



**June 23, 2008**

U.S. Environmental Protection Agency  
Air and Radiation Docket  
Mail Code:6102T, 1301 Constitution Avenue, NW  
Washington, D.C. 20460-2403

**Docket ID No. EPA-HQ-OAR-2008-0380**

**Re: Comments Supporting the State of Texas' Petition for a Waiver of a Portion of the Renewable Fuel Standard for 2008**

Dear Administrator Johnson:

The American Meat Institute submits these comments supporting the petition for a waiver of a portion of the Renewable Fuels Standard ("RFS") that was filed with the U.S. Environment Protection Agency ("Agency")<sup>1</sup> by the State of Texas on April 25, 2008. We are submitting these comments in support of this petition and urging the Agency to grant this waiver because the new, elevated ethanol mandates that Congress enacted in December of 2007 are and would continue to severely harm the economy of the State of Texas, our members, and United States of America.<sup>2</sup>

American Meat Institute ("AMI") represents the interests of packers and processors of beef, pork, lamb, veal, and turkey products and their suppliers throughout North America. Together, AMI's members produce 95 percent of the beef, pork, lamb, and veal products, and 70 percent of the turkey products in the United States. The Institute provides legislative, regulatory, public relations, technical, scientific, and educational services to the meat and poultry packing and processing industry. Annually, the meat and poultry industry has revenues of more than \$100 billion, domestically operate 6,500 plants, and employ approximately 500,000 individuals.

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<sup>1</sup> The term *Agency* in these comments is meant to encompass the United States Environmental Protection Agency and its Administrator.

<sup>2</sup> Although the Energy Independence and Security Act of 2007 ("EISA") does not mandate "corn" biofuel, corn ethanol is the only viable source of biofuels today. Also, the GHG requirements of EISA classify ethanol produced from sugar cane as Advanced Biofuels, which mandate does not begin until 2009.

Food and feed prices are complex. There are a number of factors that contribute to inflation of feed and food such as weather, energy, and government initiatives to burn between 25 to 40 percent America's largest field crop (by acreage). Of these factors, only the policy to burn massive amounts of corn as fuel is a policy that the Administration has the authority to meaningfully impact via this petition.

As an organization that represents manufacturers of protein products that provide nutritional and healthful benefits to millions of Americans, our members are very concerned about the potential of this mandate and related policies to fundamentally undermine America's protein infrastructure. For more than 200 years, meat and poultry producers have significantly invested in building a world-class meat and poultry infrastructure, plants and people that contribute daily to our nation's food security and economy.

In 2007, USDA reports that 25 percent of the U.S. corn crop was processed to produce 6.5 billion gallons of ethanol which is net of 0.8 billion gallons of gasoline equivalent fuel<sup>3</sup>. The 2008 RFS level of 9 billion gallons of ethanol is a rapid mandated escalation in corn-ethanol volume of diversion of corn from feed, food, and exports markets compared with 2007. The pending 2009 mandate further harms meat and poultry producers by building even more non-market based demand expectations in the price of corn.

Global demand, weather, energy price, and the 2005 Energy Policy Act ("EPAC") mandate sent signals to crop farmers to produce the largest corn harvest on record in 2007. Yet, world corn prices have increase sharply for the past two years and are projected to continue to rise. For 2008, plantings are have been adversely affected by a wet spring, extreme flooding, and ruptured levees. Corn production is projected to be **10.24** percent less and the mandated level of ethanol is increased by more than 38 percent in 2008 over the 2007 production level.<sup>4</sup> USDA recently stated that "record prices are expected for all four feed grains," in 2008.<sup>5</sup> The rapid increase of this diversion of corn severely impacted and will continue to harm our member companies, their investments, employees, and most immediate suppliers, producers of livestock and poultry that are competing against this government mandate. USDA forecasts a 33 percent increase in the use of corn for ethanol in 2008; this will contribute to a 40 percent reduction in corn inventory.<sup>6</sup> The same report also indicates that livestock and poultry producers will use 16 percent less corn in 2008. Further, as the mandate pushed up the price of corn, farmers planted less soybeans, food, and feed crops, thereby reducing supply and increasing the price of a wide variety of feed and food items.

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<sup>3</sup> Glauber, J., Chief Economist presentation before the USDA's Agriculture Outlook Forum 2008, February 21, 2008; MIT conversion of 1:1.3 energy:ethanol, ethanol's 67 percent BTU content of gasoline, and US DOE Energy Information Agency figures of 6.48 billion gallons of ethanol production for 2007. McCall, T., Massachusetts Institute of Technology, "Boom or Bust: Economics Will Determine Fate of Biofuels," *Technology Review*, Feb. 2008. See page 27.

<sup>4</sup> USDA: The World Agricultural Supply and Demand Estimates (WASDE), June 10, 2008. Field Crop report on corn located at: <http://www.fas.usda.gov/psdonline/psdReport.aspx>

<sup>5</sup> USDA/ Economic Research Service, *Feed Outlook* May 13, 2008, pg. 1.; Id. WASDE.

<sup>6</sup> Id. pg. 1

The June 10 2008 USDA World Agriculture Supply and Demand Estimate (“WASDE”) report does not fully recognize the value of the major flooding events that led to states declaring more than 200 Midwestern counties disaster areas. The extreme flooding and severe weather in major grain producing regions will adversely impact the corn harvest and the availability of corn for all users, not to mention the capability of Iowa based ethanol producers to meet the EISA mandate volumes for 2008. Congress included the waiver in the statute for the severe economic conditions that exist and are imminent and for extreme weather events that have transpired.

Government intervention in the marketplace on the scale of the 2008 RFS mandate has created severe and mass economic and financial harm by artificially increasing the price of nearly all feed grains and many wholesale food products and consequently consumer food prices. Accordingly, we urge the Agency to grant the waiver requested by State of Texas to reduce the requirements of section 211(o)(2)(B)(i)(I) of the Clean Air Act to 4.5 billion gallons per year or an alternative relief designed to reduce the severe economic harm that is occurring and would continue to occur in 2008 if the Agency does not grant this waiver.

This action is needed to forestall even greater harm to the economy, consumers, and environment while the impacts of an increased mandate are being evaluated by the National Academy of Sciences as required by the Energy Independence and Security Act of 2007 (“EISA”). The waiver will temper the demand for corn while the Agency develops its regulations to implement EISA and adopt a renewable fuel trajectory that balances the needs of food and fuel, and while it assesses and reports to Congress on the economic impacts to date and likely future impacts of the program requirements.

The American Meat Institute believes the time is right to call a halt to escalating mandates for consumers and farmers and all Americans – while Agency and the National Academy of Sciences study their unwanted collateral impacts. The granting of the waiver would provide more time for innovation and technologies to help develop and diversify our energy needs from non-food sources. AMI believes there is a role for biofuels in our economy. The Administration rightly concluded prior to the passage of the mandate that the bill fails by “*picking and choosing*” biofuels instead of developing a competitive marketplace for new ideas to achieve energy security. The consequences of the limited biofuel options overwhelmingly concentrated the costs on feed and food consumers in Texas and across America and among AMI members. For these reasons and reasons articulated in these comments, the Agency should grant the waiver and redress per the State of Texas’ April 25, 2008 petition for waiver of renewable fuel volumes in gasoline sold or introduced into commerce in the United States.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Patrick Boyle". The signature is written in a cursive, flowing style.

J. Patrick Boyle  
President & CEO

## **Introduction**

When Congress created national renewable fuel mandates in 2005, it also empowered the Administrator of the U.S. Environmental Protection Agency (“Agency”) to waive them. Recognizing that rigid mandates have the potential to cause injury to the domestic economy and consumers, Congress empowered the Administrator to waive or reduce all or a portion of the mandate on petition by one or more States if he determined, after public notice and opportunity for comment, that the mandate would severely harm the economy or environment of a state, a region, or the United States. 42 U.S.C. § 7545(o)(7)(A). When Congress increased and extended the mandates in December 2007, it also expanded the Administrator’s waiver authority.

The economic harms that Congress foresaw as a possibility in 2005 have quickly materialized on a scale previously unforeseen, and they will worsen unless the mandates are adjusted. The federal renewable fuel policy is creating a drag on the economy – because support costs for corn-based fuel production are double the household income created, for every \$1.00 in extra household income created by the ethanol policy, it is costing someone else in the economy about \$2.00. This increased cost is falling most heavily on the poor and middle-income Americans who can least afford it. Corn-based ethanol mandates have also increased U.S. energy costs, and may have adverse environmental impacts unless carefully and objectively studied.

Accordingly, we urge the Administrator to exercise his authority under the Clean Air Act to grant the waiver requested by the State of Texas’ petition and reduce the renewable fuel mandates in Section 211(o)(B)(i)(I) of the Clean Air Act to 4.5 billion gallons per year or an alternative relief level of 6.5 billion gallons – the actual ethanol fuel production in 2007 while the National Academy of Sciences performs the study of their impacts on agriculture, Agency studies their environmental impacts, and Agency adopts implementing regulations, all as required by the Energy Independence and Security Act of 2007 (“EISA”).

### **I. Background of the Renewable Fuel Standard**

Congress established the Renewable Fuel Standard in the 2005 EPAC, which amended existing law to require the Agency to issue regulations ensuring that gasoline sold in the U.S., on an annual average basis, contains specified volumes of “renewable fuel.”<sup>7</sup> That schedule began at 4.0 billion gallons of renewable fuel in 2006 and increased to 7.5 billion gallons in 2012. The 2007 EISA amended the schedule by extending the renewable fuels timetable for ten years, increasing the trajectory of the existing mandates, and adding new, separate mandates starting in 2009 for advanced biofuels, including cellulosic biofuel and biomass-based diesel. The 2005 EPAC set the 2007 mandate for conventional, food-based renewable fuel at 4.7 billion gallons and the 2008 mandate at 5.4 billion gallons. The 2007 EISA increased that 2008 mandate to 9.0 billion gallons, almost double the previous year’s mandate. Conventional corn-based ethanol is scheduled to increase from 9 billion gallons in 2008 to 10.5 billion gallons in 2009, to 12 billion

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<sup>7</sup> “Renewable fuel” is defined in the EPAC to mean motor vehicle fuel “produced from grain, starch, oil-seeds, vegetable, animal, or fish materials including fats, greases, and oils, sugarcane, sugar beets, sugar components, tobacco, potatoes, or other biomass [or] natural gas produced from a biogas source . . .” and is used as or in motor fuel.

gallons in 2010, and an additional 600 million gallons each subsequent year thereafter until it reaches 15 billion gallons in 2015 – an unprecedented increase of 178% in just 8 years.<sup>8</sup>

## **II. Legal Test for Waiver of the Renewable Fuel Mandates**

When Congress established the Renewable Fuel Standard it also established a mechanism to waive, in whole or in part, the fuel mandates to alleviate the severe economic or environmental harms that would result from strict mandates. Specifically, in consultation with the Department of Agriculture and the Department of Energy, the Agency Administrator may reduce the national quantity of renewable fuel mandated by statute based on “inadequate domestic supply” or because “implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States . . . .”<sup>9</sup> That authority is available to the Administrator now – it is not subject to the issuance of implementing regulations. The Administrator is not limited by statute and should not wait to the close of the comment period to issue relief.

Specifically, the provision states:

(7) *WAIVERS.--*

*“(A) In general.--The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the requirements of paragraph (2) in whole or in part on petition by one or more States by reducing the national quantity of renewable fuel required under paragraph (2)--*

*“(i) based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States; or*

*“(ii) based on a determination by the Administrator, after public notice and opportunity for comment, that there is an inadequate domestic supply.*

*“(B) PETITIONS FOR WAIVERS.--*

*The Administrator, in consultation with the Secretary of Agriculture and the Secretary of Energy, shall approve or disapprove a State petition for a waiver of the requirements of paragraph (2) within 90 days after the date on which the petition is received by the Administrator.*

*“(C) TERMINATION OF WAIVERS.--A waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy.*

It is clear beyond doubt that implementation of the requirements of the corn-ethanol portion of the Renewable Fuels Standard of EPAC as amended by EISA is and would severely harm the economy of the State of Texas, states with significant livestock, and poultry production, states that are highly dependant on other states for food, regions with significant non-grain feed

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<sup>8</sup> Although the EISA does not mandate “corn” biofuel, corn ethanol is the only viable source of biofuels today. Thus, the renewable fuel mandates effectively translate to a corn-based ethanol mandate of 15 billion gallons by 2015.

<sup>9</sup> Clean Air Act § 211(o)(7)(A); 42 U.S.C. § 7545(o)(7)(A).

production that will be converted to corn production for the Renewable Fuel Standard, AMI member companies, and the economy of the United States.

The legal test that Agency must assess this petition by is that of (7)(A)(i) “*based on a determination by the Administrator, after public notice and opportunity for comment, that implementation of the requirement would [emphasis added] severely harm the economy or environment of a State, a region, or the United States;*” To date, the implementation of this statute and the massive and accelerating diversion of corn into biofuels production has caused severe economic harm in the State of Texas and the United States. There is no reason not to believe that continued diversion on the current scale and its acceleration would not further exacerbate this severe economic harm.

### **III. Overview of Economic Harms Caused by Renewable Fuel Mandates**

The economic harms caused by the ethanol portion of the mandates in the Renewable Fuel Program are already apparent and severe, and they will surely worsen as the mandates grow. Last year, 25 percent of the U.S. corn crop was diverted from food uses to ethanol production. The Program has also tightened the supply of other crops used for food and feed. The pressure that ethanol mandates place on corn alone has caused corn prices to triple in just two years, resulting in higher domestic food prices and serious economic injury to the beef, pork, poultry, egg, and dairy industries, while also contributing to global food inflation.

The resulting rise in food and feed prices has severely harmed the national economy, causing substantial losses in many industries and contributing to food price inflation and overall higher inflation rates. Next year’s higher mandate will wreak even greater economic harm by raising food prices substantially more, thus contributing to higher inflation, weakening consumer confidence, and reducing real purchasing power. The economic impact of this RFS on corn is 21 times greater than Agency’s own estimate for EPAC.<sup>10</sup> At a time when many Americans are losing their jobs and their homes, and when a weakening dollar and global demand are increasing the cost of fuel, the government should not unnecessarily inflate the price of food for consumers.

The waiver would also allow the Agency and the National Academy of Science an opportunity to evaluate the environmental impacts of corn-based ethanol. Contrary to former assumptions, recent research indicates that corn-based ethanol may actually *increase* emissions of greenhouse gases when life-cycle impacts are included in the calculation.<sup>11</sup> It has long been known that ethanol in gasoline increases ground-level ozone concentrations. Also, since 1990, the Clean Air Act has required ozone nonattainment areas to demonstrate progress towards attaining the ozone standard. The role of ethanol’s contribution to ground level ozone is complex. There are benefits as well as harms at different levels of incorporation into gasoline. A waiver would allow time to study these effects to prevent harm or endangerment to human health.

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<sup>10</sup> Federal Register, May 1, 2007.

<sup>11</sup> Searchinger et al., “*Use of U.S. Croplands for Biofuels Increases Greenhouse Gases Through Emissions for Land Use Change,*” *Scienceexpress*, Feb. 7, 2008. Fargione, J. et al., “*Land Clearing and the Biofuel Carbon Debt,*” *Science* Vol. 319, Feb. 29, 2008,.

#### IV. Severe Economic Harm Review

The statutory test included by Congress is: “that implementation of the requirement would severely harm the economy or environment of a State, a region, or the United States.” When the Agency issued the rules for implementation of the EPAC in May 2007, it did not include provisions at that time to illustrate the condition or criteria for a favorable waiver review. Therefore, parties that are severely, extremely, catastrophically or otherwise harmed or would be harmed by the implementation of the RFS for 2008 (and beyond) are restricted to illustrating that they are of would endure meet or exceed the threshold of severe[ity].

The adverb and its adjective ‘severe’ is expressed elsewhere in federal statute(s) as a threshold measurement for the federal government to act. Specifically, it is use in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, as amended, 42 U.S.C. §§ 5121-5206, and implementing regulations in 44 C.F.R. §§ 206.31-206.48, which provides for emergency authorities of the federal government). 44 C.F.R. §§ 206.48 provides that Federal Emergency Management Agency (FEMA) will maintain a statewide per capita impact indicator to assess if emergency authorities are necessary to warrant action by the federal government for all disasters. This amount is indexed with the Consumer Price Index for All Urban Consumers published by the U.S. Department of Labor. The threshold amount from the most recent update indicates that a statewide minimum impact of \$1.24 per capita is adequate impact to initiate federal government response to a disaster.<sup>12</sup>

Whether in the State of Texas or all persons of the United States, clearly the Agency’s implementation of the RFS for 2008 would cost each person in the State of Texas, each of the 50 States, and U.S. territories more than \$1.24. Below is a table of some of the popular and reviewed analysis of this policy. This should be a minimum consideration for action. Actual harm to the State of Texas, the livestock and poultry industry, and all Americans is much greater.

