

DATA QUALITY ALERT

CRE is filing this Data Quality Alert as a precursor to filing a Data Quality Act petition.

A Data Quality Alert is a mechanism for informing an agency of the deficiencies in a report which provides the basis for filing a Data Quality Petition.

Data Obfuscation Biases EPA’s Neonicotinoid-Soybean Study Against Farmers:

In the Matter of)
Benefits of Neonicotinoid Seed)
Treatments to Soybean Production;) Docket Number: EPA-HQ-OPP-2014-0737
Notice of Availability)
Request for Comments)

“We will continue to affirm the core values of science, transparency, and the rule of law in addressing our environmental challenges. Our work will be guided by the best possible data and research and a commitment to transparency and accountability.”

– US EPA Fiscal Year 2014-2018 Strategic Plan

“In all cases, the Guidelines recommends adhering to the following general principles as stated by OMB (1996):

“Analysis of the risks, benefits, and costs associated with regulation must be guided by the principles of full disclosure and transparency...”

– US EPA Guidelines for Preparing Economic Analyses (2014)

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Conclusion

EPA needs to make public the complete dataset on which it is basing its conclusions. Unless EPA provides the required transparency and revises its soybean study, it will be subject to a Request for Correction under the Data Quality Act.

Issue

By not disclosing the data underlying its aggregated results and by using unpublished “proprietary” EPA data of unknown quality and unpublished proprietary federally-sponsored data of unknown quality, EPA has disseminated a study that is biased against American farmers and common sense. The agency does not provide the data and methodology behind its counter-intuitive conclusion that the most sophisticated, data-driven farmers on earth don’t understand their production costs.

In preparing the study, EPA did not adhere to OMB’s binding Data Quality Act (DQA) guidelines and its own agency-specific conforming DQA guidelines or its own Guidelines for Preparing Economic Analyses.

The study’s lack of transparency indicates that the agency is having difficulty meeting its Strategic Goal #4 which includes managing “a comprehensive pesticide risk reduction program through science-based registration and reevaluation processes....” The agency’s performance is evaluated under the Government Performance and Results Management Act Modernization Act (GPRMA) for reporting to the budget-side of OMB.¹

EPA needs to make public the complete dataset on which it is basing its conclusions. Unless EPA provides the required transparency and revises its soybean study, it will be subject to correction under the DQA.

Under trade harmonization commitments, EPA needs to coordinate its analysis with Canada’s Pest Management Regulatory Agency which is conducting a near identical economic analysis albeit with pre-publication input from growers and registrants.

¹ US EPA, Fiscal Year 2014-2018 Strategic Plan, p. 33.

**Data Obfuscation Biases EPA’s Neonicotinoid-Soybean Study Against Farmers:
A Data Quality Alert**

EPA’s Study Demonstrates that the Crop Protection Market Works; Farmers Choose the Best Products for their Farm-Specific Needs

There are two basic approaches to controlling pests when growing soybeans (1) treat the seeds with EPA registered chemicals or (2) treat the plant’s leaves (foliar) and surrounding soil rather than seeds with EPA registered chemicals. Both options are available to farmers and farmers choose the specific pest control options which work best for their farm-specific conditions and practice.

We expect that farmers who use treated seeds should earn about the same per-acre profit as farmers who use a foliar treatment option to control pests; farm managers would change their pest control strategy if doing so would improve their profit. It would be only in event of a market failure that we would expect to see different levels of per-acre profitability by type of crop protection treatment chosen. In short, showing that farmers earn about the same profit per acre demonstrates that the market is Pareto efficient. EPA discusses Pareto efficiency (optimality) in its *Guidelines for Preparing Economic Analyses*.² EPA explains,

The efficient level of production is referred to as Pareto optimal because there is no way to rearrange production or reallocate goods in such a way that someone is better off without making someone else worse off in the process. [EPA, Analytic Guidelines, p. 4-1]

The EPA Soybean Report’s conclusions misinterpret a market equilibrium as farmers making economically indifferent crop protection decisions.³ As we will see, the study also suffers from critical design and data transparency shortcomings.

