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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-2019-0136; FRL-10001-36-OAR; Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021, and Response to the Remand of the 2016 Standards; Supplemental Notice of Proposed Rulemaking

Dear Administrator Wheeler:

The National Chicken Council (NCC) represents companies that produce and process more than 95 percent of the chicken in the United States. According to agricultural economic research and analytical firm PRX, who provides the reference data and projections for the National Corn Growers' Association's "2019 World of Corn" statistical report, the poultry sector¹, of which of which broiler production is by far the largest component, comprises the largest single user of corn not operating under the protection of the Renewable Fuel Standard (RFS).

Since 2007 under the RFS, broiler producers have faced more than \$68.5 billion in higher feed costs for the production of broiler meat. When breeders and pullets are factored in, the cost is dramatically higher. As corn users, therefore, NCC's members are substantially impacted by the RFS and its impacts on the corn market and feed supply.

In a July notice of public rulemaking, EPA proposed percentage standards for renewable fuel use under the RFS. NCC submitted comments on that proposal detailing the uncertainty regarding the 2019/2020 crop year corn supply. NCC believes the proposed volumes and percentage standards for 2020, coupled with EPA's action to provide a 1-psi waiver from the restrictions which prohibits the Reid Vapor Pressure (RVP) of gasoline from exceeding 9.0 psi during the summer months and thus increasing the use of E15, is overly aggressive, overly reliant on corn based ethanol, and likely to cause disruptions to the nation's feed supply. Those comments are incorporated by reference as if fully set forth herein.

Supplemental Notice on Small Refinery Exemptions

EPA has requested additional comments on a proposal to project the volume of gasoline and diesel that will be exempt in 2020 via future small refinery exemptions (SRE). This supplemental proposal would effectively increase the percentage standards that apply to

¹ PRX Grain Market Overview US Major Grains Crop Years 2018/19 & 2019/20 with USDA Aug 12, 2019 WASDE.

non-exempt obligated parties to offset future small refinery exemptions. NCC believes that EPA's proposal has neglected to consider the impact on the broiler industry.

The supplemental rule proposes to reallocate SRE volumes based on the 3-year average of what the Department of Energy (DOE) recommended to EPA under two proposed calculations:

- The 2016-18 average DOE recommended volume which was 770 million gallon equivalent RINs; and
- The 2015-17 average DOE recommended volume which was 580 million gallon equivalent RINs.

Given that the 2020 required volume obligation for all biofuels is 20.04 billion gallons, and the ethanol volume obligation is 15 billion gallons, ethanol will make up about 75 percent of the reallocated gallon-equivalent RINs. That means that the reallocation based on the 2016-2018 average would be about 577.5 million gallons and the reallocation based on the 2015-17 average would be about 435 million gallons.

These calculated volumes are similar (115 and 87 percent, respectively) to the 500 million gallons of conventional ethanol which EPA waived in 2016 under its inadequate domestic supply waiver authority. Subsequent to that 2016 action, the D.C. Circuit Court of Appeals remanded EPA to further consider that waiver. NCC agrees with the Agency's conclusion that it fully met its legal obligation to reevaluate the 2016 waiver via the 2020 RVO proposal which stated that "imposing an additional burden on obligated parties for the 2016 volume requirements through a higher standard at this time would be unduly burdensome and inappropriate" and that "there are very limited opportunities to use biofuels beyond the volumes (EPA) is proposing for 2020." The supplemental notice, which proposes higher blending standards based on similar increased volumes of ethanol, stands in contrast to EPA's conclusion.

Moreover, since the EPA originally proposed the RVO in July, the Energy Information Administration (EIA) has reduced its projection for total gasoline use in 2020. The updated projection is 1 billion gallons less than July, at 142.49 billion gallons.

Meanwhile, uncertainty regarding the corn supply continues. The 2019 corn harvest has been historically slow. As of mid-November, approximately 24 percent of the corn crop was still standing in fields unharvested. That equates to more than 3.3 billion bushels of projected production.