	Household Food Costs	Per Capita	Less than \$1.24
Iowa State Univ.	\$47.00	\$11.75	No
Purdue University	\$88.66	\$22.16	No
Elam Report	\$432.00	\$108.00	No
CEA <sup>13</sup>	\$6.00 -\$9.00	\$1.50 -\$2.25	No

The test for federal government action also exists in federal jurisprudence emergency injunctive relief. A plaintiff seeking preliminary injunctive relief must show that it will suffer harm that is "more than simply irretrievable."<sup>14</sup> In *Wisconsin Gas Co. v. FERC*, the Court held

<sup>12</sup> Department of Homeland Security: Federal Emergency Management Agency, *Notice of Adjustment of Statewide Per Capita Impact Indicator*, Federal Register, Vol. 72, No. 194, Tuesday, October 9, 2007, pg. 57341.

<sup>13</sup> Dr. Edward Lazear, Chair Council of Economic Advisors, Testimony Before Senate Foreign Relations, Dr. Lazear attributes ethanol’s contribution to domestic food inflation as 2 to 3 percent of the \$300 dollars the average American is paying more for food.

<sup>14</sup> *Gulf Oil Corp. v. Dept. of Energy*, 514 F. Supp. 1019, 1026 (D.D.C. 1981).

in a closely related context, “to warrant emergency injunctive relief the harm alleged must be certain, great, actual, and imminent.”<sup>15</sup> The analog *severe* harm to the meat and poultry industry, to the State of Texas, and the United States is *certain* and *imminent* unless the Agency grants this waiver and redress. The increase in corn prices by the mandate are *great* in magnitude since it will convert 33 percent more corn into ethanol and leave livestock and poultry with 16 percent less.<sup>16</sup> There likely does not exist an American industry that can lose 16 percent of a critical input and not be severely impacted in a year. Lastly, existing harm from the 30 percent portion of feed and food inflation attributable to ethanol is *actual*.<sup>17</sup>

## V. Redress

The State of Texas’ petition requests redress in the form of a reduction that is half of the 2008 RFS, which is within the 2005 EPAC’s authority for the Administrator to waive all or part of the RFS for one year. We support this level of redress. And recognize that there be a more optimal number and therefore would be open to a redress equal to the amount of production from 2007 of 6.5 billion gallons until the National Academy of Sciences can complete its study. A redress of 4.5 or 6.5 would relieve one to two billion bushels of unnecessary corn demand, respectively. Thereby, making corn available for feed and easing the severe economic harm that is impacting America’s protein infrastructure. This redress would also reduce demand expectations that have transpired and are represented in the recent and future corn prices because of the mandate.

On June 12, 2008, USDA’s Chief Economist told Congress that without the mandate corn prices would be \$3.52 less than they are today, based on Chicago Board of Trade corn prices for July 08 for the 07/08 crop. Three and a half dollars for livestock and poultry producers who utilize approximately 6 billion bushels of corn annually is very significant amount and a clear sign that the granting of this waiver and redress would provide immediate relief this year.

In light of recent and catastrophic flooding, the Agency should place greatest consideration on the relief petitioned for and contingent on crop reports consider implementing a volume reported by the ethanol industry as sufficient for meeting the Reformulated Fuels requirement of 4 billion gallons.<sup>18</sup>

## VI. Length of Redress

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<sup>15</sup> Sandoz, Inc. v. F.D.A., 439 F. Supp. 2d 26, 31-32 (D.D.C. 2006); Apotex v. FDA, 2006 U.S. Dist. LEXIS 20894 , 2006 WL 1030151, \*16-\* 17 (D.D.C. April 19, 2006) (Bates, J.); Wisconsin Gas Co. v. FERC, 244 U.S. App. D.C. 349, 758 F.2d 669, 674 (D.C. Cir. 1985); Boivin v. U.S. Airways, Inc., 297 F. Supp. 2d 110, 118 (D.D.C. 2003); See Wisconsin Gas, 758 F.2d at 674. It is also within context of the Midwestern flooding that conditions have been met for force majeure, justifying the Agency to waive the mandate.

<sup>16</sup> USDA’s WASDE does not indicate where this 16 percent will be made up or if increase slaughter will occur, thereby impacting livestock, meat and poultry prices and consumer prices.

<sup>17</sup> USDA/Economic Research Service, Trostle, R. “*Global Agricultural Supply and Demand: Factors Contributing to the Recent Increase in Food Commodity Prices,*” May 2008.

<sup>18</sup> VeraSun Inc. 10-K 2007.

The Clean Air Act § 211(o)(7)(C) “Termination of Waivers” indicates that “a waiver granted under subparagraph (A) shall terminate after 1 year, but may be renewed by the Administrator after consultation with the Secretary of Agriculture and the Secretary of Energy. This can only be interpreted that the length of the waiver shall begin from date that the Administrator grants the waiver. In this case, if the Administrator acts on July 25, 2008, the waiver would be in affect until July 25, 2009.

While the proposed regulations for compliance to the 2007 EISA RFS is not yet released nor open to public comment, it is possible that the implementing rule may not be completed until sometime after January 1, 2009. As such, we encourage the Administrator to act on his/her own accord (as allowed under EISA) at this point to waive and forestall the 2009 RFS level for ethanol with less than 50 percent GHG benefits until an RFS mandate trajectory for corn-based ethanol is adopted by rule-making that decouples the valuation of food as fuel.<sup>19</sup>

## **VII. The Link of Ethanol Mandates and Livestock and Poultry Production.**

By raising the prices of critical feedstocks in the meat and poultry industries, the ethanol mandates impose costs on producers and processors in these major national industries that dwarf the benefits of conventional, corn-based ethanol. University research has suggested that this pressure may continue unless we cap ethanol production to “de-link” food and feed price correlation with fuel.<sup>20</sup> While the 2008 mandate is pressing obligated parties to blend ethanol, it is foreseeable that discretionary blending could arise. Due to limitations in technology and feedstock trade restrictions, the predominant and default feedstock for domestic ethanol distilleries for 2008 is corn. Although the EISA does not mandate “corn” biofuel, corn ethanol is the only viable source of biofuels for 2008.<sup>21</sup>

America’s food security is highly dependant on the economic well-being of American animal agriculture and its ability to provide protein to its domestic population and key export markets. A common meat and poultry protein production model for the last several decades has been to efficiently utilize competitively available corn and soybean supplies in order to make the U.S. a leading meat and poultry producing country. The expansion in meat protein availability, however, has been predicated on a relatively steady and consistent supply of feedstock for the nation’s 96 million cattle, 65 million hogs, and 9 billion birds.

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<sup>19</sup> CreditSuisse, Moskow, R., Aquino, P., Sawyer, W.; *Corn=Energy: Whether We Like It Or Not*. May 14, 2008.; Iowa State University, Staff Report 07-SR 101, page 1 “this insight plus the assumption that ethanol has a floor price at its energy value relative to gasoline, which is determined by crude oil prices..” This statement indicates the market is valuing corn for its energy value relative to gasoline. This insight is common, but occasionally media reports wrongly connect petroleum-based agricultural inputs as a cause for higher food prices.

<sup>20</sup> Iowa State University, Babcock, B. & Feng, H. Presentation “*Impact of Biofuels on Planted Acreage in Market Equilibrium*.” . [http://www.card.iastate.edu/presentations/babcock\\_presentation.ppt#319,41,Lessons](http://www.card.iastate.edu/presentations/babcock_presentation.ppt#319,41,Lessons) May 2008.

<sup>21</sup> Additionally, indications are the ethanol made from sugar (such as imported ethanol from the Caribbean or Brazil) would qualify as “Advanced Biofuel” under EISA definition since it produces more than 50 percent reduction in life-cycle Greenhouse Gas (GHG) emissions. Thus, the biofuel mandates effectively translate to a corn-based ethanol mandate of 15 billion gallons by 2015.

Indeed, when studies are done on corn price spikes, findings are that near term prices increases depress the sector but do not radically alter the fundamentals of the protein infrastructure. This occurs because corn prices spike due to drought, flooding, or crop failure, lead to increased production in the following year, bring the feed supply in balance and moderating prices. However, these studies and models do not account for fundamental shifts in demand that have transpired in the case of government intervention into the market place by the RFS and related transfer payments.

In the United States, corn and soybean meal are major ingredients of feed for livestock (For example, chicken feed consists of nearly 60 percent corn and over 25 percent soybeans; swine feed will be more than 80 percent corn, and dairy and cattle feed can vary from 25 to 90 percent corn). Whereas most U.S. corn went to feed use and little of it was devoted to ethanol production five years ago, in 2007, about 25 percent of the 13 billion bushel corn crop was consumed by ethanol production. Worse, the percentage diverted to ethanol production is expected to increase to at least 33 percent in the next crop year, beginning in 2008 and ending in August 2009.<sup>22</sup>

From March 2003 to March 2008, America increased the diversion of corn to ethanol from approximately 84 million bushels of corn per month to 270 million bushels of corn per month.<sup>23</sup> The acceleration of this increase has been largely occurring in the past 18 months as ethanol distilleries add plant capacity and forward contract corn to meet the obligations of the mandated levels of the RFS.

### **VIII. Firm Level Impact of RFS on Meat, Poultry, & Animal Agriculture**

Increasing the diversion of corn from animal feed, exports, or food uses to ethanol, adversely impacts livestock and poultry farmers because the increased feed prices impact farms on a firm level. That is, livestock and poultry farmers routinely plan their revenues and expenses on a quarterly or annual basis and then adjust as market conditions warrant. Occasionally, market prices for their goods will be higher (lower) than planned and they can increase (decrease) investment or reduce (increase) liabilities. Alternatively, their expenses can also be higher (lower) and this impacts their options. Animal feed is the single largest line item for livestock and poultry producer's annual budgets. When feed prices increase dramatically, livestock and poultry producers must adjust their operations by either increasing liabilities (e.g. debt, bank loans) and/or reducing production (e.g. increasing slaughter). As indicated by the USDA/National Agriculture Statistic Services (NASS) monthly slaughter reports for livestock and poultry, livestock and poultry producers have been reducing their herds and flocks at a substantial rate.<sup>24</sup>

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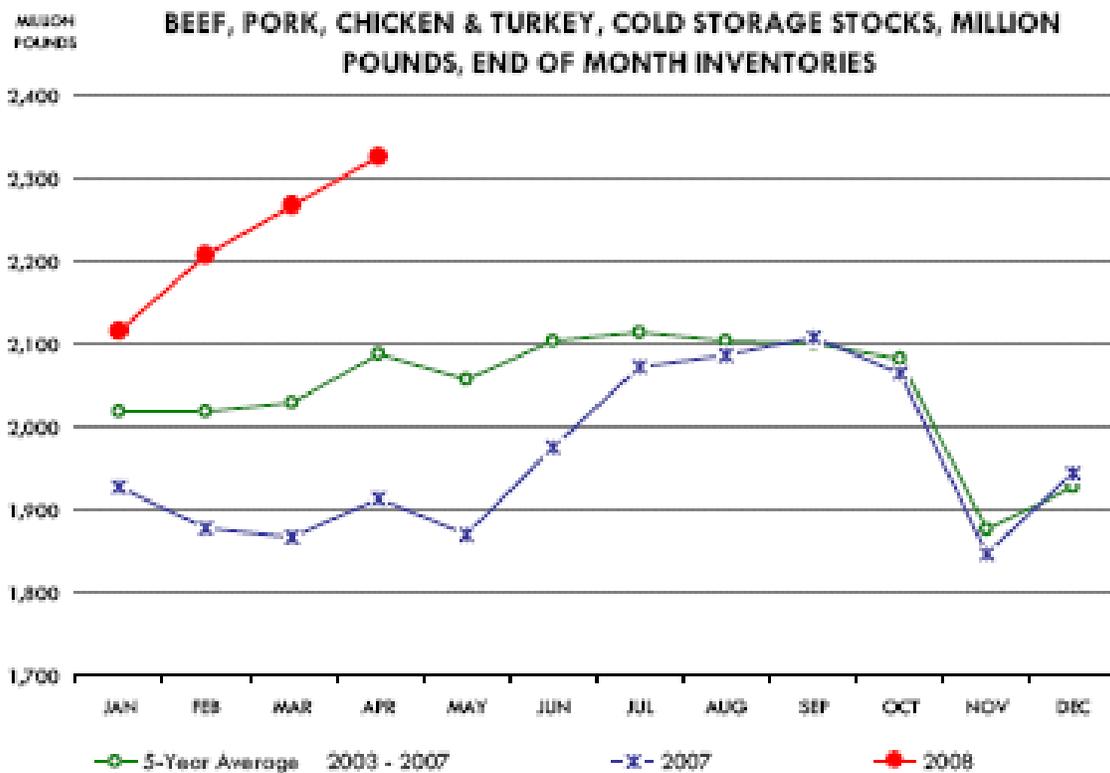
<sup>22</sup> FAPRI Report, at 11 (Table – corn supply and utilization), available at [http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI\\_MU\\_Report\\_03\\_08.pdf](http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_03_08.pdf). The study performed by researchers at the University of Missouri also projects that, taking into account the recently increased biofuels mandates in the Energy Independence and Security Act of 2007, by 2015, the amount of corn used for ethanol production will almost equal that fed to U.S. livestock. FAPRI Report, at 10.

<sup>23</sup> U.S. Department of Energy, Energy Information Agency, calculations assume 2.7 gallons per bushel (per Agency May 1, 2007 Final Rule (below)). Actual efficiency compared with USDA data was 2.16 gallons per bushel.

<sup>24</sup> USDA/ National Agriculture Statistics Service, Monthly Slaughter Data, retrieved June 4, 2008.

Monthly slaughter of hogs has been up more than 10 percent for the first 4 months of 2008 over 2007 levels and is expected to remain elevated. Monthly slaughter of dairy animals is at a five year high, and month slaughter of poultry (broilers and turkeys) is running at 5 to 7 percent higher levels than last year. The elevated slaughter levels increase the quantity of meat and poultry in the market and inventories in cold storage to record levels as reported by NASS (see chart next page). Monthly storage of red meat is 17 percent higher than 2007 levels and pork bellies in storage are up 79 percent over 2007 levels.<sup>25</sup> Commodity analyst Dennis Gartman indicated that this could create a food price inflation “echo” when the inventories ultimately decline and the U.S. has less protein production capacity as a result of this contraction and liquidation and unnecessary economic pressure from the 2008 corn ethanol mandate.<sup>26</sup>

Paul Hill, a turkey producer from Iowa and the Chairman of the National Turkey Federation stated that national turkey production could decline between 10 and 15 % this year because of high corn prices. This reduction may add more protein to the market near term, but will impact consumer prices longer term as supply and production capacity decline - at a time when consumer confidence is at a 16 year low.<sup>27</sup>

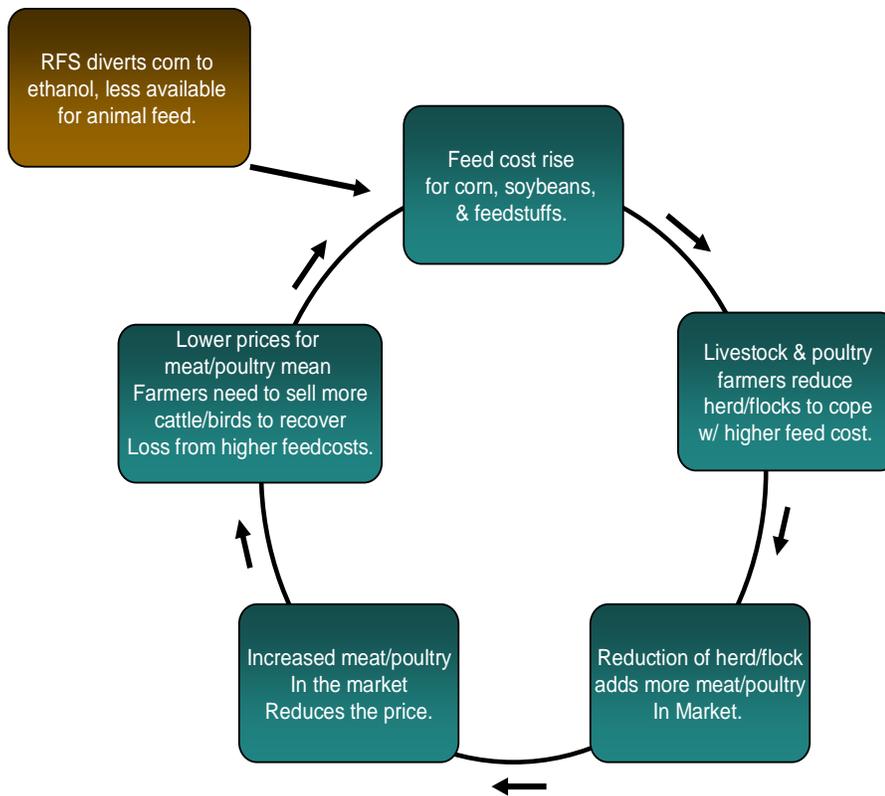


<sup>25</sup> USDA/ National Agriculture Statistics Service, May 22, 2008. “Frozen food stocks in refrigerated warehouses on April 30, 2008 were greater than year earlier levels for turkey, chicken, pork, eggs, butter and beef.”

