October 19, 2017

Submitted electronically via www.regulations.gov

Office of Transportation and Air Quality
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket ID No. EPA-HQ-OAR-2017-0091; Renewable Fuel Standard Program: Standards for 2018 and Biomass-Based Diesel Volume for 2019; Availability of Supplemental Information and Request for Further Comment (October 4, 2017).

Dear Administrator Pruitt:

The National Chicken Council (NCC) represents companies that produce and process more than 95 percent of the chicken in the United States. 1 As corn users, NCC's members are substantially impacted by the Renewable Fuel Standard's (RFS) impacts on the corn market and feed supply and thus the required volume obligations established for 2018 under the Renewable Fuel Standard are of vital interest to our industry as well as our customers, the American consumer. We appreciate this opportunity to provide further comment on the supplemental information EPA has made available.

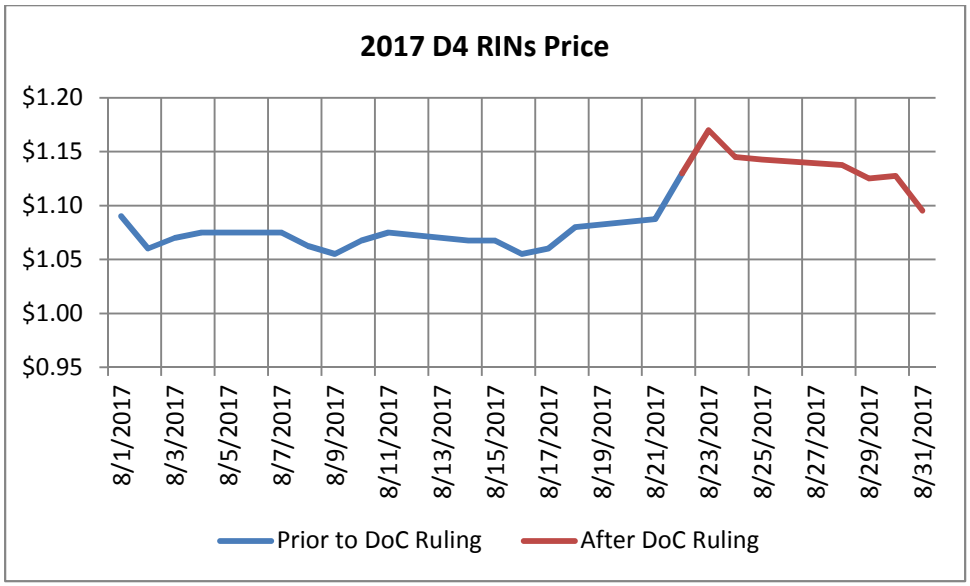
As EPA noted in the supplemental Notice of Data Availability (NODA),

> *EPA remains concerned about the high cost of advanced biofuels. As a result, and in light of the pending action on countervailing duties on imported biodiesel from Argentina and Indonesia which we believe could, if finalized, further increase the cost and/or decrease the supply of advanced biofuel in the U.S., we believe it is appropriate to request further comment on appropriate ways to determine the applicable volume requirements for 2018, and the BBD volume requirement for 2019.*

Indeed, since EPA's proposed rule was published in the Federal Register, the Department of Commerce announced a preliminary determination that biodiesel entering the U.S. from Argentina had received countervailable subsidies of 50.29 to 64.17 percent, and that biodiesel entering from Indonesia has received countervailable subsidies of 41.06 to 68.28 percent. Imports from both origins are not subject to countervailing duties (CVD) upon entry to the U.S. Furthermore, the Department also determined that "critical circumstances" existed in the Argentina investigation, allowing for collection of CVD for a retroactive period of 90 days prior to publication of the preliminary determination in the Federal Register (22 August). Thus Commerce has instructed U.S. Customs and Border Protection (CBP) to collect cash deposits from importers of biodiesel from Argentina and Indonesia based on the above preliminary rates.