Regulating the Regulators: EPA’s Analysis is Subject to the Good Government Laws

EPA’s development and publication of studies and reports is subject to the procedural, statistical and other data quality provisions of the “good government”⁴ laws that regulate the regulatory process. These comments will provide an overview of the relevant laws along with examples of EPA’s substantive violations of the same. The examples are illustrative of why the EPA report is in need of revision. The comments will conclude with a list of the data that the agency needs to make publicly available for review and comment before EPA will be able to fulfill its transparency commitments and OMB’s transparency requirements.

² US Environmental Protection Agency, National Center for Environmental Economics Office of Policy, *Guidelines for Preparing Economic Analyses*, [“Analytic Guidelines”] December 17, 2010 (updated May 2014), [http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/\\$file/EE-0568-50.pdf](http://yosemite.epa.gov/ee/epa/erm.nsf/vwAN/EE-0568-50.pdf/$file/EE-0568-50.pdf), p. 4-1.

³ US Environmental Protection Agency, “Benefits of Neonicotinoid Seed Treatments to Soybean Production,” (“Soybean Report”) October 15, 2014.

⁴ See, The Governors of the Regulatory State, http://www.thecre.com/pdf/20110530_Governors_of_the_Regulatory_State.pdf.

The Data (Information) Quality Act⁵ (DQA) is a particularly important good government law because it gives affected persons the right to “seek and obtain correction of information” that does not comply with the Office of Information and Regulatory Affairs’ (OIRA) government-wide quality standards. The US Court of Appeals for the D.C. Circuit has ruled that OMB’s DQA guidelines are “binding.”⁶ The Court subsequently rejected the Department of Justice’s petition filed in opposition to CRE’s understanding of the court ruling.⁷ OMB supplements its DQA guidelines with specialized technical guidance including its recently released Statistical Policy Directive No. 1.⁸ EPA’s own agency-specific DQA implementing guidelines comply with OMB’s guidelines.⁹

In addition to its *Information Quality Guidelines*,¹⁰ EPA has also continued long-standing development and refinement of its aforementioned guide for agency staff on “the preparation and use of sound science in support of the decision-making process.”¹¹ EPA explains that the *Guidelines for Preparing Economic Analyses* provides guidance in conducting analyses which are required by statutes and executive orders (EOs) such as the Executive Order on Regulatory Review, the Paperwork Reduction Act, and SBREFA,¹² *i.e.*, the good government laws.

What is Wrong with the EPA Study

What is EPA’s Baseline?

The first step in developing an economic analysis is specifying the baseline. EPA’s emphasis on agency analyses clearly defining the relevant baseline was made clear throughout the chapter of the

⁵ The Data Quality Act is also known as the Information Quality Act (IQA). The Office of Management and Budget, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies,” (“OMB Guidelines”) <http://www.whitehouse.gov/sites/default/files/omb/assets/omb/fedreg/reproducible2.pdf>.

⁶ The court stated: “[B]ecause Congress delegated to OMB authority to develop binding guidelines implementing the IQA, we defer to OMB’s construction of the statute. *See United States v. Mead*, 533 U.S. 218, 226-27 (2001).” At 14. See, http://www.thecre.com/quality/2010/20100414_regweek.html.

⁷ See Department of Justice, Appellees’ Petition for Panel Rehearing, http://thecre.com/pdf/20100603_Government_DQA_Appeal_to_Court.abrev.pdf. CRE cites the court’s rejection of Justice’s petition in our unopposed *amicus* brief before the United States Court of Appeals for the Ninth Circuit, http://thecre.com/pdf/20130609_Harkonen_Armicus.pdf, p. viii. For a discussion of the CRE brief, see <http://www.thecre.com/oira/?p=1876>.

⁸ See, OIRA Watch, “OMB Reinforces its Policy Implementing the Data Quality Act,” December 3, 2014, <http://www.thecre.com/oira/?p=3638>.

⁹ 67 Fed. Reg. 8452, col 1.

¹⁰ US Environmental Protection Agency, “Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency,” (“EPA Information Quality Guidelines,” http://www.epa.gov/QUALITY/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf.

¹¹ US EPA, Economic Analysis Guidelines, p. 1-1.

¹² *Id.*, p. 2-1.