<sup>26</sup> Gartman, D., *guest*, Comment on CNBC.com, Squawk Box, May 2008.

<sup>27</sup> Stevenson, J. “Record Corn Prices Mean More Expensive Meat, Dairy,” AP, June 22, 2008. The Conference Board, <http://www.conference-board.org/economics/ConsumerConfidence.cfm>

The increase of the amount of meat and poultry product in the market moderates wholesale and consumer price inflation, but creates a challenging situation for remaining livestock and poultry producers and reduces the food protein infrastructure for American consumers. As more livestock and poultry producers liquidate or reduce their herds and flocks to adjust to higher feed costs, increased supplies of meat and poultry enter the market and places downward pressure on prices (see illustration on the next page).



This stress is also evident in price-to-feed ratios. A common metric that animal agriculture producers rely on is the price of their commodity relative to the price of a USDA standardize 16 percent protein pound of feed. This is a direct way to evaluate and isolate the economic impact of feed prices relative to market prices. It is evident that corn and feed price inflation driven in part by the RFS is vastly outpacing market prices for protein and dairy products.

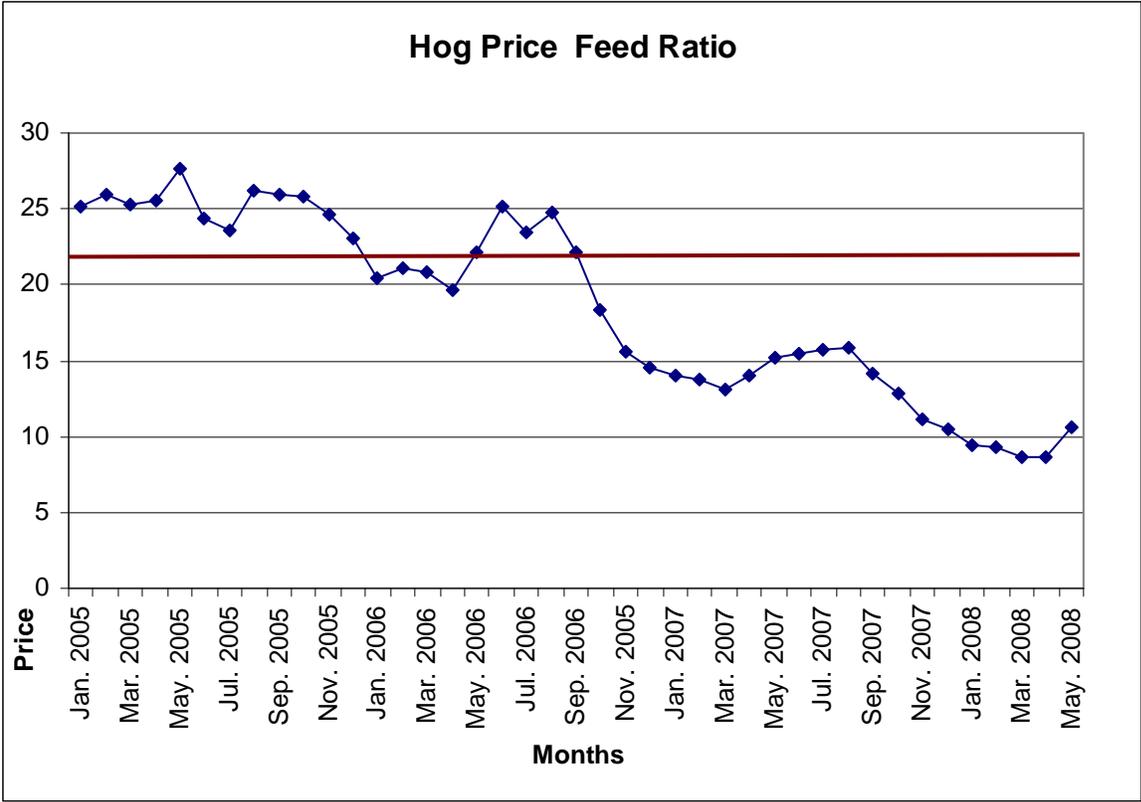
For approximately 23 years USDA has been tracking and calculating these ratios. When the ratios are between certain values, national production volumes will not change. When the ratios are above a certain level, producers will expand as long as it is profitable, and vice versa when it is below. The table below outlines industry averages for when expansions and contraction occurs and the May 2008 value. The Agency will notice that all of these are deeply into the contraction area. An expanded ten-year timeline of this model will show that these levels are record lows for the period and expected to go even lower in June.<sup>28</sup>

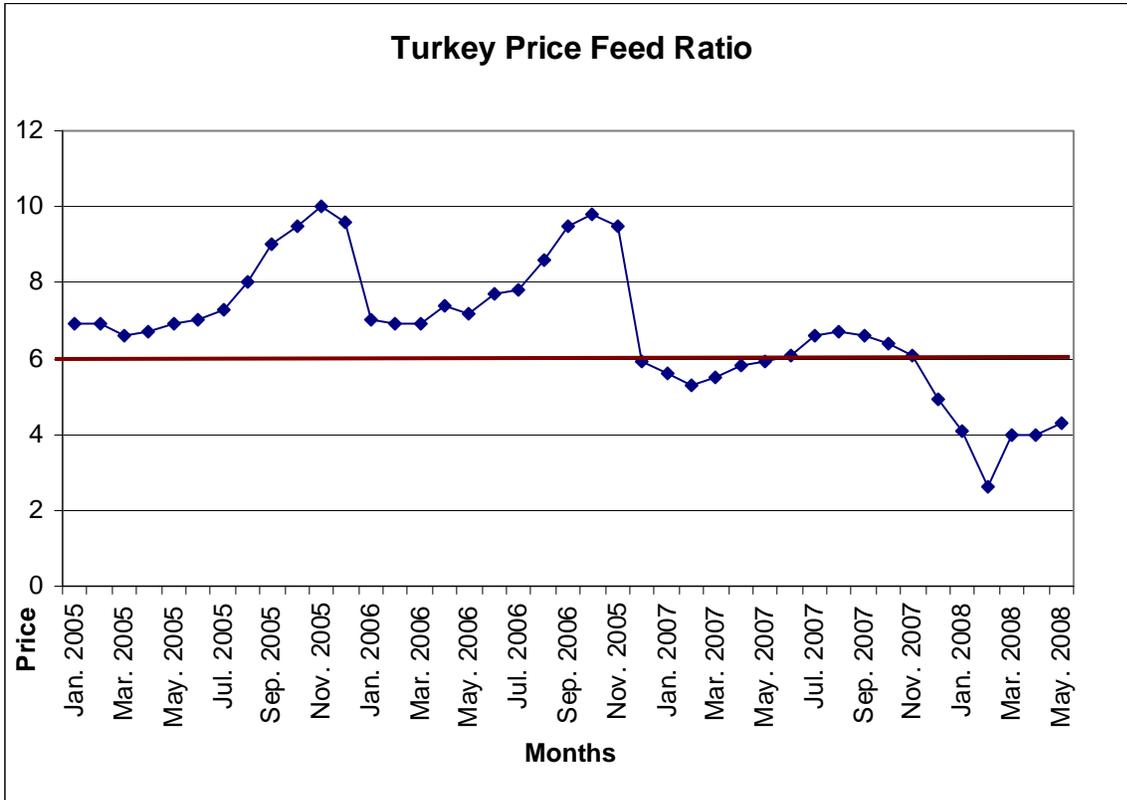
	Expansion	Contraction	May 2008
<b>Poultry</b>	7	6	<b>3.5</b>
<b>Hogs</b>	27.5	22.5	<b>10.6</b>
<b>Steers</b>	55	40	<b>18.6</b>
<b>Turkeys</b>	8	6	<b>4.3</b>

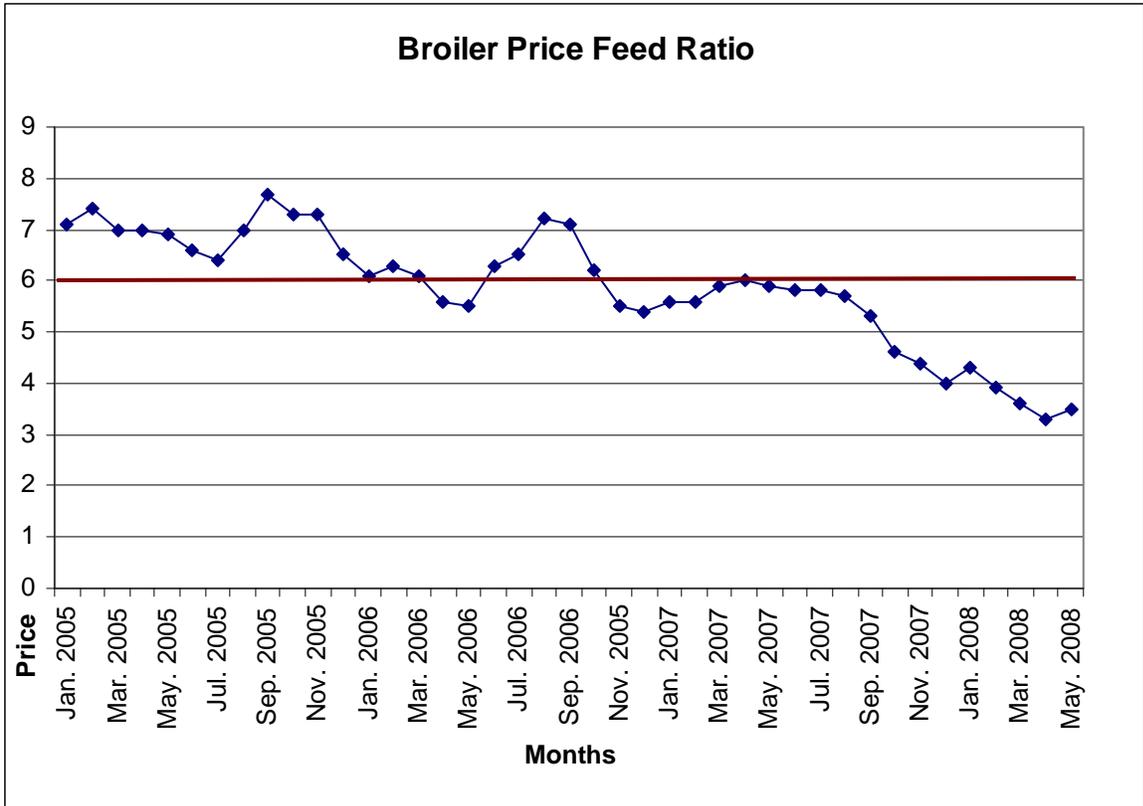
To illustrate the impact of these over time and to see when EPAC and EISA were signed and its correlated impact and new record lows for several of these categories, below are the charts that demonstrate the radical departure in the market value relative to the input costs for the inputs of our member companies. The red lines represent the contraction average.

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<sup>28</sup> Daily Livestock Report, Chicago Mercantile Exchange, Meyer and Steiner, June 12, 2008.

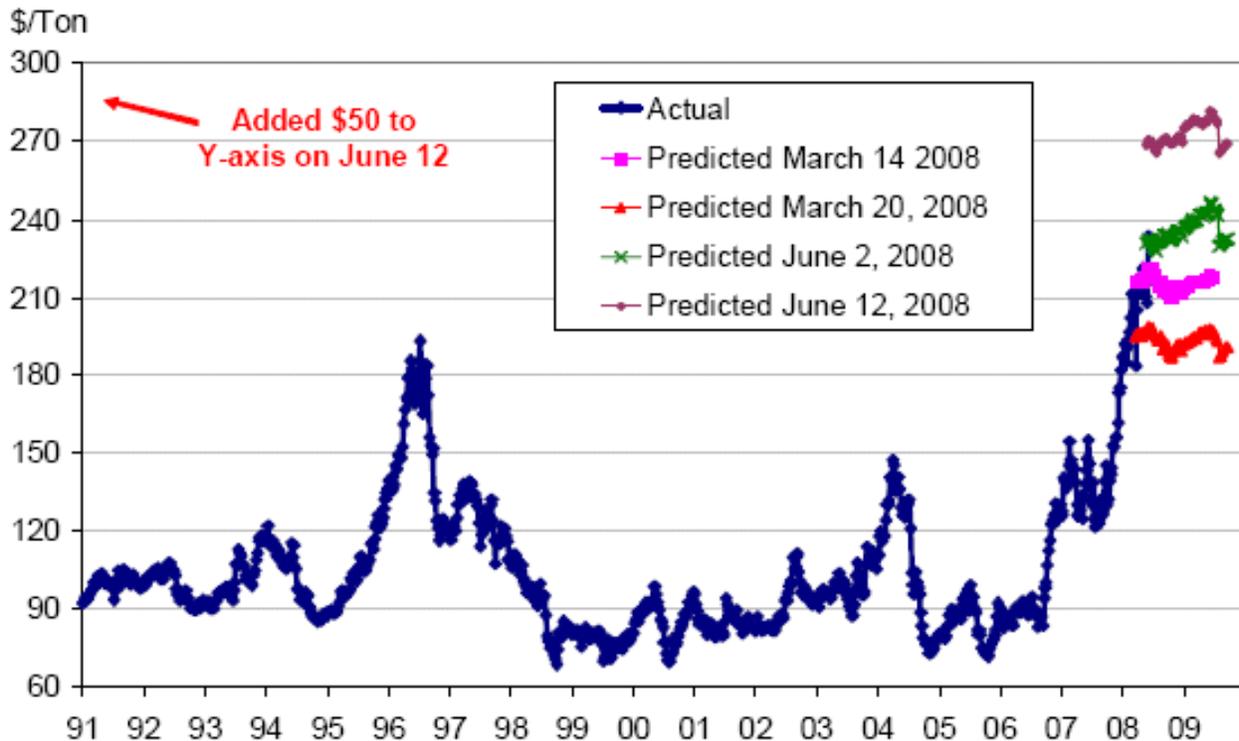






The chart on the next page illustrates the projected feed costs for the standard 16 percent protein corn-soy blend feed cost per ton of feed that is prepared by the producers of the CME Group Daily Livestock Report on June 12, 2008. As the chart demonstrates, the costs of a ton of standard 16 percent feed that would likely be used in pork production has tripled since the EPAC was enacted and more than doubled since EISA was enacted. The mandates of these two statutes are not the exclusive drivers of the inflationary pressure of these feed prices, but they are the policy lever the Agency can use to respond to this severe amount of price stress on America’s livestock and poultry producers via the granting of this waiver.

## CORN-SOY COST, 16% CR. PROTEIN DIET



### VIV. Mandates Impact on Firms and Microeconomics

Government intervention in the form of a mandate creates a requirement to act in accordance with the design of the mandate. In the case of the 2005 EPAC and the 2007 EISA, the requirements are to increase the blending of ethanol for 2008 and beyond. The Agency’s rulemaking from May 2007 developed an elaborate system of obligated parties and credit system for implementing the 2005 statute. In this mandate, the obligated parties are directed to blend a designated quantity of ethanol or face legal consequences. In February 2008, the Agency issued a notice that obligated parties are to blend 7.74 % ethanol into the gasoline supply since this is the quantity that the Agency anticipates would be sufficient for meeting the statutory obligations of EISA.

