion cost Mexico alone about \$1.5 billion in higher corn prices.²⁴

EPA has suggested that the effect of the U.S. biofuel mandate on world food prices is “relatively modest.”²⁵ But even if this were true, it would not change the fact that has increased world hunger and poverty, since even seemingly modest price increases can have deadly consequences for people in developing countries, who may

¹⁹ Congressional Budget Office, *The Impact of Ethanol Use on Food Prices and Greenhouse Gas Emissions* at pp. 6-7 (April 2009), available at <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/100xx/doc10057/04-08-ethanol.pdf>.

²⁰ *Id.*

²¹ *Id.* at 10.

²² ActionAid, *Fueling the Food Crisis: The Cost to Developing Countries of US Corn Ethanol Expansion* (Oct. 2012) at pg. 9 (www.ase.tufts.edu/gdae/Pubs/rp/ActionAid_Fueling_Food_Crisis.pdf), citing, e.g., Philip Abbot, et al., *What’s Driving Food Prices in 2011? Issue Report* (Farm Foundation); Scott Baier, et al., *Biofuel Impact on Crop and Food Prices: Using an Interactive Spreadsheet. International Finance Discussion Papers*, Board of Governors of the Federal Reserve System (2009).

²³ *Fueling the Food Crisis* at pg. 10, citing M. Lagi, et al., *Impact of Ethanol Conversion and Speculation on Mexico Corn Imports* (Apr. 30, 2012), <http://necsi.edu/research/social/foodprices/mexico/>.

²⁴ Timothy A. Wise, *The Cost to Mexico of U.S. Corn Ethanol Expansion*, at 1 (Tufts Univ., May 2012) (<http://ase.tufts.edu/gdae/Pubs/wp/12-01WiseBiofuels.pdf>).

²⁵ *Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program*, 72 Fed. Reg. 23900, 23907 (May 1, 2007) (final rule).

need to spend up to 80 percent of their income on food to survive, even before price increases.²⁶

A 2012 study on the impact of the U.S. mandate on India observed that “U.S. energy policy that mandates the production of fuel from food may lead to a sharp increase in world poverty.”²⁷ It concluded that “even with modest prices increases (10-12%) for most food crops, the U.S. biofuel policy may create about 42 million new poor in India alone.”²⁸

IV. Conclusion

For the above reasons, as well as the reasons given in our original request, EPA should grant our request for correction regarding EPA’s information on the impacts of biofuel mandates on global hunger and mortality.

Respectfully submitted,



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²⁶ *Biofuels a Factor as Global Food Riots Spread to Haiti*, African Energy New Review, April 14, 2008. (http://www.energynews.co.za/web_main/article.php?story=20080414021920559) (60-80% of income).

²⁷ See Ujjayant N. Chakravorty, *Food for Fuel: The Effect of U.S. Energy Policy on Indian Poverty*, at 1 (January 2012) (<http://works.bepress.com/cgi/viewcontent.cgi?article=1005&context=chakravorty>)

²⁸ See *id.* at 3 (also noting that with “bigger” price increases that plausibly “could happen,” a much larger figure of “88 million people become poor.”)