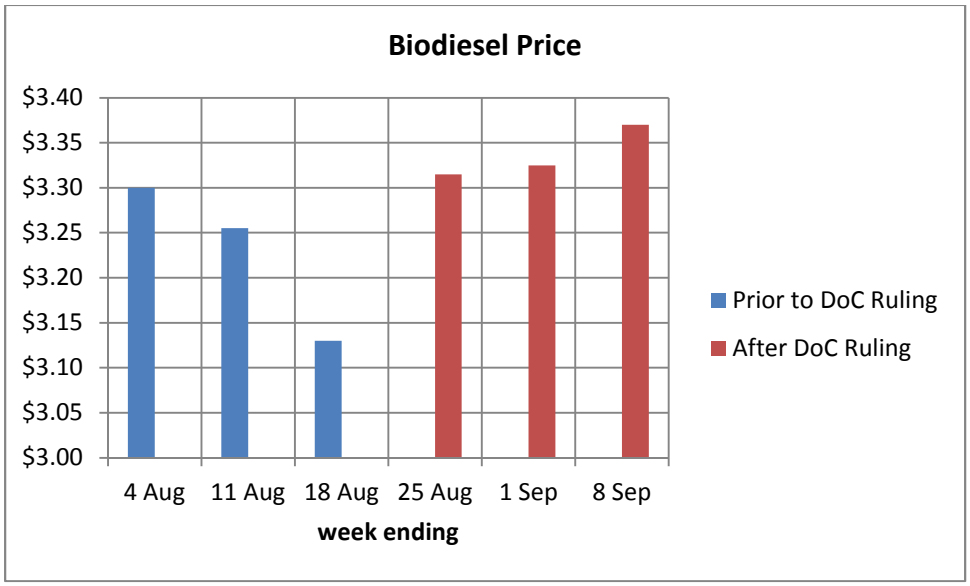
The charts below show the reaction of the market to the scenario when an aggressive RVO is established (not reduced) coupled with an expected lower supply of physical gallons of biodiesel due to reduced and/or more expensive imports

First, the price of D4 RINs increased based on a perceived reduction in biodiesel supply.



Source: NCC, OPIS

Second, the price of biodiesel increased after the Commerce Department's preliminary decision to impose CVD's and reduce imports, leaving domestic production to fill the void.



Source: NCC, Iowa State University

Should Commerce finalize this case upholding its initial decision to impose CVD's (timeline is 29 December 2017), RIN prices and biodiesel prices in 2018 would be expected to increase were EPA not to reduce the RVO's.

Rationale for Biodiesel Waiver

Section 211(o)(7)(E)(ii) of the Clean Air Act provides EPA the authority to waive the biodiesel volume if there is a "significant renewable feedstock disruption or other *market circumstances that would make the price of biomass-based diesel increase significantly*…." (emphasis added). The Department of Commerce's ruling on the petition against imports of

biodiesel from Argentina and Indonesia filed by the National Biodiesel Fair Trade Coalition is such a market circumstance and is therefore reason for EPA to use its waiver authority.

Energy Security Issues

Further, EPA has requested comment the appropriateness of considering the possible impacts of these volumes of imports on U.S. energy independence and security. As mentioned in the proposed rule, one of the factors EPA is directed to consider per the statute in the context of establishing the biomass-based diesel standard is the impact of renewable fuels on the energy security of the United States. Since 2013 under the RFS, domestic production of biodiesel has increased 29 percent, while imports have increased 136 percent.

Inadequate Domestic Supply Waiver

In 2016, imports from Argentina alone supplied 18 percent of the physical gallons of the advanced and renewable biodiesel supply. Imports of biodiesel were 448.5 million gallons last year. As the RVO was set higher in 2017 than in 2016, imports from Argentina over the first six months of 2017 have exceeded even the pace of 2016's 448.5 million gallons. This would suggest an inadequate domestic supply for meeting the advanced biofuel mandate.