Ethanol firms recognize the value of the mandate as indicated by their Security and Exchange Commission filing “any waiver of the RFS with respect to one or more states could adversely offset demand for ethanol...”<sup>29</sup> This statement is confirmation of the demand driving implications of the RFS. However, this demand is often viewed as macroeconomic. Several economic analyses attempt to value the contributions of the corn ethanol and related renewable

<sup>29</sup> VeraSun 2007, Annual Report 10-K

fuels mandates, subsidies, and its related impact on corn prices.<sup>30</sup> These academic studies, in different variations, model the mandated level of ethanol and calculate the difference in values between the production level with the mandate and the production level dictated by state mandates and regional economics. While the findings of these studies are helpful from a macroeconomic perspective, they underestimate the impact of mandates' role in a microeconomic environment. These studies partially exclude the business function of a mandate as a forward contract and the regional effects (to some extent).

The EPAC and EISA RFS mandates function as a forward contract (e.g guarantee) for present and future dates. The contract is that the government will enforce the mandated volume to blend the 9 billion gallons of ethanol for 2008 AND increasing amounts in future years according to the EISA schedule. To meet the obligations of the contract, ethanol firms purchase corn and inputs for their ethanol distilleries to provide ethanol for the mandate's requirements. Since the obligated parties are required to purchase the ethanol and blend (according to the Feb 2008 FR Notice) 7.74 percent ethanol into the gasoline they market or face penalties, the ethanol distilleries can purchase inputs at above market values and even lever the firm to secure market share for future years. Local permitting challenges for ethanol distilleries may also incentive leverage as permit difficulty increases entry barriers.<sup>31</sup> Fabozzi and Thomas confirm that it is common for firms to utilize leverage to secure future market share even though the firm will spend more on inputs than it can realistically recover in revenue during the current period.<sup>32</sup> Simply, mandates incentives leverage (e.g. debt), which allows ethanol distilleries to pay more for inputs than they can charge gasoline blender (obligated parties). This ability to pay more for inputs than are supported by the market supply and demand fundamentals is a leading cause of the severe economic harm from the mandates. "The fact is that RFS mandates play a huge role in shaping expectations not only about the level of future demand but about the stability of that demand."<sup>33</sup>

While a number of ethanol distilleries are profitable today, many ethanol distilleries can also afford to operate at a loss and utilize leverage in the current period to establish market share. Once ethanol distilleries establish their market share and have sufficiently discouraged competition in the local marketplace and mandated levels increase, they can increase prices and recover the input costs.

Unlike obligated parties or ethanol distilleries, consumers and livestock and poultry producers are not supported by a mandate and would have to make adjustments in their operation or employ credit if their expenses are greater than their revenue.

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<sup>30</sup> Iowa State University, FAPRI, and Corinne Alexander and Chris Hurt, *Biofuels and Their Impact on Food Prices*, at 3, available at <http://www.ces.purdue.edu/extmedia/ID/ID-346-W.pdf>.

<sup>31</sup> JournalSentinel Online. Benson, D. "Ethanol plant courted behind closed doors," <http://www.jsonline.com/story/index.aspx?id=729160>

<sup>32</sup> Fabozzi, F. *Handbook of Fixed-Income Securities*; Thomas, J., "The Strategy of Leverage," <http://www.decisionanalyst.com>.

<sup>33</sup> Anderson, J & Coble, K, Mississippi State University, "Impact of Renewable Fuel Standards Ethanol Mandates on the Corn and Livestock Markets," June 9 ,2008.

The second key consideration of the mandate that is not captured in macroeconomic analysis is the severe economic harm for livestock and poultry producers that are geographically near ethanol production. The microeconomic impact for livestock and poultry producers that are near ethanol plants face an increasing and near unbearable challenge from the mandate supported competitor for inputs. Several studies have captured the microeconomics of diminishing basis near ethanol distilleries. The basis is a term that means the difference of price from the national values relative to distance from key markets. The closer a quantity of corn is to a key market, the lower the discount and vice versa. Studies have indicated that the local corn prices (basis) can increase (decrease) as much as 19.3 and 12.5 cents per bushel on average and effects be felt as far as 68 miles away by the presence of an ethanol distillery. For a livestock or poultry producer that is located near a plant, this increases the economic costs at a more rapid rate than livestock and poultry producers that are further away from ethanol distilleries.<sup>34</sup> McNew and Griffith find that “the price increase is spatially concentrated around the plant.” The regional impacts are compounded when there are multiple ethanol distilleries within a limited and overlapping geographic area. While there is some value to the byproduct of ethanol plants, the distiller grains vary greatly in nutritional value, are undesirably high in phosphorus and fiber, and some livestock producers have indicated concerns about the ethanol distilleries’ use of antibiotics.<sup>35</sup> Further, monogastric animals such as swine and poultry cannot handle amounts greater than 5-10 percent of high fiber distillers grains.

The starch that is converted from corn into ethanol to meet the mandate is energy that would otherwise be available to animal agriculture, food, or exports. According to USDA, “the most important item in an animal’s diet and overall feeding standards is based on energy needs. Meeting the energy requirements of an animal can be a major cost in feeding. Animals derive energy from partial or complete oxidation of carbohydrates, fats, and proteins ingested and absorbed from the diet or from breakdown of glycogen, fat, or protein absorbed in the body. Animals require some energy even in a nonproductive state for sustaining the body and maintaining body temperature and muscular activity. Additional energy is required when performing work and for growth and fattening, pregnancy, and lactation.”<sup>36</sup> When this starch is extracted for ethanol production, the remaining byproducts are deficient in available energy for animal agriculture and produce an inconsistent coproduct that has variable nutritional qualities and undesirably high fiber and phosphorus.<sup>37</sup> There are a few plants that produce more consistent feed products and higher value feed than DDGS, but these are a minority in the ethanol distilling industry.

Corn yields are not keeping pace with the increasing volumes of mandated ethanol (see illustration). Corn yields have averaged 1.3 percent improvements for more than 50 years and

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<sup>34</sup> McNew, K., & Griffith, D., “*Measuring the Impact of Ethanol Plants on Local Grain Prices*,” 2003, *Review of Agricultural Economics*. For more information on understanding basis and spatial demand impacts, see “An Introduction to Basis,” by Parcell and Pierce, University of Missouri, <http://agebb.missouri.edu/mgt/risk/basis.htm>

<sup>35</sup> Shurson, G., Before the House Committee on Agriculture, Subcommittee on Livestock, Dairy, and Horticulture. Drouillard, J. presentation on effects of ethanol byproducts on animal health. Laitrol advertisement.

<sup>36</sup> USDA National Range and Pasture Handbook, 6-2.

<sup>37</sup> *Id.*, Dr. Gerald Shurson.

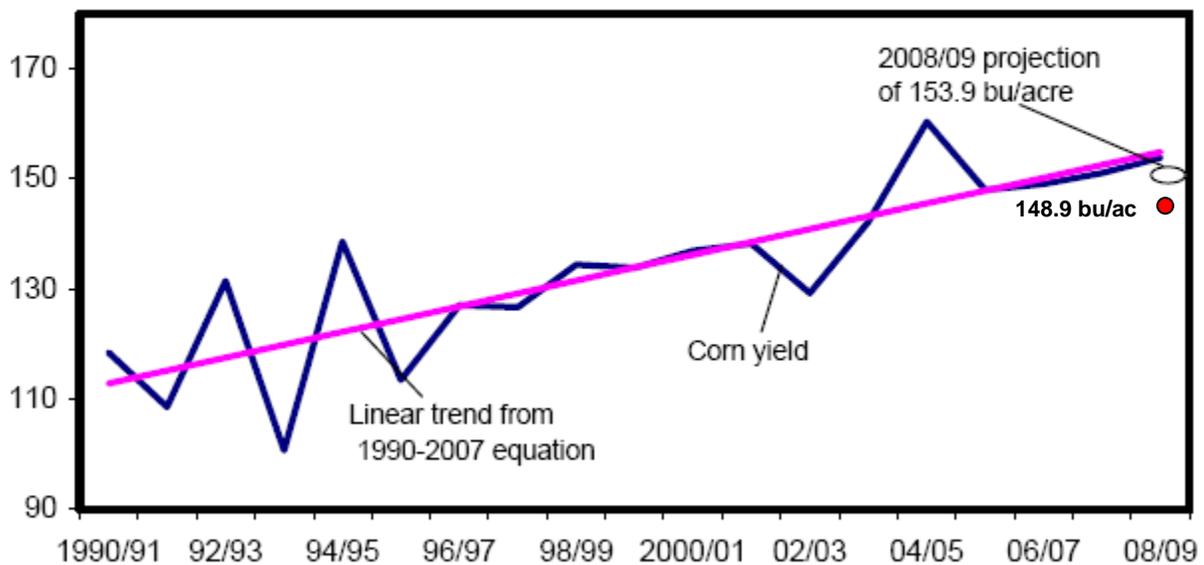
are expected to be below trend in 2008 by USDA. Some research indicates that this increase is slowing.<sup>38</sup> This deceleration of increasing corn yield exacerbates the existing mismatch between the accelerating volumes of ethanol (per RFS) and the amount of corn produced.

Some opinion leaders indicate that biotechnology would aid yield improvement. While we generally support biotech's application in this area, of the 23 approved biotech corn varieties *none* are designed for yield or starch improvements or will be available before planting is completed this month.<sup>39</sup> We recognize benefits of some approved varieties to improve production, but none are designed specifically for it. Additionally, this petition is for relief for the severe economic harm in 2008 and for the severe economic harm that will develop if the Agency does not act favorably on this petition in 2008. It is important for biotechnology to advance productivity in food and feed stuffs, but this waiver request is for Agency to provide relief in the present environment to forestall further severe economic harm.

To illustrate the challenges of corn yields and their volatility, below is a chart of corn yields. Please note that this chart is from April 2008 and USDA has reduced yields substantially to **148.9** bushels per acre since then. These yields can be anticipated to go lower in light of massive Midwestern flooding in four of the leading corn producing states, especially Iowa. The Agency will also notice that the yields can vary significantly from year-to-year. It is because of this type of volatility that Congress provided the waiver authority to the Agency.

### Delayed spring plantings put the 2008/09 corn yield projection below trend

Bu per acre



Source: USDA, World Agricultural Outlook Board, WASDE.

<sup>38</sup> IFPRI

<sup>39</sup> United States Regulatory Agencies Unified Biotechnology Website (USDA, Agency, HHS)  
[http://usbiotechreg.nbio.gov/Search\\_pub.asp](http://usbiotechreg.nbio.gov/Search_pub.asp)

Moreover, the ethanol portion of the renewable fuel mandate is scheduled to increase 178 percent in just 8 years – during this same 8 year period an extension of USDA corn yields trend would have them increase by only 10.4 percent. This mismatch will increase the pressure on the meat and poultry sector, our suppliers, and consumers unless the Agency grants this waiver.

## **X. The Ethanol Mandates Severely Harm the State of Texas's Economy**

AMI sees that the State of Texas is and will continue to endure severe economic harm under the existing RFS requirements unless the Agency acts to waive a portion of the corn ethanol mandate. The meat, livestock and poultry industries of Texas are highly dependent on corn and other grains imported from other states. The USDA reported in January 2008 there are 13.8 million cattle in Texas and 616 million broilers. As the price of corn climbed to meet the mandated level of ethanol production for 2008, Texas meat, livestock, and poultry producers and processors were unable to pass on the higher costs and had to absorb the substantial losses or discontinue operations. As more Texas producers reduced production, Texas consumers were harmed by the escalation in food prices caused by less dairy, beef, pork, poultry, and eggs being available to purchase.

Livestock and poultry producers alone contribute more than \$10.9 billion to the state's economy. Cattle and poultry are two of the top five agricultural commodities in Texas by revenue. According to USDA's Food Safety Inspection Service, there are more than 370 inspected meat and poultry establishments in Texas, many of whom are AMI member companies. Texas livestock and poultry producers are substantial importers of grain from Midwestern and adjacent states. As the price of corn and feed grain has increased to be converted into ethanol, Texas livestock and poultry farmers endure and will continue to endure severe economic harm until Agency acts. While the mandate is not the only contributing factor to this inflationary pressure, it is the one that Agency can affect and provide some relief to a severe economic situation.

The ethanol mandates have and will severely harm major U.S. food producers, consumers, and the economy as a whole. One study estimated that, in 2007, through the addition of jobs and other opportunities, ethanol production created approximately \$12.3 billion in household income. At the same time, the study estimated that additional support costs for biofuels production that year totaled about \$24.5 billion. This means that increased biofuel production mandated by the renewable fuel program is costing the economy about \$2 for every \$1 in extra household income created. Elam Report, at 33.<sup>40</sup> This means that the increased costs and job losses resulting from artificially created demand for biofuels has created a net drag on the overall national economy.<sup>41</sup>

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<sup>40</sup> Dr. Thomas E. Elam, *Biofuel Support Policy Costs to the U.S. Economy* (March 24, 2008) (hereinafter "Elam Report"), at 33.

<sup>41</sup> Elam Report, at 34. Increased demand for biofuels has particularly harmful economic effects on regions and states with large poultry, livestock, pork, and dairy industries. These states, with their large animal populations, are the most heavily affected by higher prices for corn, soybean meal, and other feed ingredients. Elam Report, at 29.

## **XI. The Ethanol Mandates Severely Harm the State of Texas' Consumers**

The Agency should grant this waiver because the State of Texas' consumers are also enduring economic harm from food inflationary pressures and experiencing food insecurity that are partly resulting from this mandate. This is particularly disturbing since the State of Texas has the largest number of participants in USDA's Food Stamp program. According to USDA, 2,422,198 Texans use food stamps to buy food every month.<sup>42</sup> That amounts to 10 percent of the people in Texas. This level of food insecurity is compounded by policies and mandates that increase the cost of food by diverting massive quantities of grain to be burned as fuel.

Ethanol mandates have contributed to higher domestic and global food prices, and domestic food shortages. The Bureau of Labor Statistics reports that food inflation in the United States is rising by 6.1 percent and other studies predict that food inflation could increase by 7 to 8 percent in the next few years. Although many factors have contributed to high food costs, ethanol mandates are a significant factor that must be reconsidered in light of changing circumstances and science.

The ongoing and growing diversion of corn and soybean oil into our fuel supplies is placing unnecessary upward pressure on commodity prices and food prices in general. According to the U.S. Department of Agriculture, 25 percent of America's corn crop was diverted to produce ethanol in 2007 and 30 to 35 percent of our corn will be diverted in 2008. As a result, corn prices have tripled in the last two years, driving up the cost of basic staples like eggs (69%), milk (22%), beef (10%) and chicken (12%). The rising cost of food prices are falling most heavily on the State of Texas' and America's fixed income families. It is estimated for poultry producers to break even, poultry prices need to rise 23 percent from current levels.<sup>43</sup>

The ethanol portion of the renewable fuels program also tightens the supply of other crops used for food and feed. At a time when the American economy is weakening, the pressure that the ethanol mandate places on corn alone has caused higher domestic food prices and serious economic injury to the livestock, pork, poultry, egg, and dairy industries, while also contributing to significant food inflation. Next year's higher mandate will wreak even greater economic harm by raising food prices substantially more, thus contributing to higher inflation, weakening consumer confidence, and reducing real purchasing power.

## **XII. The Agency Should Grant This Waiver Because Ethanol Mandates Severely Harm the American Consumer and Place Undue Hardships on U.S. Households in a Time of Financial Stress.**

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For example, Dr. Elam has estimated that, as a result of federal biofuel policy, states such as Iowa, North Carolina and Texas may incur costs of over \$1 billion each resulting from increased animal feed prices. Elam Report, at 30.

<sup>42</sup> FY2007 average monthly participation, the most recent full year for which data is available. In February 2008, the most recent month for which USDA has published data, there were 2,431,025 participants in the state, but this data is preliminary and monthly data can fluctuate significantly. For the most recent month see:

<http://www.fns.usda.gov/pd/29fslatest.htm>.

<sup>43</sup> Markwatch.com, Andrejdczak, M. "Grain Prices, Other Concerns Tar Chicken Stocks," June 16, 2008.

The ethanol mandates are contributing to domestic (and global) food price inflation, which will only worsen if the mandates are not waived. U.S. food inflation is currently at the highest it has been in over 15 years, while energy and other costs are also soaring.