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Economic Analysis Guidelines devoted to the issue. The chapter begins with a plain English explanation,

A careful and correct baseline specification assures the accuracy of benefit and cost estimates. The baseline specification can vary in terms of sources analyzed (e.g., facilities, industries, sectors of the economy), geographic resolution (e.g., census blocks, GIS grid cells, counties, state, regions), environmental objectives (e.g., effluents and emissions versus pollutant concentrations), and years covered. Because the level of detail presented in the baseline specification is an important determinant of the kinds of analysis that can be conducted on proposed regulatory options, careful thought in specifying the baseline is crucial. [EPA, Economic Analysis Guidelines, p. 5-1]

EPA also provides a common sense definition of a baseline,

A baseline is defined as the best assessment of the world absent the proposed regulation or policy action. This “no action” baseline is modeled assuming no change in the regulatory program under consideration. [EPA, Economic Analysis Guidelines, p. 5-1]

The current “no action” situation with respect to soybeans is that farmers choose different crop protection strategies, seed treatment or foliar treatment, based on their farm-unique situation.

A baseline, however, is far more than a general concept, it is a detailed set of specifications that underpins the analysis. Clear specification of the baseline in an economic analysis is so important that EPA states,

Analysts are advised to seek clear direction from management about baseline definitions early on in the development of a rule. [EPA, Economic Analysis Guidelines, p. 5-2]

EPA provides detailed guidance on the type of specifications which should be included in baselines.

In specifying the baseline, analysts should employ the following guiding principles each of which is discussed more fully below:

1. Clearly specify the current and future state of relevant economic variables, the environmental problem that the regulation addresses and the regulatory approach being considered;

2. Identify all required parameters for the analysis;

5. Specify the “starting point” of the baseline and policy scenario;

6. Specify the “ending point” of the baseline and policy scenario;

8. *Use the baseline assumptions consistently for all analyses for this regulation.*
[EPA, Economic Analysis Guidelines, p. 5-2]

It's not surprising that the agency's most recent guidance on baselines is so detailed, EPA was a pioneer in developing baseline specifications for regulatory analysis. For example, in discussing a 1982 report prepared for the agency by a contractor, *Baseline Concepts for Regulatory Impact level Analysis*¹³ EPA explains that *Baseline Concepts* "discusses, and provides an illustration of, the effects of baseline choices on the costs and savings of regulation."¹⁴

The agency provides practical advice, not just abstract ideals, in applying its baseline analytic guidance principles to real world situations,

Though these principles exhibit a general common-sense approach to baseline specification, the analyst is advised to provide her own explicit statements on each point. Failure to do so may result in a confusing presentation, inefficient use of time and resources, and misinterpretation of the economic results. [EPA, Economic Analysis Guidelines, p. 5-2]

Regrettably, the agency's soybean economic analysis does not even use the word baseline. Although it is possible to tease out indications or suggestion as to some of the baseline specifications, the report contains no clear statement of the baseline specifications used in the analysis. By not recognizing a baseline situation in which the market is in equilibrium, the report demonstrates why the clear communication of baseline specifications is essential.

EPA warned its analysts that lack of clarity on baseline specification could lead to confusion and wastes of time and resources. Avoidable confusion and waste are more than poor practice, they are violations of the good government laws. For example, OMB's DQA guidelines explain that "objectivity," one of the three basic components of quality along with "utility" and "integrity," means that agency "disseminated information is being presented in an accurate, clear, complete, and unbiased manner."

A key good government law, the Paperwork Reduction Act (PRA), contains specific prohibitions against wasting time and resources. The PRA's very purpose is to "reduce, minimize and control burdens and maximize the practical utility and public benefit of the information created, collected, disclosed, maintained, used, shared and disseminated by or for the Federal government."¹⁵

Because of the report lack a clear statement of its baseline specifications, the reader is left without an understanding of basic issues including,

¹³ ICF Incorporated, "BASELINE CONCEPTS FOR REGULATORY IMPACT ANALYSIS," Prepared for: Economic Analysis Division, Office of Planning and Resources Management, U.S. Environmental Protection Agency, August 1, 1982, [http://yosemite.epa.gov/ee/epa/eerm.nsf/vwAN/EE-0112.pdf/\\$file/EE-0112.pdf](http://yosemite.epa.gov/ee/epa/eerm.nsf/vwAN/EE-0112.pdf/$file/EE-0112.pdf).

