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## **Proposed Critical Amendments To United States Biofuels Policy To Preserve the United States' Oleochemical Industry**

### **Oleochemicals**

Oleochemicals are the original “green chemistry.” They are chemicals made from animal fats and seed oils, including fatty alcohols and fatty acids. Oleochemicals are used as ingredients in personal care products, cleaning products, plastics, tires, lubricants, drilling muds and paper production (see attachment).

### **Issue:**

Oleochemicals are impacted by federal biofuels policy because they share a raw material base, i.e., animal fats, with biodiesel and other biofuels. Until 2004, the animal fats market was free and open, driven by supply and demand. Since then, biofuels producers and others have received raw material subsidies of up to \$1/gal through tax credits as well as guaranteed markets via the Renewable Fuel Standards and its latest revisions (RFS2). Oleochemical producers, to their detriment, receive no such government supports. Oleochemical producers must now compete for raw material against a government-subsidized industry. Raw material prices have more than doubled since 2004.

Animal fats provide a competitive raw material base against foreign palm oil alternatives. If animal fats prices lose their competitive edge, the domestic industry stands to be lost to offshore, foreign competitors. Absent relief, market economics will first drive oleochemical production offshore to be followed by related finished product production. Animal fats are falsely portrayed as “waste.” They are the lifeblood of the domestic oleochemical industry and have historical, well-established uses in other applications as well, including animal feed.

While it is somewhat difficult to tease out industry specific numbers from the Standard Industry Codes (SIC) or Dunn and Bradstreet, our best estimate is that the oleochemical industry directly supports 20,000 jobs in the United States. Oleochemical plants provide union, breadwinner jobs represented by the United Commercial and Food Workers, reflecting the industry's origins in the stockyards of the Mid West, as well as the United Steelworkers Union.

### **Remedy Sought**

Eliminate all tax credits related to the energy use of “animal fats” including the biodiesel tax credits, all other biofuel credits, e.g., renewable diesel, as well as the alternative fuel tax credit for direct burning. Eliminate animal fats-based biofuels from qualification under the RFS2.

## **Result of Proposed Amendments**

The market for animal fats would once again become free, open and competitive. Oleochemical and biofuels producers would purchase animal fats at competitive, open market prices. Oleochemical producers will no longer be in competition with their own government.

## **Background**

### Legislative History

Animal fats used for biodiesel, renewable diesel, advanced biofuels and renewable biomass fuels<sup>1</sup> are incentivized by the “American Jobs Creation Act of 2004” and other laws by tax credits of up to \$1/gal. Biodiesel markets are also guaranteed by the mandates contained in the Revised Renewable Fuel Standards (RFS2) established by the “Energy Independence and Security Act of 2007” (Public Law No. 110-140). The RFS2’s mandated markets compound the situation by allowing biofuels producers to purchase their raw materials at any price since they can charge what is necessary to cover their costs because the mandated volumes of the product must be purchased by blenders.

These two principal statutes have caused the price of tallow to effectively double over pre-incentive, historical prices. This poses a serious problem. The animal fats supply is inelastic, generally varying no more than 2% per annum. Livestock are not grown for their fat. Consequently, animal fats, as well as other non-food portions of the livestock, are known as “co-products” of the slaughter.

### Animal Fats are Not Waste

Animal fats have historically been used to a very high degree in various applications. Any characterization of animal fats as “waste” flies in the face of reality. Waste implies something that does not otherwise have a value. This is clearly not the case with animal fats. The Wall Street Journal and New York Times do not publish commodity prices for useless material. If you want to know the commodity prices for various grades of tallow or pork fat etc., you just have to open one of these or other papers of record. These prices are also collected and published by private firms such as The Jacobsen Letter.

## **Proposed Remedies**

### Eliminate Animal Fats from Biofuels Excise Tax Credits

This would have the effect of shifting all subsidies to expandable agricultural crops, e.g., soybeans. Animal fats prices would once again be determined by free market conditions as they were prior to 2004. The exemption should include the Alternative Fuel Tax as well as the biofuels excise tax credits.

### Amend RFS2 Biofuel Mandate

The RFS2 threatens both supply and price. The mandated volume levels of the RFS2 assure biofuels producers a market regardless of cost or price. They can pay whatever is necessary for raw materials, thereby inflating animal fats prices beyond the oleochemical industry’s ability to

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<sup>1</sup> In some instances, the same animal fats-based biodiesel (methyl ester biodiesel) is referred to by different terms despite being the same product.

compete, because their market is guaranteed. As noted above, once the price of animal fats is inflated beyond that of palm oil, the domestic oleochemical industry will have reached the tipping point of economic sustainability. ACI proposes the following to address the inequities posed by the RFS2 volume mandates:

#### Exclude Fats and Greases from Definition of “Renewable Biomass”

The definition of “renewable biomass” includes “Animal waste material and animal byproducts.” Animal byproducts, e.g., fats and greases, have long, well-established markets in oleochemicals as well as pet foods and other applications. While in general, all the other stipulated constituents of “renewable biomass” are either expandable crops or genuine waste products without pre-existing markets; animal-fats and greases are traded as commodities, have a recognized economic value, are a critical raw material for an existing industry and are not an expandable supply. Neither are they wastes: the price per barrel for tallow is similar to and at times higher priced than a barrel of crude oil. ACI believes that reconsideration of their inclusion ought to be undertaken. They ought not to be included in this definition.

A precedent for such consideration is found at Section 932(a)(C)(i) of the “Energy Policy Act of 2005.” In defining biomass derived from “forest-related” materials the phrase “...or otherwise non-merchantable material” is applied. The clear implication of this is that material which otherwise has a market is excluded from the definition. ACI would respectfully urge that similar language be included in the current “renewable biomass” definition.

#### Eliminate Alternative Fuel Tax Credits for Direct Burning of Animal Fats

The alternative fuel tax credit currently applies to the direct burning of fats in boilers and other stationary facilities. Such burning was a longstanding practice prior to the subsidy and based on market prices for fuels and fats. As such, it was a practice analogous to the burning of “black liquor” by the paper industry. Consequently, it ought to be eliminated as well.

Legislation to accomplish these changes is attached as well. The proposal is based on existing exemptions found in related statutes that already account for the diversion of essential raw materials from historical uses to biofuel production.

#### Government Apportionment of the Animal Fats Market - 35% of Animal Fats and Greases Should Be Set Aside for Oleochemical Use

Another approach is to apportion the animal fats markets to assure that traditional users of animal fats have access to sufficient fractions of the market. The US Department’s Energy Information Administration already conducts a “Monthly Biodiesel Production Survey” pursuant to statute. The information required by Form EIA-22M (attached) includes disclosure of the raw material used to produce the reported biodiesel. This detailed data would allow the EPA to apportion the market appropriately among the industries that use animal fats as a raw material.

Apportioning could be conducted along the following lines. Once animal fats consumption trends for a calendar year indicate that 20% of animal fats stand to be used in biofuels, as determined by a rolling average or other appropriate statistical measure, the EPA would take steps to disqualify animal fats under the RFS2 to assure that no more than 25% of animal fats are being used for biodiesel production under the program. The goal is to assure that the oleochemical industry will have access to at least 35% of animal fats and greases for its use.

In addition, the animal fats biodiesel tax credit would be suspended once the 25% limit is reached.

Insofar as this approach would impose new costs on government and industry, it is not the oleochemical industry's preferred approach. Nevertheless, it is an option that should be considered if amendments to the RFS2 and biofuels tax credit structure cannot be accomplished.