A key contributor to rising food prices is the vast diversion of corn from use in food and feed to biofuel production. Unprecedented demand for corn has created price hikes in that crop, which in turn has increased animal feed costs and contributed to higher consumer food prices.<sup>44</sup> In 2004-2005, around the time that the federal mandates were created, the price of corn averaged \$2.06 per bushel.<sup>45</sup> Just a few years later, in 2007-2008, the price is expected to average between \$3.75 and \$4.25 per bushel.<sup>46</sup> These projections may, in fact, be too low—to the surprise of many, in June 2008, the price of corn jumped to \$8 per bushel.<sup>47</sup> The USDA projects that the price of corn will continue to rise through 2009, and, over the long run, it will remain historically high.<sup>48</sup> Economists predict that food inflation will continue at elevated levels until 2012 and may be as high as 9 percent, partially as a result from ethanol policies.<sup>49</sup>

High corn prices have caused many farmers to switch from cultivating other grains (such as soybeans and wheat) to corn, which further contributes to food inflation. In 2007, higher corn prices contributed to a 15 million acre increase in corn area, and a 12 million acre *reduction* in soybean area.<sup>50</sup> As a result, soybean prices recently hit historic highs, and while wheat prices reached record highs, the country's wheat stockpiles hit a 60-year low.<sup>51</sup>

Absent a waiver of the corn ethanol mandates, substantial adverse effects on the agricultural sector and commodity prices will not be alleviated, but will grow, over time. USDA estimates that the percentage of the nation's corn crop that will be diverted away from food and feed uses will continue to rise from around 14 percent in the 2005/2006 crop year to at least around 30 to 35 percent by 2009/2010.<sup>52</sup> Eventually, the demand for corn and other biofuel

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<sup>44</sup> Food and Agricultural Policy Research Institute, *2008 U.S. Baseline Briefing Book* (March 2008) (hereinafter "FAPRI Report"), at 2, available at [http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI\\_MU\\_Report\\_03\\_08.pdf](http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_03_08.pdf).

<sup>45</sup> Allen Baker and Edward Allen, *USDA Feed Outlook* (December 13, 2006), available at <http://usda.mannlib.cornell.edu/usda/ers/FDS//2000s/2006/FDS-12-13-2006.pdf>.

<sup>46</sup> Allen Baker, Edward Allen, and Heather Kmak, *USDA Feed Outlook* (March 13, 2008), available at <http://usda.mannlib.cornell.edu/usda/current/FDS/FDS-03-13-2008.pdf>. See also FAPRI Report, at 11 (Table – corn supply and utilization).

<sup>47</sup> <http://www.CBOT.com>, Chicago Board of Trade. (June 16, 2008).

<sup>48</sup> *USDA Agricultural Projections to 2017*, U.S. Department of Agriculture (February 2008) (hereinafter "USDA Projections"), at 35 (Table 7), available at <http://www.ers.usda.gov/Publications/OCE081/OCE20081.pdf>.

<sup>49</sup> USA Today.com, Kirchoff, S. "Midwest floods send corn prices soaring past \$8 a bushel," June 16, 2008.

<sup>50</sup> FAPRI Report, at 3.

<sup>51</sup> Wheat prices are projected to remain higher than in years before creation of the federal biofuels mandates because of higher prices for corn and other crops and decreased wheat acreage. See FAPRI Report at 22.

<sup>52</sup> Paul Westcott, *Ethanol Expansion in the United States: How Will the Agricultural Sector Adjust?* (May 2007), at 4, available at <http://www.ers.usda.gov/Publications/FDS/2007/05May/FDS07D01/fds07D01.pdf>.

feedstocks will cause even the price of biofuels themselves to rise, contributing to overall inflationary pressures.

### **XIII The Agency Should Grant the Waiver Because Ethanol Mandates Contribute to Food-Price Inflation.**

The rise in corn prices has led to increases in the prices of major food staples in the United States in at least two important ways. First, increased corn prices are reflected directly in food products that use corn, such as cornflakes and corn syrup. Second, increased corn and other crop prices translate into higher meat, egg, and milk prices due to the higher costs of animal feed.<sup>53</sup>

Staples like meat and poultry products are particularly likely to increase as the costs of animal feed increase. This is because the prices of foods that require little or no processing generally follow changes in farm prices more closely than do the prices of heavily processed and packaged foods. Because the farm prices for pork, poultry, and beef are particularly sensitive to changes in underlying feedstock prices, costs of the ethanol mandates are felt directly by consumers in grocery stores.<sup>54</sup>

Between March 2005, just prior to the creation of the renewable fuel mandates, and March 2008, the diversion of an increasing proportion of the nation's corn crop to ethanol production contributed to increases in the costs of basic staples like eggs (94.7%), ground beef (12.3% ), and whole chicken (10.4 %).<sup>55</sup> Moreover, the price for bread was 14.7 percent higher in March 2008 than it was one year earlier, and milk (which set an all-milk price record of \$19.15 per cwt in 2007<sup>56</sup>) was 13.3 percent more expensive in March 2008 compared to its price one year earlier.<sup>57</sup> USDA projects that consumer price increases for red meats, poultry, and eggs will continue to exceed the general inflation rate in 2008 and 2009 as the livestock sector adjusts to higher feed costs flowing from increased ethanol production.<sup>58</sup> Beyond 2009, as conventional corn-ethanol production increases to keep pace with growing mandates, the diversion of corn

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<sup>53</sup> In addition to increasing the cost of feed by increasing the price of corn, the ethanol mandates result in increases in the prices for other crops, such as soybeans and wheat. Soybean prices surged in the past year after U.S. farmers planted the smallest soybean acreage in 12 years to sow the most corn since 1944. Jae Hur, *Soybeans Rise to Record on Expected China Demand; Wheat Gains*, Bloomberg.com (February 15, 2008). Projections suggest that, due to the record-high current prices of soybeans, some acreage is expected to switch back to soybean production in 2008. However, the overall trend will be toward increased corn acreage and away from soybean and wheat production, reflecting the growth in domestic corn-based ethanol production. USDA Projections, at 21. Soybean stocks are projected to remain low and soybean prices will remain high by historical standards. FAPRI Report, at 26

<sup>54</sup> *Corn Prices Near Record High, But What About Food Cost?*, U.S. Department of Agriculture (February 2008), at 3-4, available at <http://www.ers.usda.gov/AmberWaves/February08/Features/CornPrices.htm>.

<sup>55</sup> Consumer Price Index – Average Price Data (retrieved for most requested statistics), Bureau of Labor Statistics, available at <http://www.bls.gov/data/home.htm>.

<sup>56</sup> FAPRI Report, at 48.

<sup>57</sup> Consumer Price Index: March 2008, Bureau of Labor Statistics, available at <http://www.bls.gov/news.release/pdf/cpi.pdf>.

<sup>58</sup> USDA Projections, at 4.

from food to fuel will grow even larger, with even greater future impacts are expected on the costs of feed and food.

An April 2008 study from Purdue University suggests that recent public attention to the alarming growth in national and world food prices is well-founded.<sup>59</sup> The Purdue study projects U.S. food inflation in 2008 to be in the range of 3.5 to 4.5 percent – the highest in over 15 years.<sup>60</sup> This inflation rate would exceed the general inflation, of around 3 percent, which would be a change from recent years when food inflation was lower than the general inflation rate.<sup>61</sup> The study concludes that added food costs attributable to increased demand for biofuels equal \$15 billion per year, or about \$130 per household.<sup>62</sup>

Corn-ethanol mandates run the risk of increasing food prices even beyond projected levels, and possibly contributing to food shortages. The mandates create a price inelastic demand for biofuel, which means that they impose a rigid demand for corn even in the face of unexpected supply shortfalls. Food demand is also resistant to rising prices because food is a basic human need. As a result, in the event of an unforeseen decrease in the corn crop due to a cutback in acreage, a drop in yield, or perhaps a drought, the price of food and feed would increase even more than is currently projected. Ethanol mandates ensure that corn will continue to be used for fuel production, no matter how urgently it is needed for food. One study suggests that a reduction of U.S. crop production by 5 percent in 2008 could push food inflation up to 5.7 percent.<sup>63</sup>

The rising cost of food has the largest adverse effect on the nation's lower and middle class families, resulting in record demand for food welfare programs and school lunch programs.<sup>64</sup> Lower income families generally use a larger proportion – sometimes up to a third – of their income for food purchases.<sup>65</sup> Moreover, poor consumers get a large percentage of their food directly from commodities (*e.g.*, wheat to turn into flour, vegetable oil for cooking), which means that they bear the brunt of high commodity prices.

And because the average American household spends nearly 10 percent of its disposable income on food, food prices play a major factor in the overall inflation rate. Food cost increases

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<sup>59</sup> See, *e.g.*, Andrew Martin, *Fuel Choices, Food Crises and Finger-Pointing*, The New York Times (April 15, 2008), available at <http://www.nytimes.com/2008/04/15/business/worldbusiness/15food.html>.

<sup>60</sup> Corinne Alexander and Chris Hurt, *Biofuels and Their Impact on Food Prices* (September 2007), at 2, available at <http://www.ces.purdue.edu/extmedia/ID/ID-346-W.pdf>.

<sup>61</sup> *Id.* at 2. USDA also project that food price inflation will exceed general inflation in 2008 and 2009. USDA Projections, at 4.

<sup>62</sup> Corinne Alexander and Chris Hurt, *Biofuels and Their Impact on Food Prices*, at 3.

<sup>63</sup> Corinne Alexander and Chris Hurt, *Biofuels and Their Impact on Food Prices*, at 3.

<sup>64</sup> See Jim Weill, *The Impact of Rising Food Prices on Hunger in America*, Food Research and Action Center (April 16, 2008), available at [http://www.frac.org/pdf/JWhungercaucus\\_apr08.pdf](http://www.frac.org/pdf/JWhungercaucus_apr08.pdf). See also *Higher Prices Land on School Lunch Trays*, American Public Radio (April 14, 2008), [http://marketplace.publicradio.org/display/web/2008/04/14/school\\_lunches](http://marketplace.publicradio.org/display/web/2008/04/14/school_lunches).

<sup>65</sup> Jim Weill, *The Impact of Rising Food Prices on Hunger in America*, Food Research and Action Center, available at [http://www.frac.org/pdf/JWhungercaucus\\_apr08.pdf](http://www.frac.org/pdf/JWhungercaucus_apr08.pdf).

have been observed in the food index – a component of the Consumer Price Index (“CPI”), a key inflationary reading – which rose 6.1 percent in April 2008 and is expected to outpace general inflation again in 2009.<sup>66</sup> In fact, the food index rose at a 5.3 percent (seasonally adjusted) annual rate in the first quarter of 2008.<sup>67</sup> The index for grocery store food prices in the first quarter of 2008 increased at an even greater adjusted annual rate than that – 5.9 percent.<sup>68</sup>

**XIV. The Agency Should Grant this Waiver Because the Conversion Factor Relied Upon Distort the Severity of the Economic Impact.**

For 2007, the U.S. Department of Energy reports that 6.48 billion gallons of ethanol was produced last year (98 percent from corn) and USDA reports that 3 billion bushels were converted into ethanol.<sup>69</sup> This would mean that for each bushel of corn, only 2.16 gallons of ethanol was produced ( $6.48 / 3 = 2.16$ ). Due to this miscalculation, the country will need more corn than the Agency, USDA or DOE is currently calculating to meet the RFS obligation and contribute to even more economic stress for consumers, livestock and poultry farmers, and food producers. This conversion miscalculation is more than 20 percent below the 2.7 gallons per bushel that Agency estimated in their May 1, 2007 rule.<sup>70</sup>

Ethanol Production	Bushels Used at Different Conversion Rates		
	2.7 gal/bu.	2.16 gal/bu	Difference
6.5 billion	2.40 Billion	3.00 Billion	<b>601 Million</b>
9 billion	3.33 Billion	4.16 Billion	<b>833 Million</b>
4.5 billion	1.66 Billion	2.08 Billion	<b>416 Million</b>

The Agency’s reliance on a conversion value that exceeds the actual utilization of levels for 2007 and future projections would lead to an inaccurate projection of the actual level of corn needed to achieve the 9 billion gallon RFS. The discovery was partially unearthed in an Iowa State May 2007 report which indicate that many ethanol distilleries do not use the seed pericarp of corn, which would allow them to have an increased efficiency (pg 2). While it is possible that

<sup>66</sup> Consumer Price Index: March 2008, Bureau of Labor Statistics, available at <http://www.bls.gov/news.release/pdf/cpi.pdf>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> USDA/ Economic Research Service, *Feed Outlook* May 13, 2008, pg. 3. ISU CARD Biofuels webpage June 2008. Dept. of Energy/Energy Information Agency, Oxygenate historical data for 2007.

<sup>70</sup> Federal Register (40 CFR Part 80) Regulation of Fuels and Fuel Additives: Renewable Fuel Standard Program; Final Rule. Vol. 72/ No. 83, pg. 23981. The difference in this calculation from the EPA projected conversion rate is concerning since there is substantial intrinsic incentive for ethanol blenders to report accurately since they can claim a tax credit of either 51 or 45 cents per gallon and incentive for corn to be reported accurately for market position management purposes and profit maximization. Ethanol producers are also eligible for production credits for plants less than 60 million/yr capacity and in general in Minnesota, Iowa, and other states, furthering the incentive to be accurate in disclosure. An alternative report from FAPRI provides 6.9 billion gallons of ethanol from corn in 2007, which would yield 2.3 gallons per bushel still 0.4 below EPA’s 2.7 gal/bu.

technology exist to produce 2.7 gallons of ethanol from a bushel of corn, the reported numbers from USDA and DOE does not match that technological possibility. For 2008, this difference is equal to 7 percent of the projected harvest and would provide livestock and poultry with approximately 15 percent of their needs for 2008. Another view of this is the 833 million bushel deficit is 160 million bushels greater than USDA's projected ending stocks for June 2008.<sup>71</sup> A deficit of this magnitude could have a profound impact on price and availability of corn and other feedstuffs.

Therefore, the Agency should grant the waiver because of the imminent and severe economic harm that will transpire from this significant miscalculation in the amount of corn that will be diverted to meet the 9 billion gallon requirement for 2008. The Agency would be wise to grant the waiver and redress, and wait until the National Academy of Science and the Agency has the opportunity to evaluate the data inputs, examine current conversion rates, and the projected calculations.

#### **XV. The Agency Should Grants a Waiver and Redress Because Mandates Will Cause Further Economic Harms by Contributing to Fuel-price Increases.**

Absent a waiver of the renewable fuel mandates, the steadily increasing demand for biofuels created by renewable fuel mandates will contribute to U.S. fuel price increases, causing further financial distress to American households already battling high food and energy costs. The price of the primary biofuel feedstock – corn – continues to rise as biofuel producers compete for limited supplies. Eventually, the biofuel-induced demand for corn will drive the price of corn so high that it will lead to increases in the cost of biofuels themselves. As Dr. Thomas Elam has observed, expensive corn will contribute to higher prices at the gas pump.<sup>72</sup>

Added to the increased prices of food, increased fuel prices resulting from renewable fuel mandates have the potential to create unprecedented economic hardships for all Americans. Dr. Elam has suggested that a combination of the current federal biofuel policy and an unexpected crop failure resulting in a 10 percent reduction in corn and soybean yields could cause both food and ethanol prices to skyrocket beyond any current projections.<sup>73</sup> An often cited claim is that ethanol reduces fuel pump prices by 15 percent. However, this claim is predicated on Iowa State University research that the researcher directs readers in their conclusion that “it would be wrong to extrapolate the results to today's markets.”<sup>74</sup> In fact, the report finds that ethanol blending may have less impact on consumer fuel pump prices, but is reducing fuel marketer's margins - (which confirms the that absent the mandate, marketers would have an intrinsic interest to reduce ethanol consumption and corresponding corn demand). As a consequence of the impact on margins, fuel marketers need to increase prices of diesel fuel and other products to cover operating margins. Thereby, adversely impact consumers and farmers who rely on diesel and other petroleum products.

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<sup>71</sup> Id. WASDE, pg. 12, June 2008.

<sup>72</sup> Elam Report, at 22.

<sup>73</sup> Elam Report, at 32.

<sup>74</sup> Iowa State University, Du, X. & Hayes, D., “*The Impact of Ethanol Production on U.S. and Regional Gasoline Prices and on the Profitability of the U.S. Oil Refinery Industry*,” April 2008. Fore referenced by a Merrill Lynch report.

The granting of the waiver would have insignificant effect on consumer fuel pump prices and significant beneficial effects on corn prices by making one to two billion bushels available to corn feed and food consumers. Again, this impact discrepancy is a clear validation for the Agency to grant this waiver and redress until the National Academy of Sciences and the Agency has an opportunity to evaluate these questions.