¹⁴ EPA, National Center for Environmental Economics, "Baseline Concepts for Regulatory Impact Analysis," http://yosemite.epa.gov/ee/epa/eed.nsf/a86084a5f63a7e9985257600006bb560/7758d574f0b62f33852576000e-an_06c0263!OpenDocument.

¹⁵ 5 CFR 1320.1

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1. What data did EPA use?
2. How did EPA use it?

Table 4 in the EPA Soybean Report is titled “Upper Bound Estimate of the Average Economic Benefits to Soybean Growers in the U.S. from Using Neonicotinoid Seed Treatments.” The table provides estimates of the yield, variable costs, and operating revenue per acre for two soybean pest protection scenarios, seed treatment and soil treatment.

What Data did EPA Use and How did EPA Use it?

Since Table 4 contains the report’s only quantitative comparison of the economic benefits of soybeans grown seed treatment versus foliar treatment pest control, it is the focal point of this DQA Alert. Of particular Data Quality concern is row 1, “Yield (bu/A)” since (1) comparing the relative effectiveness of the two soybean pest control strategies is the nub of the economic benefits issue and (2) Net Operating Revenue is directly dependent on it.

EPA highlighted the centrality of the Yield estimate in its Soybean Report when it stated, “[s]ince no significant yield gains are expected for soybeans from the use of neonicotinoid seed treatments, any national benefits will be reflected in net operating revenue through changes in production costs.”¹⁶ The Yield estimates are thus the cornerstone on which EPA’s analysis rests.

There are three particular concerns with the report’s Yield estimates,

1. *The Yield estimates have no date or other boundary specification.* Table 4 contains no indication as to what year(s), past, present or future, its Yield, Price, Insecticide Costs and Net Operating Revenue estimates are intended to represent. The Table describes itself as an Upper Boundary Estimate but the only boundary condition discussed in the text (p. 10) refers to the use flubendiamide as the selected soil treatment pest control option because it is “the most expensive alternative” to neonicotinoid seed treatment. Whether there are other Upper Boundary conditions that were used in developing the table is unstated.
2. *The Yield estimates for the two pest treatment options is without basis.* None of the public data sources cited in the report include pest treatment data, such estimates were derived from federal and federally-sponsored, proprietary data. The report’s misuse of propriety and unpublished data is discussed below.
3. *The Yield estimates are demonstrably wrong.* All 16 of the USDA Yield estimates cited by the Soybean Report are below EPA’s Yield estimates disseminated in Table 4. The agency has thus performed unstated manipulation on the underlying USDA statistics that produces its unsupported Table 4 estimates.

The Table 4 lists the following sources for its undated estimates of yield, price and insecticide costs,

¹⁶ US EPA, Soybean Report, p. 11.

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- Crop Product Summary and Crop Values Summary (USDA NASS, 2010-2014);
- USDA ERS Commodity Costs and Returns (2013); and
- EPA Proprietary Data, 2014.

The five National Agricultural Statistics Services Crop Product Summary reports published 2010-2014 contain state-specific and national estimates of soybean yield for seven years, 2007 through 2013. The Economic Research Service report contains soybean yield estimates for 2012 and 2013.

Since the Soybean Report's Table 4 cited generally to all the reports rather than to specific data, the matrix below displays the complete range of USDA soybean yield data that may have been cited as being the source(s) of EPA's Yield estimates.

EPA's Soybean Yield Estimates Exceed USDA's Yield Data								
Report	2007	2008	2009	2010	2011	2012	2013	Table 4
USDA NASS (2014, p. 45)					41.9	39.8	43.3	
USDA NASS (2013, p. 45)				43.5	41.9	39.6		
USDA NASS (2012, p. 43)			44.0	43.5	41.5			
USDA NASS (2011, p. 71)			44.0	43.5				
USDA NASS (2010, p. 37)	41.7	39.7	44.0					
USDA ERS (2013, cells B37, C37)						42.0	43.0	
EPA (2014, p. 11)								45.0

All 16 of the 16 USDA national soybean Yield estimates referenced in Table 4 are below both of EPA's Yield estimates. In short, **the Soybean Report is inaccurately disseminating USDA statistical data.**

The matrix makes clear that

1. EPA's Yield estimate for soybeans produced with treated seed is not supported by its underlying data, and
2. EPA's Yield estimate for soybeans produced using flubendiamide is not supported by its underlying data.