USDA NASS Harvest Progress as of 17 November 2019				
	This Week	Last Week	Last Year	5 Year Avg
Corn	76%	66%	89%	92%

Given the weather patterns and late planting this year, there is continued uncertainty over yield and quality, and propane infrastructure shortages in the Corn Belt continue to impact the ability to dry corn for feed. This is in conflict with EPA's presumption, provided in the proposed rule, that

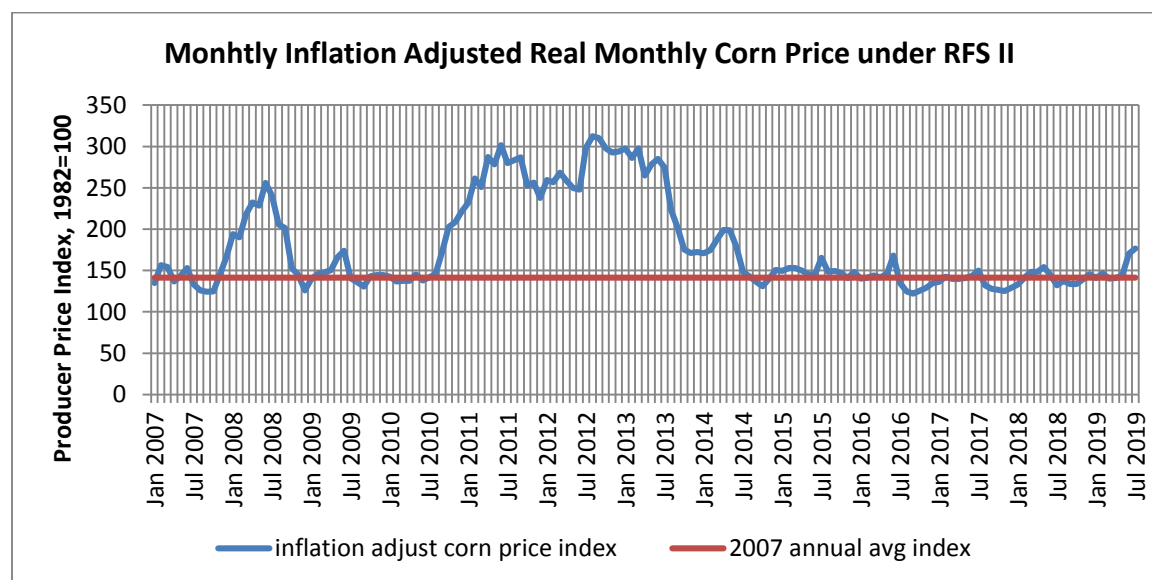
... production of these feedstocks is likely to increase as crop yields, oil extraction rates, and demand for the primary products increase in 2020.

The 2019/2020 corn crop year has the potential to match the volatility that occurred in the market due to supply disruptions in 2008 and 2012/2013, both of which had a devastating impact on the broiler industry. As a recent report from CoBank² has analyzed:

The five-year period prior and including 2012 is in many ways a dark age for the U.S. chicken industry and animal protein in the U.S. in general. From 2008 through 2012 more than a dozen chicken companies changed hands as industry profitability tested historic lows on more than one occasion. Factors driving this challenging period included:

- *Passage of the Renewable Fuel Standard in the U.S. The country developed a large ethanol industry consuming approximately one-third of U.S. corn production.*

However, it is clear that the mandated use of ethanol under the RFS has not raised the average long-term average price of corn, rather it has only served to add unprecedented volatility to the corn market during times of supply disruptions, as the chart below shows. This volatility, as pointed out by CoBank's analysis, has been highly destructive to the broiler industry.



Source: Federal Reserve Bank of St. Louis, NCC

Restore the Off Ramp

EPA's supplemental proposal to add 435 to 577.5 million gallons of ethanol use to accommodate ethanol at the statutory maximum under the RFS has the potential for a similarly destructive pattern as 2008 and 2012/2013, and it poses a threat to the U.S. broiler industry during the 2020 RFS compliance year and 2019/2020 crop year. When coupled with the earlier approval of year round use of E15 in finished motor fuel via EPA's waiver of the Clean Air Act regulations on RVP for E15, ethanol has the potential to well exceed its statutory maximum under the RFS. Through the combination of the proposed 2020 RVO's, the supplemental proposal for higher mandatory blending percentages imposed on obligated parties without SREs, and the implicit subsidy of the RINs value, ethanol mills

² U.S. Poultry Outlook, June 2019, CoBank Knowledge Exchange.

will gain an even more significant economic advantage over other corn buyers in the market. This presents a significant problem in times of short corn supply, effectively insulating ethanol producers from the full impact of the market fundamentals faced by other buyers.