To date, EPA has relied on biodiesel to make up for more of the total advanced category under the RFS. Cumulatively, from 2014 to 2017, EPA waived 15.63 billion gallons of the cellulosic statutory volumes, while waiving only 12.06 billion gallons of the total advanced volumes. The result of this imbalanced approach effectively has made meeting the RFS volumes even more reliant on biomass based diesel as a percent of the total RFS. In fact, reliance on biodiesel has been an explicit goal in setting the mandated volumes.
In the rulemaking for the 2017 RVO's, EPA stated "we expect that larger volumes of (biodiesel) … to be used to comply with the advanced biofuel requirement." Further, the rulemaking stated "We are increasing the required volume of BBD so as to provide continued support to that important contributor to the pool of advanced biofuel …."

The advanced biofuels category has three distinct categories nested within it: cellulosic biofuel, biomass-based diesel and undifferentiated advanced biofuels, a residual category. There are however limited volumes of undifferentiated advanced biofuels to make up the shortfall of cellulosic biofuel, placing a greater demand on biodiesel than domestic production can supply. As described above, the total supply of biodiesel is likely to be reduced by lower imports. The domestic supply of biodiesel will be inadequate to meet the proposed RVO.

Waiver of the Total Renewable Fuel Volume

In the 2018 proposed rule, EPA has reduced the statutory volume for cellulosic biofuel by 6.76 billion gallons and is also proposing an equal reduction of 6.76 billion gallons for the advanced biofuel category and the total renewable fuel category. Reducing the biodiesel category, as is demonstrated above to be necessary, should also require a reduction in the total renewable category.

Because specific biofuels categories are nested within larger categories, a reduction in a nested renewable fuel type can justify a corresponding reduction in the broader renewable fuel standard or standards that the particular fuel can be used to meet. Thus under the agency's waiver authority, a reduction in the total renewable fuel volume requirements is authorized by any reduction in the biodiesel and/or advanced fuel category. In fact, a reduction in the total renewable fuel RVO would be necessary as NCC agrees with EPA's

assessment in the proposed rule that if the agency were to reduce the total renewable fuel volume requirement by a lesser amount than the advanced biofuel volume requirement there would be an "opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory cap of 15 billion gallons."

EPA is aware of the negative impact of ethanol volumes exceeding the 15 billion gallon statutory cap as evidenced by the statement in the proposed rule that reducing the total renewable fuel mandate by an amount less than the advanced biofuel requirement would provide an "opportunity for conventional biofuels to participate in the RFS program beyond the implied statutory cap of 15 billion gallons" cited earlier in these comments. Whether the marginal ethanol in excess of 15 billion gallons is used domestically without qualifying for RINs, added to stocks, or exported, it still has a negative impact on other corn users such as broiler companies and growers by creating artificial demand for corn-based ethanol. For this reason NCC urges EPA to reduce the total renewable fuel mandate in the final rule commensurate with any necessary reduction in the biodiesel and advanced categories.

Ethanol Exports

As the EPA averred in the NODA, "The level of imports and exports can also affect the price of renewable fuel used in the U.S. …." As the RVO is set higher, the advanced and biomass-based diesel categories have become more reliant on imports, conversely conventional ethanol production has increasingly become reliant on exports. Just as imports put downward pressure on fuel prices, export can put upward pressure on fuel prices. Ethanol exports totaled 1.05 billion gallons last year, putting ethanol production at more than 16 billion gallons. Whether the marginal ethanol in excess of the 15 billion gallon statutory cap is used domestically without qualifying for RINs, added to stocks, or exported, it still has a negative impact on other corn users such as broiler companies.

It has been proposed to EPA during this rulemaking to allow ethanol exports to generate RINs. Were this recommendation accepted, an additional billion or more potential RINs could be generated from exports. While this would reduce the value of D6 ethanol RINs, it would not, however, eliminate the RIN value altogether. RINs are the implicit subsidy to the biofuel producer under the RFS. By allowing ethanol exports to generate RINs of any value, exports would be subsidized and therefore encouraged. This would be harmful to other unsubsidized corn users and not in keeping with the intent of the statue. For this reason we urge EPA to not enact any provisions that would subsidize, mandate, nor encourage exports of ethanol.

Sincerely,

Mike Brown
President, National Chicken Council