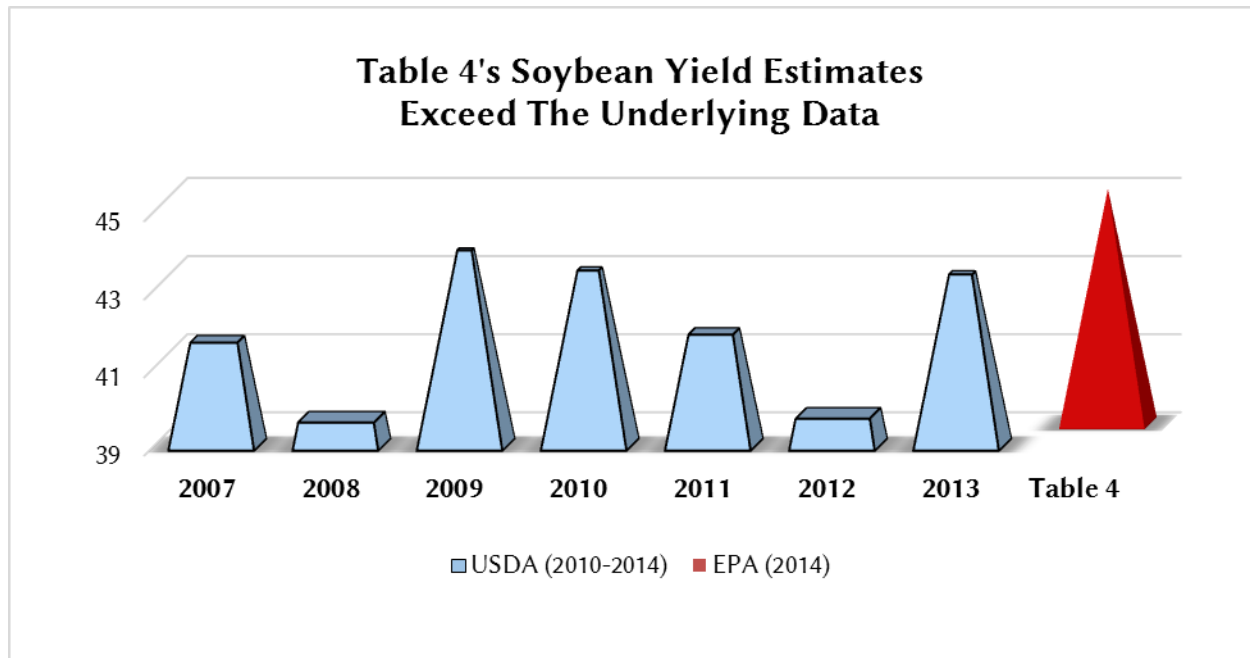
The Office of Information and Regulatory Affairs recently published its new Statistical Policy Directive No. 1.¹⁷ The Administrator's Memorandum explained the importance of the Directive,

Any loss of trust in the Federal statistical system and its products causes uncertainty about the validity of measures the Nation uses to monitor and assess its performance, progress, and needs by undermining the public's confidence in the information released by the Government. [OIRA, Memorandum M-15-03]

¹⁷ Howard Shelanski, Memorandum for the Heads of Selected Executive Departments and Agencies, "Department Suppmi for Implementation of Statistical Policy Directive No. I: *Fundamental Responsibilities of Federal Statistical Agencies and Recognized Statistical Units*, M-15-03, November 26, 2014, <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-03.pdf>.

Any EPA information disseminations based on flawed use of data from Federal Statistical Agencies, such as the USDA NASS reports, violates the DQA and threatens a loss of trust in America’s agricultural statistics.

The graph below illustrates that Table 4’s two Yield estimates are not traceable to the underlying data. Thus, whatever unstated manipulations EPA performed on the underlying USDA data are responsible for producing the report’s unsupported Yield estimates.