**XVI. The Agency Should Grant the Waiver Because the Benefits of Corn-Ethanol are Insignificant for the Severe Economic Cost that are Incurred.**

The benefits of ethanol mandates are insignificant relative to their severe economic costs to meat and poultry producers. The Massachusetts Institute of Technology (MIT) indicate that for each unit of energy required to make ethanol, 1.3 units of energy result as ethanol and are eligible for consumption.<sup>75</sup>

To evaluate this on the basis of British thermal unit (btu) adjusted gasoline means that for each gallon of corn-ethanol produced, .769 gallons of energy equivalent are required.<sup>76</sup> Thus, to produce the 9 billion gallons of corn-ethanol for the 2008 RFS, it will require 4.38 billion gallons of gasoline equivalent energy. This measure accounts for the lower energy content of ethanol.

Below is a table that illustrates the energy derived from ethanol production if the energy that went into its production came exclusively from gasoline. Clearly, corn and ethanol production rely on natural gas, diesel fuel, marine fuel, coal, other sources of energy, as well as gasoline, but this comparison is to illustrate the direct gasoline gains relative to the severe costs that livestock and poultry producers and consumers are enduring because of this policy. For reference, the Department of Energy’s Energy Information Agency estimates that the U.S. will use just less than 140 billion gallons of gasoline (including E10) this year. (All numbers are in U.S. gallons)

Ethanol Production	Gasoline Equivalent <sup>77</sup>	Gasoline Equivalent Required	Net Gasoline
4.5 Billion	2.84 Billion	2.19 Billion	<b>0.6 Billion</b>
6.5 Billion	3.79 Billion	2.92 Billion	<b>0.8 Billion</b>
9.0 Billion	5.69 Billion	4.38 Billion	<b>1.3 Billion</b>

<sup>75</sup> McCall, T., Massachusetts Institute of Technology, “Boom or Bust Economics Will Determine Fate of Biofuels,” *Technology Review*, Feb. 2008.

<sup>76</sup> Patzek, et al. <http://petroleum.berkeley.edu/papers/patzek/PublishedEDS2005.pdf> values ethanol at 67 percent of the energy value of gasoline for equal volumes at 60 degrees. However, gasoline btu content is not standardized and can vary from 115,000 -125,000, which would place ethanol at a 66-68 percent value to gasoline. The added oxygen level of ethanol would be captured in high and low heat btu diagnostic evaluation captured by current btu evaluation physics.

<sup>77</sup> Conversion factors include energy:ethanol 100:130, Gasoline:Ethanol 120,000:76,000 btu per gallon.

Therefore, the net production of energy for 2008 if the Agency fails to act would be 1.3 billion gallons of gasoline equivalent created as a result of the RFS and other government transfer payments to ethanol distilleries and blenders. For context, according to the U.S. Department of Energy, the world use 3.57 billion gallons of petroleum per day.

Unfortunately, for this approximate 1.3 billion gallons of gasoline equivalent, American meat, livestock and poultry producers and consumers domestically and internationally must endure significantly higher costs and the severe economic consequences that accompany the mass diversion of corn to produce the corn ethanol to meet the mandate. Alternatively, if there was less ethanol produced from corn, consumers could anticipate insignificant disruption in transportation fuels prices and corn prices would moderate to ease the severe economic stress on the meat and poultry producers and consumers' food budgets.

In sum, for the 1.3 billion gallons of gasoline equivalent energy the RFS will yield, consumers are and will pay more for their food since meat and poultry producers are paying more for their feed due to the ethanol mandate unless the Agency grants this waiver.

## **XVII. The Agency Should Grant the Waiver Because of Severe Economic Harm and Risk to Food Security.**

By raising the prices of critical feedstocks in the meat and poultry industries, the ethanol mandates impose costs on producers in these major national industries that dwarf the benefits of conventional, corn-based renewable fuels. Ethanol mandates create an automatic (and growing) demand for biofuel, which in turn creates an unprecedented demand for the feedstocks used to produce the fuel – mainly corn. Although the EISA does not mandate “corn” biofuel, corn ethanol is the only viable source of biofuels in 2008. Thus, the biofuel mandates effectively translate to a corn-based ethanol mandate of 9 billion for 2008 and if left unmitigated 15 billion gallons by 2015.

In the United States, corn and soybean meal also are major ingredients of feed for livestock and poultry (For example, chicken feed consists of nearly 60 percent corn and over 25 percent soybeans). Whereas most U.S. corn went to feed use and little of it was devoted to ethanol production five years ago, in 2007, about 25 percent of the 13 billion bushel corn crop was consumed by ethanol production. Worse, the percentage diverted to ethanol production is expected to increase to more than 30 percent in the next crop year, beginning in 2008 and ending in August 2009.<sup>78</sup>

To understand the implications of converting 4 billion bushels of corn into ethanol on meat and poultry producers, the USDA table below illustrates the volume of corn required to produce a pound of meat or poultry protein. Each bushel of corn weighs 56 pounds, thus 4 billion bushels provides 224 billion pounds of feed that would normally be available to meat and

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<sup>78</sup> FAPRI Report, at 11 (Table – corn supply and utilization), available at [http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI\\_MU\\_Report\\_03\\_08.pdf](http://www.fapri.missouri.edu/outreach/publications/2008/FAPRI_MU_Report_03_08.pdf). The study performed by researchers at the University of Missouri also projects that, taking into account the recently increased biofuels mandates in the Energy Independence and Security Act of 2007, by 2015, the amount of corn used for ethanol production will almost equal that fed to U.S. livestock. FAPRI Report, at 10.

poultry producers. Put simply, a bushel of corn in a mixed ration can produce approximately 20 pounds of pork (80 servings) or 2.1 gallons of ethanol, but not both.

Class of Animal <sup>79</sup>	Pounds of feed needed to produce 1 pound of meat
Chicken	2.6
Pork	6.5
Beef	7

As more corn is used for ethanol production, less of it is available for feed and other uses. And because overall corn production is limited by the amount of suitable cropland, the increased demand for corn created by ethanol mandates raises its price.<sup>80</sup> As noted above, the price of corn has gone from \$2.06 per bushel in 2005 to over \$8.00 per bushel in 2008. The higher costs of corn and soybean meal,<sup>81</sup> have translated directly into higher feed costs for all livestock and poultry producers.<sup>82</sup> One study estimated that feed costs climbed by over \$15 billion between 2005 and 2008 due to higher prices for corn and other grains.<sup>83</sup> This study projects that feed costs will continue to remain well above pre-biofuel mandate levels through 2017.<sup>84</sup>

As feed costs rise, meat and poultry production could very likely decline over the next few years.<sup>85</sup> The stress on this important segment of our economy is already apparent. In 2007,

<sup>79</sup> Id. USDA, WRS-0801, pg. 12.

<sup>80</sup> Price increases resulting from increased demand for corn cannot be reversed simply through the production of more corn. In 2007, the nation's corn production hit its highest levels since World War II (acreage devoted to corn hit a record 93.6 million acres, up 20 percent from the year before) in response to the high demand for corn ethanol, but the price of corn has nearly tripled in recent years.

<sup>81</sup> Elevated corn prices in response to increasing biofuels demand also contribute to the historically high prices of soybeans because soybean cropland must compete with corn for cropland. Indeed, the price of soybeans has risen even though stockpiles of soybean oil are also at near record levels. USDA reported that the price of soybeans per bushel was \$6.43 in 2006/2007, but shot up to \$9.00 in 2007/2008. USDA Projections, at 35 (Table 7). Prices of soybeans and soybean-derived products (*e.g.*, soybean meal and soybean oil) are projected to increase and remain well over 2006/2007 levels over the long-term due to continued increased demand for biofuels, with even greater price increases likely as a result of the strengthened biofuels mandates enacted by Congress in 2007. USDA Projection, at 23 and 41 (Table 13).

<sup>82</sup> FAPRI Report, at 3.

<sup>83</sup> FAPRI Report, at 60.

<sup>84</sup> FAPRI Report, at 60. *See also* USDA Projections, at 4, 49 and 60. In fact, USDA acknowledges that its own projections likely underestimate the anticipated increases in costs of animal feed because, although they account for the biofuels mandates created by the Energy Policy Act of 2005, they do not account for the strengthening of those mandates by Congress in December 2007, which has added to the unprecedented demand for corn. USDA Projections, at 23.

<sup>85</sup> USDA Projections, at 47.

high corn and soybean meal prices caused producers in the poultry industry to suffer their second-lowest profitability levels in 10 years.<sup>86</sup> On June 1, 2008, USDA reported that feeder cattle placements were down 12% over 2007 levels, indicating a contraction in the beef herd. On April 28, 2008, Tyson Foods reported its first loss in six quarters and announced that its corn and soybean costs would increase by \$600 million this year.<sup>87</sup> As the ethanol mandates grow over time and more of the nation's corn is diverted to fuel use and less is available for feed,<sup>88</sup> feed prices will remain at their astoundingly high levels, potentially forcing more and more food producers out of business.

The sharp, adverse impact of increased corn prices on U.S. food producers is related to the undeniably large role that feed plays in the overall costs of meat, poultry, and dairy production.<sup>89</sup> Although ethanol production has the potential to generate co-products, distillers grains, which may be used for animal feed, this co-product is not a desirable feed substitute for all animals. Distillers grains are not easily used by chickens and hogs, whose digestive systems differ in important ways from those of cattle,<sup>90</sup> and their use in animal feed may be limited by the location of their production.<sup>91</sup> In addition, some studies project that the price of co-products such as distillers grains will generally keep pace with corn prices, meaning that they will not necessarily provide a low-cost alternative to feedstock users.<sup>92</sup>

The food producers that are most severely affected and that will continue to face economic harm as a result of continued feed price increases are the poultry, dairy, and fed-beef producers, who generally do not produce their own feed crops and have few farm income alternatives.<sup>93</sup> One study estimates that nearly half of food price inflation resulting from increased corn-based biofuels demand will be absorbed by the animal production sector in the form of higher feed costs.<sup>94</sup> It estimates that poultry producers will shoulder higher annual costs of around \$3.9 billion, pork and beef producers will experience higher annual costs of around

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<sup>86</sup> FAPRI Report, at 46.

<sup>87</sup> Steven Mufson, *Siphoning Off Corn to Fuel Our Cars*, The Washington Post (April 30, 2008), available at <http://www.washingtonpost.com/wp-dyn/content/story/2008/04/29/ST2008042903585.html?sid=ST2008042903585>.

<sup>88</sup> Domestic feed use and exportation of corn is projected to decrease in 2008/2009 as more corn goes toward fuel production. FAPRI Report, at 11.

<sup>89</sup> One study estimates that increased demand for biofuels in 2008/2009 will cost broiler producers an extra \$4,597, hog producers an extra \$3,633, fed cattle producers an extra \$2,881, and dairy producers an extra \$3,616 in corn, soybean meal, and related costs. Elam Report, at 24.

<sup>90</sup> Steven Mufson, *Siphoning Off Corn to Fuel Our Cars*, The Washington Post (April 30, 2008), available at [http://www.washingtonpost.com/wp-dyn/content/article/2008/04/29/AR2008042903092\\_3.html?sid=ST2008042903585](http://www.washingtonpost.com/wp-dyn/content/article/2008/04/29/AR2008042903092_3.html?sid=ST2008042903585).

<sup>91</sup> USDA Projections, at 47.

<sup>92</sup> FAPRI Report, at 16.

<sup>93</sup> Elam Report, at 28. *See also* FAPRI Report, at 42 (suggesting that beef producers will experience financially difficult times in the next few years as they face high and rising input costs); *see also* FAPRI Report, at 50 (stating that higher feed costs have contributed to increases in the costs of producing milk).

<sup>94</sup> Corinne Alexander and Chris Hurt, *Biofuels and Their Impact on Food Prices*, at 3, available at <http://www.ces.purdue.edu/extmedia/ID/ID-346-W.pdf>.

\$2.6 billion each, and dairy producers will see higher annual costs of around \$1.1 billion.<sup>95</sup> As a result of feed price increases, these industries will be forced to reduce their production and eliminate jobs, particularly those industries that cannot pass on the increased costs to their customers. In fact, the March 12, 2008 announcement by Pilgrim's Pride, the largest global broiler producer, that it would close a chicken processing complex and six distribution centers in the United States, thereby eliminating approximately 1,100 jobs, can be directly tied to increased biofuels production in the United States.<sup>96</sup> Devastating economic losses of this kind are expected to continue absent a waiver of the ethanol portions of the renewable fuels requirements.

In sum, the ethanol mandates are contributing to severe net harm to the national economy. Although other factors also play a part in rising food and feed prices, the renewable fuel mandates, which create a guaranteed market for corn-based ethanol, are a significant contributor to these impacts. Today's artificially inflated and record-high grain prices, particularly for corn, will continue as long as federal ethanol mandates remain in place.

### **XVIII. The Ethanol Mandates Should be Waived Because Statutory Restrictions Would Prevent the Agency from Acting During a Crop Failure.**

The waiver provisions of EPAC and EISA are substantially different from others sections of the Clean Air Act or the Administrative Procedures Act and these could potentially preclude the Administrator from acting during an emergency presented by a crop failure. Thereby, the Agency should recognize the severe economic harm that would potentially develop during a normal weather year and the extreme economic harm that would develop under adverse weather and waive a portion of the RFS.

The Clean Air Act, Section 211(o)(7)(A) authorizes one or more states to petition the Administrator to reduce the national quantity of renewable fuels required by law. EISA amended this in two ways: First, they allow "person[s] subject to the requirements" of the renewable fuel program to petition the Administrator for a waiver of the renewable fuel mandates. "Person[s] subject to the requirements" of the program could refer to the "refineries, blenders, and importers" specified as being under a "renewable fuel obligation" in Section 211(o)(3)(B)(ii) of the Clean Air Act and include *citizens*. Second, the 2007 amendments also expanded the waiver provision to allow the Administrator to waive the renewable fuel mandates "on his own motion."

Unfortunately, the 2007 amendments will not take effect until January 1, 2009. The amendments specify that, until that time, the Administrator shall implement Section 211(o) of the Clean Air Act "in accordance with the provisions of that section as in effect before the enactment" of the amendments, except that the applicable volume of renewable fuel for the calendar year 2008 shall change from 5.4 billions of gallons to 9.0 billions of gallons. This means that until January 2009 only states have a legal right under Section 211(o) to petition for a waiver of the renewable fuel mandates.

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<sup>95</sup> *Id.* at 3.

<sup>96</sup> Elam Report, at 29.

This extraordinary limitation of Executive Branch authority concerned the Administration when the bill was being considered, but its point went unheeded. In the President's Statement of Administration Policy issued on December 6, 2007, the Administration argues for "an effective safety valve," indicating its reservations about the potential economic and environmental implications that could and did materialize from the statute. Specifically, it states that "the safety valve included in the bill is inadequate to its purpose."

Therefore, given this extreme preclusion of citizen's rights to petition its government and the limitations on Executive authority, the Administrator should act to waive the RFS mandates requirements and adjust the volumes to address existing and potential severe economic harm and extreme economic harm should a crop failure or additional extreme weather event impact the corn and other crop harvest. Failure to act on the State of Texas petition could leave the Agency with limited options to provide relief for the extreme economic harm that could transpire should a drought, flood, or other devastation adversely impact yields by 5, 10 or 15 percent from current projections.

#### **XVIV. The Agency Should Grant This Waiver Because Recent Extreme Flooding and Adverse Weather in Key Growing Regions Will Exacerbate Existing Severe Economic Harm.**

The Agency should grant this waiver because several major agricultural producing areas have been declared disaster areas because of flooding, levee breaches, or severe drought. The most recent were Iowa, Indiana California, and Wisconsin, but the National Weather Service anticipates above normal precipitation for parts of the Midwest in the next 3.5 months – a critical growing season for corn.<sup>97</sup> According to the USDA, the Midwest accounts for nearly 67 percent of the United States corn acreage and 70 percent of the annual production of corn.<sup>98</sup>

In June, Iowa Governor Chet Culver declared 83 of Iowa's 99 counties disaster areas because of flooding, levee failures, and severe weather events.<sup>99</sup> Iowa is the nation's largest corn producing state and harvested 2.37 billion bushels in 2007.<sup>100</sup> The majority of these counties were in the northern part of the state, which is currently a surplus corn producing region and exports to many states and countries as food or feed for livestock and poultry. This extreme weather adds to existing price pressures during a very critical period since most crop farmers try to have their planting completed by June 15 at the latest. On June 18, 2008, NBC News reported that 5 million acres of Midwestern cropland will not be harvest this year because of flooding. If half of that was planted as corn, that would reduce corn inventories by 372.2 million bushels to 300.7 million bushels, which would be precariously low unless the Agency grants this waiver. Even Iowa's Secretary of Agriculture Bill Northey stated on June 13, 2008 that "almost 10

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<sup>97</sup> NOAA/ National Weather Service, queried on June 11, 2008 and June 15, 2008 at <http://water.weather.gov>

<sup>98</sup> USDA, Foreman, L. "Characteristics and Production Costs of U.S. Corn Farms," Feb. 2006, pg. 17.