Given these dynamics, NCC believes that it is imperative for EPA to clearly communicate its commitment to comply with the statute and Congressional intent in the consideration of its use the “off-ramp” waiver authority as provided under Section 211(o)(7)(A) of the statute, which provides that in the case that mandated biofuels volumes cause severe economic harm, EPA may waive the applicable volumes specified in the Act in whole or in part by the EPA Administrator on his own motion.

Thus, in order to provide necessary transparency to stakeholders, NCC strongly believes that EPA must, in its final 2020 required volume obligation rule, explicitly state the conditions and circumstances under which the off-ramp waiver authority would be exercised.

Therefore, NCC suggests that a predictable, transparent off ramp that would be fair to all involved be based on the USDA stocks-to-use-ratio in the June 2020 WASDE report. Partial waivers for the remainder of the compliance year (i.e. approximately six months) would be structured as the table below presents.

Stocks to Use	RFS Waiver Amount
More than 10%	no waiver
7.5% to 10%	10%
6% to 7.49%	15%
5% to 5.99%	25%
below 5%	50%

To date under the RFS, poultry and livestock growers and other corn users have been denied protection from the rapid, mandatory expansion of corn use due to the RFS despite the “off ramp.” In particular, on two major occasions, waiver petitions have been denied by EPA:

- The first denial was in 2008, the first year that expanded ethanol mandates were foisted on the market and drove corn prices to historic record highs; that waiver request was made by then-Governor Rick Perry of Texas. The Texas petition called for reducing the initial RFS volume mandate by 50 percent for one year. Under the statute, EPA has 90 days to make a decision on a waiver request; EPA took more than 120 days.
- The second of EPA’s waiver denials was in 2012. That waiver request was made of EPA by a bipartisan group of 8 States’ Governors and supported by a number of livestock commodity groups and a number of members of Congress.

In denying the waiver petitions, EPA interpreted the standard to be “the (RFS) mandate *itself* would severely harm the economy; it is not enough to determine that implementation of RFS would *contribute* to such harm.” Based on that improper rationalization, EPA ignored the worst drought in more than 50 years and record high corn prices that the RFS exacerbated. By setting that standard, EPA is asserting that a complete failure of the U.S.

corn crop would not warrant the waiver of the RFS, because in such a case the RVO mandate would only “contribute” to harm in a given crop year.

Consider the effects of the two waiver denials to date: since 1975, actual total broiler production has increased over the previous year every year (including through the most severe corn disruption prior to the RFS era in 1995/96) except for the two years the RFS waivers were denied. That was severe economic harm to those regions and states that depend on chicken production and the jobs it creates.

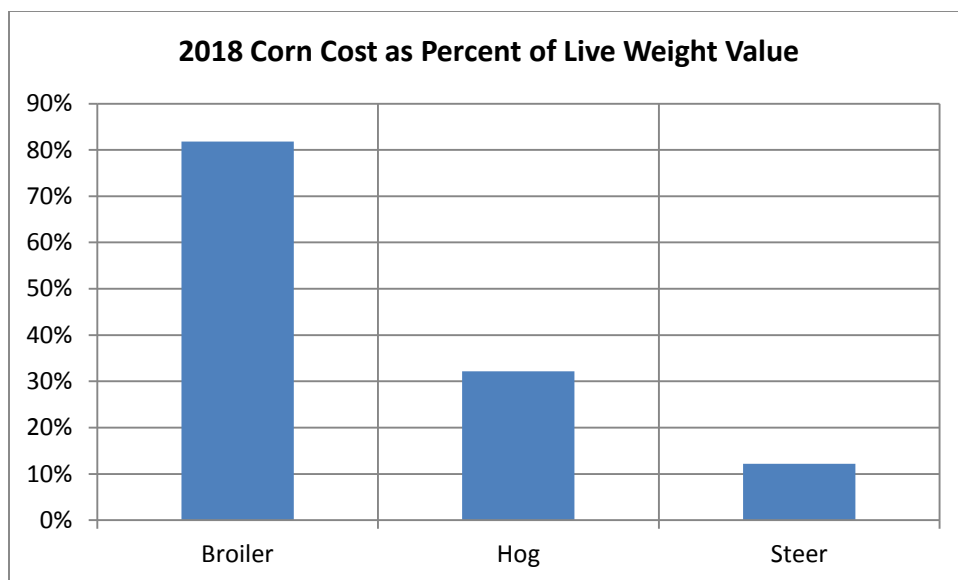
NCC requests that EPA consider the differences in the industry structure between ethanol mills and broiler producers when setting the conventional biofuel mandate. It is much more difficult for broiler producers to adjust to artificial swings in the corn market induced by the EPA’s administration of the RFS. The very high and very volatile corn prices, particularly in crop years 2008/2009 and 2012/2013, set the stage for longer term restrained production. Not only did chicken producers have to significantly adjust production downward to survive higher input costs, but the negative economic ripple effect of an inflexible RFS also caused the primary broiler breeders to significantly adjust their production downward and curtail their production plans for the future.