Since the Table 4 Yield estimates are unsupported, so too are Table 4’s estimates of Net Operating Revenue that depends on Yield and the report’s comparisons of seed treatment and soil treatment pest control options.

In addition to the USDA reports, Table 4 also cites to EPA Proprietary Data, 2014. The report discusses its use of agency-proprietary data below Table 4 stating,

EPA proprietary data show that on average from 2004 to 2012, approximately 65% of soybean growers in the U.S. indicated that they had no pest they were targeting when using neonicotinoid-treated seed. [EPA Soybean Report, p. 11]

The proprietary data discussed in the above statement is crucial to the report’s conclusions since it apparently serves as the basis for EPA’s unstated assumption that a substantial share of soybean farmers are using plant protection products in an economically irrational manner. The report addressed this issue more explicitly when it stated,

Most growers (approximately 65%) did not indicate any specific target insect pests driving their usage of soybean neonicotinoid seed treatment products, suggesting that a large majority of usage in soybean could actually be prophylactic in nature,

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rather than in response to a specifically identified problem.” [EPA Soybean Report, pp. 4-5]

Thus it becomes clear that report’s “conclusions” about the economic benefits of seed treatment rely on what the agency thinks that proprietary data “could” suggest.” Specifically, based on its proprietary data, EPA indicates that the majority of farmers who decide to grow soybeans using treated seed are doing so with rational basis since the report states,

With 30% of the 75 million acres of soybeans in the U.S. being treated with neonicotinoid seed treatments, this implies that approximately 8.6 million of the 23 million soybean acres using neonicotinoid seed treatments derive potential benefits from the application. [EPA Soybean Report, p. 11]

The report is thus implying farmers who did not indicate on their survey response that they used neonicotinoid treated seeds without targeting a specific pest gain no benefit from the seed treatment. Whether the survey was ever intended to answer such a question and whether the respondents were aware of such use of their responses is unknown.

An additional point of concern is that the report does not indicate that the proprietary data they used is statistically representative of the nation’s soybean farmers.

The report contains other discussions of its use of proprietary and unpublished data that raises additional transparency, methodology and accuracy concerns. For example, the report contains a subsection titled “Additional Unpublished Data” which discusses data from the North Central IPM Center (NCIPMC). The NCIPMC’s website explains that it is “sponsored by the United States Department of Agriculture, National Institute of Food and Agriculture” which means that its data is subject to the DQA and to the PRA.

The report’s statement about the NCIPMC data makes clear that the survey and additional unpublished data is (1) based on the views of a relative handful of “researchers” and (2) requires that the research data to have not have been subject to publication scrutiny. The report states that the NCIPMC

collected information through a questionnaire and additional unpublished data on neonicotinoid seed treatment efficacy, target pests, and benefits from national research and extension experts on a number of crops. The stated purpose of the questionnaire was to “gather input from researchers who have been working on neonicotinoid seed treatment projects and whose results/data have not yet been published.” Overall, researchers completed a total of 37 questionnaires. For the soybean portion of this questionnaire effort, 21 respondents representing 17 states (IA, IN, KS, LA, MD, MI, MN, MS, NC, ND, NE, OH, PA, SD, TN, TX, and VA) submitted responses. [EPA Soybean Report, p. 9]

Even though the Soybean Report does not define the universe that the sample of researchers was drawn from, it disseminates statistical-style arithmetic findings based on the sample such as the report’s statement that “74% of respondents (14/19) responded that yield either stayed the same or

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decreased.”¹⁸ This quantitative yet meaningless statement, based on a non-representative survey of unpublished data from 19 researchers, informs the report’s conclusion that neonicotinoid seed treatments provide no yield benefits.

It is important to note that, although the Soybean Report states that there were “21 respondents,” to the soybean portion of the survey, its analysis of the data only considers only 19 of the respondents with regard to Yield while also discussing the responses from 20 respondents and from 21 respondents with respect to other soybean-neonicotinoid issues. Why the report picks and chooses sub-samples from its 21 soybean responses is left unstated.

It is particularly important to recognize that, although the report emphasizes some arithmetic findings from the survey, the very same data could have been used to produce very different conclusions about the productivity of neonicotinoid-treated seeds.