<sup>99</sup> Office of the Governor, <http://www.governor.iowa.gov/>

<sup>100</sup> Iowa Department of Agriculture, <http://www.iowaagriculture.gov/quickFacts.asp>

percent of the corn and about 20 percent of the soybeans that are not out there growing right now."<sup>101</sup>

In 2007, Iowa's ethanol industry reported they used 604.3 million bushels of 2,370 million bushels. However, if the ethanol mandate progresses unchecked by the Agency, Iowa's ethanol industry plans to expand to utilize up to 2.054 billion bushels of the Iowa crop.<sup>102</sup> Not counting modest yield improvement, this would reduce the Iowa corn available to feed and food from 1.7 billion bushels to 315 million bushels in the interceding months it would take to complete the expansions, constructions, or development of these plants.

In April and May 2008, Illinois Governor Rod Blagojevich declared 15 and 19 (respectively) Illinois counties flood disaster areas and requested assistance from FEMA.<sup>103</sup> Illinois is the second largest corn producing state in the country producing more than 2 billion bushels per year and the month of May is a critical planting period. It is weather events of this nature and potential for others to occur that should compel the Administrator to act on this petition and not wait for further economic harm to manifest in the animal protein, dairy, and food sector as well as for consumers.

In June, President Bush declared 29 counties in Indiana as disaster areas eligible for assistance because of extreme flooding. Governor Mitch Daniels declared 15 more countries severe disaster areas – bringing the total to 44 counties altogether.<sup>104</sup> Press accounts correlate the flooding and heavy rains with a flood from March 1913, which had been considered the state's worst flood of modern times.<sup>105</sup> Indiana is the fifth largest corn producing state in the country and harvested 987 million bushels in 2007. With almost half the state declared a disaster zone because of excessive flooding and moisture, the Agency should grant the waiver because the adverse impacts of this extreme weather events and its potential impact on the economy of Texas and the United States due to losses from corn production.

In June, Wisconsin Governor Jim Doyle declared “a state of emergency for 29 counties due to severe storms and flooding.” Wisconsin is a top ten state for corn production and will be impacted similarly as Iowa, Illinois, and Indiana.<sup>106</sup>

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<sup>101</sup> Iowa Independent, Judge, D. “*Northey: Many Farmers Facing Disaster*,” <http://www.iowaindependent.com/showDiary.do?diaryId=2481> June 13, 2008. This estimate was increased to 17 % later in the week of Iowa's 13 million corn areas, totally 2.21 million acres. [http://www.monstersandcritics.com/news/usa/features/article\\_1412092.php/In\\_photos\\_USA\\_Midwest\\_Floods\\_-\\_June\\_18th](http://www.monstersandcritics.com/news/usa/features/article_1412092.php/In_photos_USA_Midwest_Floods_-_June_18th)

<sup>102</sup> Renewable-Ag, [http://www.renewable-ag.com/Iowa\\_Sample.pdf](http://www.renewable-ag.com/Iowa_Sample.pdf) pg.2.

<sup>103</sup> Illinois Governor Rod Blagojevich, <http://www.illinois.gov>

<sup>104</sup> Gov. Daniels, [http://www.in.gov/gov/files/060808\\_Governor\\_Sends\\_Letter\\_to\\_President.pdf](http://www.in.gov/gov/files/060808_Governor_Sends_Letter_to_President.pdf)

<sup>105</sup> Indiana Television News, ITV.com, June 11, 2008, <http://www.itv.com/News/Articles/US-floods-leave-destruction-541348605.html>

<sup>106</sup> Office of Governor Jim Doyle, <http://www.wisgov.state.wi.us/>

Heavy rain and flooding complicates fertilizer application that typically occurs in mid to late June. Fertilizer is a critical component to helping achieve maximum yield for corn. Since corn is a non-legume, it requires a significant amount of nitrogen fertilizer to help it grow on schedule and achieve maximum yield for the farmer. Without fertilizer, the International Plant Nutrition Institute estimates the corn yield could fall by 41 percent. A common agronomic practice is to apply fertilizer to corn twice a season – once during planting and the second shortly after emergence (when the plant is 4-18 inches tall).<sup>107</sup> The first application will add approximately 8 percent of the yield, which makes the second application critical to achieving maximum yield.<sup>108</sup> During this second application, large agronomy equipment must be used to minimize adverse impact on the plants and soil. However, if the ground is too wet, most agronomy operations will not apply the second application because they would potentially harm the soil, the plants, and risk getting stuck in the fields or damage the equipment.

To compound matters, if farmers are unable to access their fields to add fertilizer in June because of excessive moisture and flooding, they may not be able to use pesticides to stem weed growth. Weeds impact corn production by limiting the plant's access to moisture and soil nutrients, thereby adversely impact their growth. Research indicates that the combination of not using fertilizer or pesticides could reduce corn yield by 53 percent.<sup>109</sup>

Unfortunately, the USDA reported agronomic evidence of this extreme June flooding will not be available until August 12, 2008, when USDA releases their crop progress report. The market concerns about a far smaller harvest than previously anticipated is already having a dramatic effect on prices as evident by record closing prices for corn on the Chicago Board of Trade.<sup>110</sup> It is critical that the Agency weigh the effects of these extreme weather events on the ability to meet the feed and food needs prior to the mandates for the ethanol community.

In June 4, 2008, California Governor Arnold Schwarzenegger declared the state of emergency to address the extreme drought that has developed in California.<sup>111</sup> While California is not a significant corn production state relative to the Midwest, it is a leading livestock state that relies on imported grains and local grazing. Since grazing and pasture quality is adversely impacted by the severe lack of rain, livestock farmers will need to supplement with more grain or feedstuffs from other parts of the United States or elsewhere. This added pressure increases the need for the waiver and redress.

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<sup>107</sup> Purdue University Extension, *Starter Fertilizer for Indiana Corn Production*, <http://www.agry.purdue.edu/ext/corn/pubs/starter.htm>

<sup>108</sup> *Id.*

<sup>109</sup> International Plant Nutrition Institute, [http://www.ipni.net/ppiweb/usagp.nsf/\\$webindex/485AF893EC22742A86256B80007B54DD](http://www.ipni.net/ppiweb/usagp.nsf/$webindex/485AF893EC22742A86256B80007B54DD)

<sup>110</sup> *Id.* [www.cbot.com](http://www.cbot.com)

<sup>111</sup> Office of the Governor of California, June 4, 2008, <http://gov.ca.gov/press-release/9796/>

Given the increasing amount adverse weather events that have transpired during the 2008 planting season in key growing and animal agriculture regions for feed and food and the potential for more events, the Agency should grant the State of Texas this waiver and redress.

**XX. The Agency Should Grant the Waiver Because the Administration Foresaw Price Distortions That Have and Will Continue to Materialized**

In the President's Statement of Administration Policy issued on December 6, 2007, the Administration argues for "an effective safety valve," indicating its reservations about the potential economic and environmental implications that could and did materialize from the statute.<sup>112</sup> More specifically, the Administration made this argument in context to the rigid prescriptive design of the mandate. Specifically, it states that "the safety valve included in the bill is inadequate to its purpose. Whereas a properly functioning safety valve would limit price distortions arising from an alternative fuel mandate, the safety valve in H.R. 6 would be too limited to function effectively, being triggered only in the event that a single fuel (cellulosic ethanol) fails to meet prescribed production targets." The Administration's claims are that this waiver authority places an extraordinary limitation on Executive Branch authority and the fuels standard would fragment the market by "picking and choosing" consequently contributing to price distortions in the State of Texas and for all American consumers.

To further support this point, the Administration argued against this measure stating that "the bill would fragment the market by picking and choosing among fuel types instead of relying on market forces to develop new, more advanced technologies and the next generation of fuels with lower greenhouse gas emissions." Unfortunately, the overly prescriptive design of this measure concentrated the economic costs on the users of feed and food, on consumers, and the State of Texas, our members, and the United States.

This is not the first time the Administration expressed concern about this fuels mandate and its costs to all Americans. In April 20, 2005 Statement of Administration Policy to the U.S. House of Representatives, the Administration stated that "the Administration also is concerned about the significant direct and potential cost of H.R. 6."<sup>113</sup>

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<sup>112</sup> Statement of Administration Policy, Dec. 6, 2008. [http://www.whitehouse.gov/omb/legislative/sap/110-1/hr6sap-h\\_2.pdf](http://www.whitehouse.gov/omb/legislative/sap/110-1/hr6sap-h_2.pdf)

<sup>112</sup>Statement of Administration Policy to H.R. 6 (House), April 20, 2005. <http://www.whitehouse.gov/omb/legislative/sap/109-1/hr6sap-h.pdf>

<sup>112</sup> "Twenty In Ten," White House webpage, <http://www.whitehouse.gov/stateoftheunion/2007/initiatives/energy.html>

<sup>112</sup> <http://www.synfuels.com>, <http://www.virent.com>, Royal Dutch Shell 2007, 10-K pg. 16; [http://www.hydrogen.energy.gov/pdfs/review04/hpd\\_p6\\_king.pdf](http://www.hydrogen.energy.gov/pdfs/review04/hpd_p6_king.pdf) ; <http://www.ecw.org/biomass2power/index.html>

<sup>113</sup> Steven Erlanger, *U.N. Panel Urges Changes to Feed Poor While Saving Environment*, The New York Times (April 16, 2008), available at <http://query.nytimes.com/gst/fullpage.html?res=9507E5D9143DF935A25757C0A96E9C8B63&scp=10&sq=food+shortage&st=nyt>.

The granting of this waiver would not limit the country from achieving the Administration's "Twenty in Ten" goals of reducing America's dependence on imported sources of petroleum. The goal of the initiative is to reduce gasoline usage by 20 percent in ten years through two main programs a renewable/alternative fuels standard and improvements in vehicle fuel economy.<sup>114</sup> As mentioned previously in these comments, many technologies exist to achieve this that do not rely on corn or food as a feedstock. In fact, biomass fuels produced by aqueous reforming or catalytic conversion have superior economics and environmental characteristics than corn based ethanol and can be scaled within the "Twenty in Ten" time frame. The State of Texas specifically limited their concerns to corn-based ethanol. Technologies currently exist that supplant the transportation fuels 20 percent baseline of gasoline consumption by 2017 that do not rely on corn or other food-based inputs as feedstock.<sup>115</sup> The granting of this waiver and a redress to 4.5 billion gallons or an alternative amount of corn ethanol will not impact this objective.

Therefore, the Agency should grant this waiver and redress because it would be consistent with policy concerns that existed prior to the implementation of this statute on price distortions and limitations on the capacity of the Executive Branch to waive the standard to respond to further economic or natural disasters. The "price distortions arising from an alternative fuel mandate" that the Administration had concerns with prior to becoming law have quickly materialized and would foreseeably continue unless the Agency grants this waiver and redress.

#### **XXI. The Agency Should Grant the Waiver Because Ethanol Mandates' Adverse Impacts are Felt by the World's Economy.**

Increased U.S. demand for corn-based ethanol is also contributing to current global food price increases and shortages, demonstrating the severity of the effects of food-based biofuels mandates. According to the World Bank President, Robert Zoellick, between 2005 and 2008, world prices of food staples jumped by an alarming near 80 percent.<sup>116</sup> In March 2008, the real price of rice hit a 19-year high and the real price of wheat rose to a 28-year high and almost twice the average price of the last 25 years. Although there are other factors contributing to the record food price increases, the amount of grain removed from global food use by U.S. biofuels production should not be underestimated. A recent World Bank report explains that almost all of the increase in global maize (corn) production from 2004 to 2007 went towards biofuels production in the United States, while existing stocks were depleted by an increase in global

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<sup>114</sup> *Rising Food Prices: Policy Options and World Bank Response*, The World Bank (April 9, 2008), at 1, available at [http://siteresources.worldbank.org/NEWS/Resources/Developmentcommittee\\_note\\_Apr11.doc](http://siteresources.worldbank.org/NEWS/Resources/Developmentcommittee_note_Apr11.doc).

<sup>115</sup> *World Bank Chief: Biofuels Boosting Food Prices*, National Public Radio (April 11, 2008), available at <http://www.npr.org/templates/story/story.php?storyId=89545855>.

<sup>116</sup> See Marc Lacey, *Across Globe, Empty Bellies Bring Rising Anger*, The New York Times (April 18, 2008), available at [http://www.nytimes.com/2008/04/18/world/americas/18food.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/04/18/world/americas/18food.html?_r=1&oref=slogin). The Food and Agriculture Organization of the United Nations estimated that the food import bill of developing countries increased by 10 percent between 2005 and 2006, and in 2007, these countries paid an estimated 25 percent higher food import bill than the year before. See Stacey Rosen and Shahla Shapouri, *Rising Food Prices Intensify Food Insecurity in Developing Countries*, U.S. Department of Agriculture (February 2008), available at <http://www.ers.usda.gov/AmberWaves/February08/Features/RisingFood.htm>.

consumption for other uses.<sup>117</sup> In fact, Mr. Zoellick has concluded that biofuels production is a “significant contributor” to the record-high food price levels<sup>118</sup>, which in turn is causing hunger that is fomenting political instability in many developing nations.<sup>119</sup>

Moreover, the federal mandates prevent U.S. production and exports from alleviating the dire conditions that persist worldwide. Although the United States has traditionally accounted for about 60 to 70 percent of world corn exports,<sup>120</sup> corn use for ethanol production in the United States is now rising faster than corn use for feed and exports.<sup>121</sup> USDA projects that the increasing use of corn for U.S. ethanol production will lead to a decrease in corn exports through 2011/2012.<sup>122</sup> This will have serious consequences, particularly because poorer nations rely on corn more directly for food than does the United States.<sup>123</sup>

## **XXII. The Agency Should Waive the RFS Because Its Added Food Inflation Contributes Adversely to Health and Nutrition.**

The University of Washington’s Dr. Adam Drewnowski’s research indicate that as food prices rise, all consumers and in particular lower earning consumers will shop more for calories instead of nutritional content.<sup>124</sup> His research finds that as consumers cope with increasing food costs and economic stress, they add increasing amounts of calorie-dense foods and gain more weight. Higher rates of diabetes, obesity, and heart disease are more common among fixed-income and lower earning segments of the American population who also spend significantly more on food costs as a portion of their budget than the average American.

The added inflation from the RFS’ requirement for corn-ethanol is contributing and accelerating these health consequences that the lower and fixed-income populations are facing. The U.S. Department of Labor added the price connection that “price increases for food can be attributed primarily to increases in ethanol production, exports, and energy demand.”<sup>125</sup> The Agency should issue this waiver to ease the price pressure on food and provide the National

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<sup>117</sup> Paul Westcott, *Ethanol Expansion in the United States: How Will the Agricultural Sector Adjust?*, at 7, available at <http://www.ers.usda.gov/Publications/FDS/2007/05May/FDS07D01/fds07D01.pdf>.

<sup>118</sup> *Feed Grains Backgrounder*, U.S. Department of Agriculture (May 2007), available at <http://www.ers.usda.gov/Publications/FDS/2007/03Mar/FDS07C01/fds07C01.pdf>.

<sup>119</sup> USDA Projections, Table 7. These projections very likely overestimate the amount of corn that will be exported, given that they do not account for the recent increase in mandated U.S. biofuel levels, enacted by Congress in December 2007, which will cause an even greater share of corn to be diverted toward biofuels production. USDA Projections at 23.

<sup>120</sup> Drewnoski, A., Ph.D. “Poverty and Obesity,” Center for Public Health Nutrition, UW, May 15, 2004. “Price of Lower Calorie Foods Rising Drastically, UW Researchers Find,” *Science, Health and Medicine*, Dec. 2007.

<sup>121</sup> Elam Report, at 3.

<sup>122</sup> Elam Report, at 3.

<sup>123</sup> US Agency for International Development (USAID) and the P.L. 480, Title II, food programs leading food donations to developing countries are consistently corn-soy blend (CSB) and corn meal – both are produced with yellow #2 corn. [www.usaid.gov](http://www.usaid.gov)

<sup>124</sup> 153 Cong. Rec. H16650-04 (statement of Rep. Capps (D-CA)).