Primary breeders generate the great grandparent, grandparent, and pedigree flocks. These breeders suffered significant financial strain during periods of high corn prices as orders for day-old pullet chicks were reduced or even cancelled by chicken producers facing unprofitable feed costs under the RFS. It takes time to rebuild grandparent flocks that produce the day-old pullet chicks that mature in seven months into the mother hens that then produce broiler chicks that are put on feed. This recovery process for the production system can take a year or more. By contrast, the fermentation process for producing ethanol takes between 95 and 105 hours. Thus, in five days to a week ethanol manufacturers can adjust production, though the RFS protects them from having to do so.

Distillers Grains and Distillers Corn Oil

From 2007 through 2013, due in large part to high and volatile feed costs brought on by the RFS and EPA’s denial of an off-ramp waiver, at least a dozen chicken companies ceased operations, filed for bankruptcy, or were acquired by another company. Given the corn market situation for this coming crop year, the chicken industry faces the potential for another supply shock that could lead to another crisis like in 2008 and 2012. Such a shock is particularly damaging to broiler growers.

First, corn comprises the largest cost in broiler production at a much higher percent of live weight value than other species.



Source: NCC, USDA

Further, the feed value of distillers grains (DDGs) by-product from ethanol has a very low nutritional value for poultry. According to PRX, the disposition of DDGs as feed is follows:

- Cattle: 30% ration at 1.0 feed value of corn
- Hogs: 20% ration at 0.8 feed value of corn
- Poultry: 5% ration at 0.5 feed value of corn

In its proposed rule, EPA states that it expects increasing volumes of distillers corn oil (DCO) to be available for use in 2020 because of enhanced oil extraction from dried distillers' grains (DDGs). This DCO is used as feedstock for biodiesel, and biodiesel use will also increase under EPA's supplemental proposal regarding SRE reallocation. However, the defatting of dried distillers' grains with solubles (DDGS) to produce DCO for biodiesel feedstock disadvantages broiler production as it limits options for feedstuffs.

DDGs are made up of protein, fat (oil) and fiber and are used in livestock feed. Each of these components has a role in animal nutrition. Energy is important in livestock feed and by de-fatting the DDGs, energy content is dramatically reduced. In order for feed to have value, energy content must be replaced. The resulting DDGs after the corn oil is extracted have a different nutritional profile: there is a higher concentration of protein and fiber commensurate with the reduction in fat and energy content. Currently, the biggest use of DDGs is for feed for ruminants (primarily beef and dairy cattle) because of the fiber content.

The increase in DCO production from DDGs defatting has dramatically reduced the utility of DDGs in broiler feed. Prior to the use of DCO to meet the RVO, up to 90 percent of broiler production used some DDGs at an inclusion rate of up to 8 percent. Currently, less than 60 percent of broiler production include some DDGs in the rations with average inclusion rates at 5 percent or lower. Higher advanced biofuels mandated under the RFS effectively undermine the ability of the broiler industry to access this feed.

Conclusion

NCC strongly supports efforts to create a more reasonable and sustainable approach to the nation's biofuel policy. Foremost is restoring a workable off ramp during times of market volatility.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Brown', with a stylized, cursive script.

Mike Brown
President, National Chicken Council