For example, the report could have used the NCIPMC survey data to point out that 100% (5 of 5) of the surveyed researchers who responded that neonicotinoid were beneficial “were researchers working in the Southern U.S....” The report, however, does not quantify the economic benefits of neonicotinoid-treated seeds on state -specific basis even though the report’s own data indicates that regional consideration should be given to assessing such benefits. This inconsistency in the report’s geographic resolution is a further demonstration of why it is essential that a report clearly specify the baseline used.

The report’s use of the proprietary data and its use of USDA statistics are both in direct contradiction of OMB’s requirement that disseminate information be

presented in an accurate, clear, complete, and unbiased manner. This involves whether the information is presented within a proper context. Sometimes, in disseminating certain types of information to the public, other information must also be disseminated in order to ensure an accurate, clear, complete, and unbiased presentation. Also, the agency needs to identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a scientific, financial, or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data should have full, accurate, transparent documentation, and error sources affecting data quality should be identified and disclosed to users. [OMB, 67 Fed. Reg. 8459, col. 3, emphasis added]

EPA’s Information Quality Guidelines echo OMB’s requirements in explaining the agency’s basic quality standards by stating,

Objectivity, integrity, and utility are defined here, consistent with the OMB guidelines. “Objectivity” focuses on whether the disseminated information is being presented in an accurate, clear, complete, and unbiased manner, and as a matter of substance, is accurate, reliable, and unbiased. “Integrity” refers to security, such as the protection of information from unauthorized access or revision, to ensure that

¹⁸ US EPA, Soybean Report, p. 9.

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the information is not compromised through corruption or falsification. “Utility” refers to the usefulness of the information to the intended users. [EPA Information Quality Guidelines, p. 15]

The Soybean Report does not meet any of the above criteria;

1. The report is not Objective since the Yield estimates are not accurate as they are contradicted by its cited data. Similarly the report is not clear because the baseline specifications were never clearly stated. It’s not even clear to which time frame or set of conditions the Yield estimate is supposed to apply.
2. The report has not assured Integrity. Although no suggestion is being made that the data was falsified, the report’s lack of transparency results in a situation where readers cannot tell the difference.
3. The report lacks Utility because it is not useful to external readers or to the Agency. EPA can’t make pesticide re-evaluation decisions based on non-representative samples and data which is not transparent and which contradicts available source materials.

The Relevance of the Soybean Report to EPA’s GPRA Modernization Act Performance Evaluation and OMB Circular A-11

The GPRA Modernization Act¹⁹ (GPRMA) requires OMB to assess agencies’ performance to determine whether they are meeting their performance goals and objectives²⁰ and then to report the results of its assessments to the House and Senate oversight committees and to GAO. The statute also establishes remedial steps that an agency must take if its “programs or activities have not met [its] performance goals....” These steps are to be overseen by OMB, whose judgment of the agency’s performance is based on the agency’s own data. Circular A-11 establishes GPRMA reporting as part of a process where “data and empirical evidence play[s] a greater role in policy, budget, and management decisions.”²¹

Circular A-11 (2013)—*Preparation, Submission and Execution of the Budget*—constitutes OMB’s directive to agencies for implementing GPRMA’s data reporting and analysis requirements.²² Section 270 of the Circular, *Performance and Strategic Reviews*, states that COOs—whom Circular A-11 requires be “Deputy Secretaries or equivalent”—“must run at least quarterly, data-driven reviews on each of the Agency Priority Goals with agency goal leaders or their designees.”

Under Circular A-11, agencies’ leadership—political appointees and senior career executives—must (1) rely on high quality data in performing their mission activities and (2) hold agency staff

¹⁹ See, <http://www.gpo.gov/fdsys/pkg/BILLS-111hr2142enr/pdf/BILLS-111hr2142enr.pdf>.

²⁰ See, <http://www.performance.gov/>.

²¹ See, <http://www.performance.gov/faq#q4>.

²² See, http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/a11_2013.pdf.

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responsible for the quality of the data they develop, use, and disseminate during those activities. Section 270.5 of the Circular, “How should frequent data-driven performance reviews be conducted?” states that “the agency head and/or COO, with the support of the [Performance Improvement Officer] PIO and his/her office should: ...