<sup>125</sup> U.S. Dept. of Labor/ BLS Consumer Price Index Information for March 2008.

Academy of Sciences time to evaluate the affects of the RFS's food inflationary pressures on the lower and fixed-income population's health and medical costs.

### **XXIII. The Agency Should Grant this Waiver Because it Would Accelerate Next Generation Biofuels, Cellulosic Ethanol, and Non-Food-Based Biofuels**

The Agency would aid the acceleration of the next generation of biofuels that do not rely on food or feed as a feedstock and have demonstrated that they are better for the environment and can be used in the U.S.'s existing fuel distribution system by granting this waiver. Many biofuel producers are having difficulty accessing affordable construction contractors, engineers, or equipment to build the next generation facilities because the construction firms are building old generation ethanol distilleries to comply with the RFS for 2008 (and future years). If the contractors were not producing old generation ethanol distilleries, they would likely be more construction and engineering resources available for the next generation of biofuels, such as cellulosic ethanol, di-methylfuran, coprocessed, and catalytic biomass fuels. Unfortunately, the mandate for ethanol is and would continue to send a market signal to construct more old generation ethanol distilleries instead of the next generation of plants. Therefore, the Administrator should waive the RFS requirements for corn-based ethanol to allow more engineers and construction contractors to be available to construct the next generation operations.

### **XXIV. Summary of Severe Harm to the Economy.**

In summary, ethanol mandates have severely harmed the U.S. economy by contributing to significant, artificial increases in the prices of corn (and other crops) since 2005 and will continue unless the Agency grants the waiver. The price of corn sharply increased from approximately \$2 per bushel when the biofuels mandates were created to \$8 per bushel within the last month. The cost of more expensive corn due to federal biofuels policy has been estimated at \$14.7 billion for the 2007 crop.<sup>126</sup> In addition, the cost of more expensive soybeans is estimated to be at \$8.5 billion for the 2007 crop.<sup>127</sup> These extra costs are expected to rise sharply again in the 2008/2009 crop year, as more of the corn crop is diverted to ethanol production and away from other uses such as food and feed.

The costs of increased feedstocks like corn and soybeans are borne mostly by livestock, meat, poultry, food producers and consumers in the form of increased feed and food costs. The vast, adverse, and severe impact of these costs on both groups is already apparent. Major food producers are reporting losses and some are being forced out of business. Consumer food prices have risen sharply and are continuing to exceed projected rates of increase. These severe impacts represent a net cost to the economy – the cost will increase under the existing ethanol portion of the renewable fuel mandates. Thus, the Administrator should exercise his discretion to waive the mandates to prevent the increased adverse impacts identified here.

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<sup>126</sup> *Id.*

<sup>127</sup> California Air Resources Board: *Proposed 2007 Amendments to Phase 3 California Reformulated Gasoline Regulations*. Staff Report, April 27, 2007.

## No Adverse Environmental Impact From Waiver

While research indicates that corn based ethanol has environmentally positive and negative attributes, there is substantial body of scientific evidence that confirms that the granting of a waiver and redress of 4.5 billion gallons of ethanol will not adversely impact the environment or human health. Ethanol is a very effective oxygenate. The California Air Resources Board research confirms that on a volume basis ethanol is a more efficient oxygenate than its predecessor methyl tertiary butyl ether (MTBE) and requires lower volumetric quantities to be added to gasoline to provide equivalent oxygen benefits.<sup>128</sup> For air quality management, it may be desirable to use the optimal amount of ethanol instead of a mandated level for 2008 and beyond since the volatility of ethanol is greater than gasoline.<sup>129</sup> In fact, the Agency should grant this waiver to study the optimal amount of ethanol to balance ozone precursors and oxygen requirements.

To meet the current Reformulated Gasoline (RFG) requirements for all of the regions, the oxygenate industry estimates this would require approximately 4 billion gallons of ethanol.<sup>130</sup> We do not disagree with this amount. The scientific consensus is clear that a waiver under this program and redress downward adjustment of the RFS to 4.5 billion for 2008 and 2009 will not prevent attainment of national ambient air quality standards.

### Conclusion

For the foregoing reasons, implementation of the ethanol portion of the renewable fuel program would severely harm the economy of Texas, the United States, and the members of the American Meat Institute. It is our perspective that the current, actual, and imminent conditions meet the test for severe economic harm to a state, region and the United States and would continue unless a waiver is granted. It is possible that the current harm may be irreparable and that redress will not fully correct the severe economic harm and economic dislocations in Texas and America. However, the redress, as previously indicated, would begin to diminish the non-market signals that distort the market and have adversely impacted our members, the State of Texas, and American consumers.

The test having been met for several months and projected to continue, the Agency is within its legal bounds to grant this waiver and redress as requested by the State of Texas as soon as practicable.

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<sup>128</sup> Id. California Air Resources Board: *Proposed 2007 Amendments to Phase 3 California Reformulated Gasoline Regulations*. Staff Report, April 27, 2007.

<sup>129</sup> Dr. Mark Jacobson; *Effects of Ethanol (E85) Versus Gasoline Vehicles on Cancer and Mortality in the United States*, Rev. February 19, 2007.; The Agency's OIG report for 2008 indicates that "some major metropolitan area may not have achieved the required 3-percent annual emissions reductions in ozone precursor emissions." The report adds that 20 of the 25 serious to extreme nonattainment areas have not reported downward trends in ozone precursors, such as volatile organic compounds. One study conducted by Wisconsin's Department of Natural Resources/ Bureau of Air Management predicts that statewide use of 10 percent ethanol in gasoline increases NOx emissions to the same degree as would a 350 megawatt coal-fired powerplant.

<sup>130</sup> Id. VeraSun, 10-K

The sharply increased mandates should be moderated while information about their impacts is being developed. In Section 203 of the EISA, Congress ordered the Secretary of Energy, in consultation with the Secretary of Agriculture and the Administrator of Agency, to arrange for the National Academy of Sciences to study the impact of the renewable fuel program requirements on each industry relating to the production of feed grains, livestock, food, forest products, and energy. One of the topics of the required study is a description of the conditions under which the program requirements should be suspended or reduced to prevent adverse impacts. Additionally, Agency is still in the process of developing its regulations to implement EISA, and has yet to assess and report to Congress on the environmental impacts of the RFS to date and likely future impacts of the program requirements, as required under Section 204 of EISA.

Harm from the expanding mandate continues to occur, and Congress authorized the Administrator to act immediately under the conditions we are seeing today and would see in the future months for 2008. Accordingly, we respectfully request the Administrator to reduce the ethanol portion of the renewable fuel mandate in Section 211(o)(2)(B)(i)(I) of the Clean Air Act, 42 U.S.C. 7545(o)(2)(B)(i)(I), for 2008 to 4.5 billion gallons per year or an alternative relief designed to reduce the severe economic harm that is occurring and would continue to occur in 2008 if the Agency does not grant this waiver. This action is necessary to prevent further severe harm to the economy environment of the United States. Moreover, it is wise to keep the mandate below the 2008 mandate levels pending the outcome of the NAS and Agency studies and the rulemaking mandated by Congress.

Respectfully submitted.

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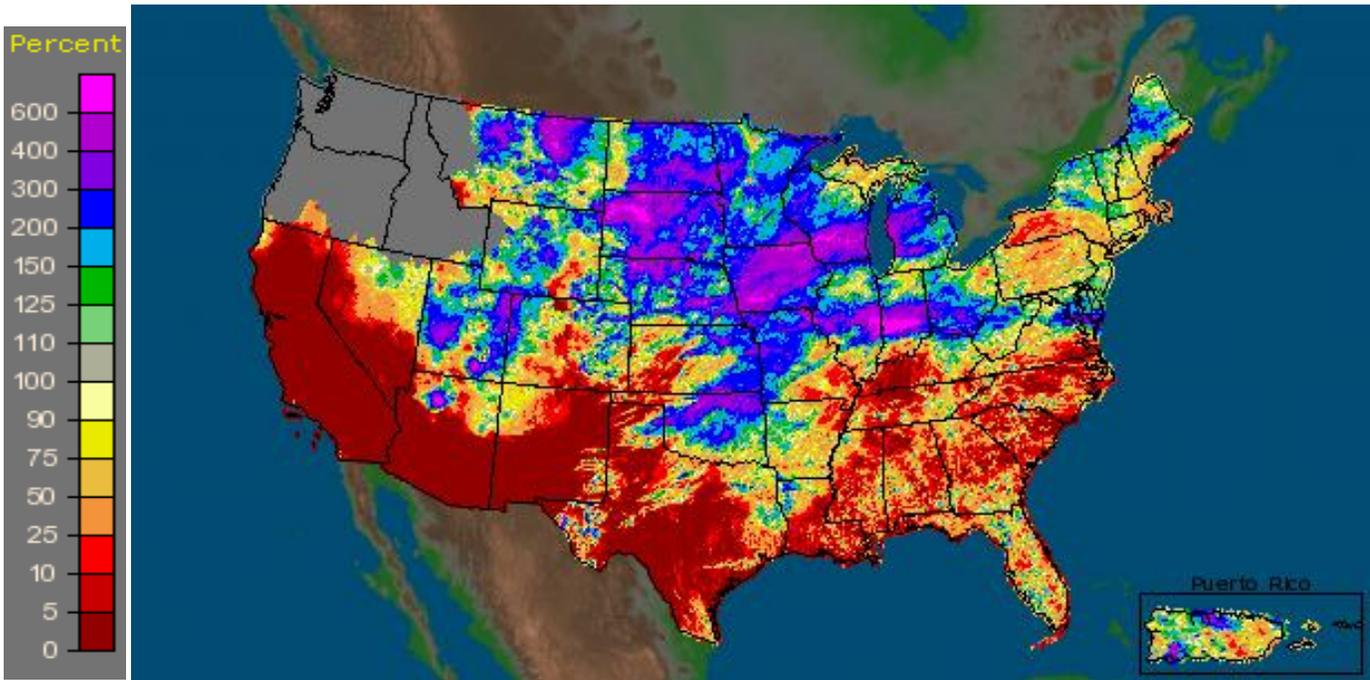
Table 1: U.S. 2008-2022 Biofuel Standards, Billion Gallons/Year

Year	Renewable Biofuel	Advanced Biofuel	Cellulosic Biofuel	Biomass-based Diesel	Undifferentiated Advanced Biofuel	Total RFS
2008	9					9
2009	10.5	0.6		0.5	0.1	11.1
2010	12	0.95	0.1	0.65	0.2	12.95
2011	12.6	1.35	0.25	0.8	0.3	13.95
2012	13.2	2	0.5	1	0.5	15.2
2013	13.8	2.75	1		1.75	16.55
2014	14.4	3.75	1.75		2	18.15
2015	15	5.5	3		2.5	20.5
2016	15	7.25	4.25		3	22.25
2017	15	9	5.5		3.5	24
2018	15	11	7		4	26
2019	15	13	8.5		4.5	28
2020	15	15	10.5		4.5	30
2021	15	18	13.5		4.5	33
2022	15	21	16		5	36

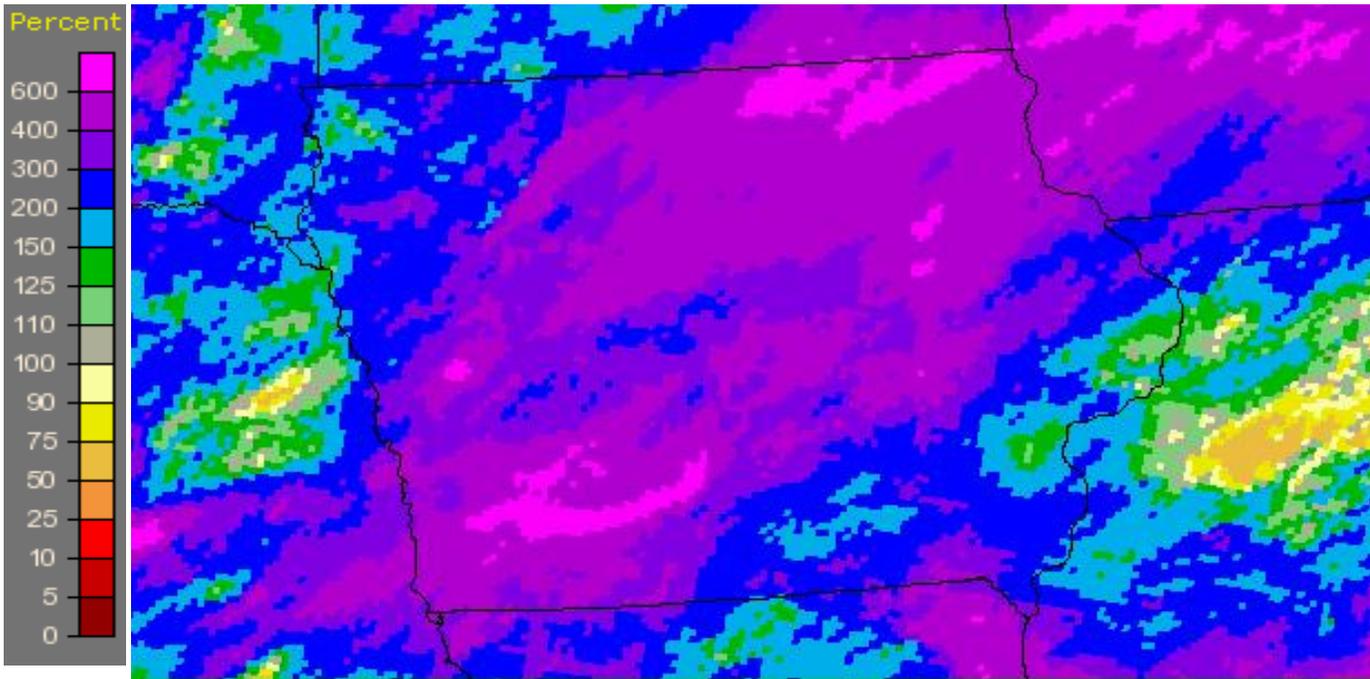
## Weather

On the following pages, are two maps from the National Weather Service (“NWS”) taken on June 15, 2008, illustrating the percentage departure from normal for the month of June. The side legend indicates the departure from normal as recorded by the NWS in percentages. The maps demonstrate two clear pictures that impact the economic well-being of the animal and crop agriculture economy. One there has been extreme precipitation in the critical parts of the corn and soybean production areas from the plain states across to Western Michigan. And, second that California through the Southwest and Texas have experience significantly below precipitation that would be normal. The second picture is a close up of Iowa, which is the leading producer of corn and has been severely impacted by this excessive precipitation.

**The National Precipitation Map from June 15, 2008 (Percent Departure from Normal).**



**The Iowa Precipitation Map from June 15, 2008 (Percent Departure from Normal).**



## Attachments

- 1) Letter from Governor of Texas Rick Perry petitioning the Agency for a waiver of a portion of the Renewable Fuels Standard. April 25, 2008.
- 2) Credit Suisse, Moskow, R., Aquino, P., Sawyer, W.; “*Corn=Energy: Whether We Like It Or Not.*” May 14, 2008.
- 3) USDA/Economic Research Service, Trostle, R. “*Global Agricultural Supply and Demand: Factors Contributing to the Recent Increase in Food Commodity Prices,*” May 2008.
- 4) Alexander, C and Hurt, C. “*Biofuels and Their Impact on Food Prices,*” available at <http://www.ces.purdue.edu/extmedia/ID/ID-346-W.pdf>.
- 5) Dr. Thomas E. Elam, “*Biofuel Support Policy Costs to the U.S. Economy,*” March 24, 2008.
- 6) USDA: Feed Outlook. Baker, Allen, & Lutman. May 13, 2008.
- 7) The World Agricultural Supply and Demand Estimates (WASDE), June 10, 2008. Field Crop report on corn located at: <http://www.fas.usda.gov/psdonline/psdReport.aspx>
- 8) FAPRI. <http://www.fapri.org/outlook2007/tables/14BiofuelsTables.pdf>
- 9) California Air Resources Board: *Proposed 2007 Amendments to Phase 3 California Reformulated Gasoline Regulations. Staff Report,* April 27, 2007.
- 10) Anderson, J. and Coble, K. “*Impact of Renewable Fuels Standard Ethanol Mandate on the Corn and Livestock Markets,*” June 9, 2008.
- 11) Foreman, L. “*Characteristics and Production Costs of U.S. Corn Farms, 2001,*” USDA/Economic Research Service, Feb. 2006.