- Hold goal leaders accountable for knowing the quality of their data, for having a plan to improve it if necessary, and for filling critical evidence or other information gaps.”

Thus, GPRMA and Circular A-11 demand that agency leadership take responsibility for meeting the federal data quality standards established by OIRA.

EPA’s Goal 4 in its GPRMA Strategic Plan states that, over “the next 4 years, EPA will manage a comprehensive pesticide risk reduction program through science-based registration and reevaluation processes....”²³ EPA’s Federal Register notice requesting comments on the Soybean Report stated that the “Agency has conducted this assessment as part of its ongoing re-evaluation of clothianidin, imidacloprid, and thiamethoxam under the registration review program.”²⁴

However, as demonstrated above, EPA’s pesticide re-evaluation for neonicotinoids is not being conducted through a “science-based” process. Thus, EPA is not meeting its GPRMA commitment to carry out a science-based process and EPA’s Leadership is, by statute, to be held to account.

EPA is Obligated to Honor its International Trade Harmonization Commitments by Consulting with Canada’s Pest Management Regulatory Agency

The US and Canadian governments recently expanded their formal commitment to regulatory harmonization through the US—Canada Regulatory Cooperation Council (RCC) which was created by the Obama and Harper Administrations.²⁵ The RCC’s Joint Forward Plan explains that,

The Leaders created the RCC to facilitate closer cooperation between our two countries to develop smarter and more effective approaches to regulation to make the United States (U.S.) and Canadian economies stronger and more competitive, while meeting the fundamental responsibilities to protect the safety and welfare of our citizens. They recognized that regulatory differences and duplicative procedures impose unnecessary requirements and costs on our citizens, businesses and economies. [RCC, Joint Forward Plan, p. 2]

The Joint Forward Plan discusses Department-to-Department Commitments including specific EPA pesticide review coordination responsibilities,

²³ US EPA, Fiscal Year 2014-2018 Strategic Plan, p. 33, http://www2.epa.gov/sites/production/files/2014-09/documents/epa_strategic_plan_fy14-18.pdf.

²⁴ 79 FR 63119.

²⁵ See, <http://www.trade.gov/rcc/>.

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Crop protection products: Health Canada's Pest Management Regulatory Agency and the U.S. Environmental Protection Agency's Office of Pesticide Programs will enhance the existing bilateral system of joint product reviews, including for use expansion submissions, and move towards the establishment of a single application for crop protection products that will be accepted in both countries. This will include coordinated work planning; data sharing; aligning approaches to risk assessment; coordination of submissions; and the alignment of submission requirements. In addition, the Agencies will jointly develop information technology solutions for applicants to facilitate the joint review and processing of pest control product applications submitted to both countries. [RCC, Joint Forward Plan, p. 20]

The need for EPA coordination with its Canadian counterpart is heightened because the Pest Management Regulatory Agency (PMRA) has announced its own economic assessment of the benefits of neonicotinoids on soybeans.

In contrast to EPA's analytic approach, PMRA states that is "conducting a value assessment of the use of neonicotinoids when used to treat corn and soybean seed... based on information provided by provincial governments, grower associations, registrants and other stakeholders...."²⁶

The Soybean Report's non-compliance with the DQA and other good government laws emphasizes the need for EPA to promptly coordinate with the PMRA on evaluating the economic benefits on neonicotinoid treated soybean seeds.

²⁶ Health Canada, Update on Neonicotinoid Pesticides and Bee Health, 25 November 2014, p. 6.

Data EPA Needs to Disclose

EPA needs to make public for review and comment the following data underlying its estimate of the economic benefits of neonicotinoid treated soybean seeds before the agency will be able to fulfill its transparency commitments and OMB's transparency requirements.

- The Yield (bu/A) on a state-specific basis of soybeans grown with neonicotinoid treated seeds,
- The Yield (bu/A) on a state-specific basis of soybeans grown with foliar/soil treatment of untreated soybean seeds, and
- EPA's methodology, including all baseline specifications, for deriving its conclusions.

Failure to disclose such information makes the agency vulnerable to a DQA challenge.