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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-9996-53-OAR; Renewable Fuel Standard Program: Standards for 2020 and Biomass-Based Diesel Volume for 2021

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 National Corn Growers' Association "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 \$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.

Proposed 2020 Required Volume Obligations (RVOs)

EPA has proposed the following RVOs for biofuels under the RFS for 2020, and for biodiesel in 2021:

Biofuel Category	2020	2021
Cellulosic	540 mgy	n/a
Biomass Biodiesel	n/a	2.43 bgy
Advanced Biofuel Total	5.04 bgy	n/a
Total Renewable Fuels	20.04 bgy	n/a
Implied Conventional Volume	15 bgy	n/a

Source: Federal Register

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

NCC offers the follow comments on the proposed RVOs:

Total Renewable Fuel Volume Waiver

The statutory total renewable fuel volume is 30 billion gallons of which the advanced biofuel requirement for 2020 is 15 billion gallons. Thus, in setting the 2020 RVO at 20.04 billion gallons, EPA exercised its cellulosic waiver authority by proposing an equal reduction for the overall advanced biofuel category and the total renewable fuel total as it exercised its cellulosic waiver authority. NCC supports this action. Were the total renewable fuel volume requirement decreased by a lesser amount than the cellulosic waiver there would be an incentive for conventional biofuels to participate in the RFS program beyond the statutory cap of 15 billion gallons set by Congress.

Remanded 2016 Volume

In 2016, EPA waived 500 million gallons of conventional ethanol under its inadequate domestic supply waiver authority. Subsequently, the D.C. Circuit Court of Appeals remanded EPA to further consider that waiver. NCC agrees that the Agency fully met its obligation to reevaluate that waiver in concluding 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.” As EPA noted, adding that volume back into the 2020 RVOs would lead to a drawdown of renewable identification numbers (RINs).

As EPA noted in its proposal, the bank of carryover RINs “provides an important and necessary programmatic and cost spike buffer that will both facilitate individual compliance and provide for smooth overall functioning of the program.” Indeed, RINs become part of the value of each gallon of biofuel to which they are attached. Thus as the price of D6 RINs increases, so too does the ability for ethanol producers to bid up the price of corn. Poultry producers must compete with ethanol mills for corn, however, with no mandate that establishes a minimum volume of chicken that must be consumed similar to the mandate that ethanol enjoys, chicken producers must absorb the higher costs of corn that can be bid up by high RIN values.

Implied Conventional Biofuel Mandate

EPA is proposing to leave the conventional ethanol implied mandate at 15 billion gallons, the statutory cap. NCC urges that the effective conventional biofuel volume be reduced in the final rule, especially given the volatility of the corn supply for the 2019/2020 crop year combined with EPA’s earlier approval of a 1-psi waiver from for the RVP over the summer months, allowing year-round use of E15.

As stated in comments submitted to EPA (Docket ID No. EPA-HQ-OAR-2018-0775), NCC believes that EPA’s E15 waiver proposal has neglected to consider the impact on the broiler industry and for poultry and livestock feeders generally. Providing a waiver to year-round E15 use could result in a rapid expansion of corn use under the RFS adding the potential for price and supply volatility in the corn market. Those comments are incorporated by reference as if fully set forth herein.

Volatile and Unpredictable Corn Market in 2019/2020

Weather and other factors have created a volatile corn market leading into the 2019/2020 marketing year. This marketing year begins on 1 September as EPA will be reviewing these and other comments on the proposed 2020 RVOs, and there still exists unprecedented uncertainty in the corn market. USDA reported in its 1 August crop acreage report that corn growers were prevented from planting more than 11.2 million acres. This is the largest number of prevented planting acres since USDA has been keeping record on prevented plantings beginning in 2007, a period which coincides with the implementation of the RFS II. This acreage count is likely to be further adjusted as USDA releases more data.

Late plantings and weather conditions are further impacting projected and estimated corn yields. The USDA's World Agriculture Supply and Demand Estimate (WASDE) report for August is projecting a yield of 169.5 bushels per acre, a 4 percent decrease from 2018 yields. However, in the July WASDE report, USDA projected a yield of 166 bushels per acre, a reduction of 6 percent from last year. Private industry estimates of corn yields underscore the uncertainty of this year's corn supply. Virtually all reports and estimates from crop tours are projecting yields well below USDA's. Accounting for variance in the projected yield reductions, there is nonetheless an accepted consensus among private and federal government authoritative sources that corn yields will be reduced. 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."

Moreover, there remains a critical question of the number of acres that will produce the 2019/2020 crop. No doubt a factor in the USDA's adjustment in its corn yield outlook is due to new assessments of potential abandoned acres; from the July to August WASDE reports, USDA is estimating a drop of 1.6 million corn acres that will be harvested. That number of abandoned acres could increase further.

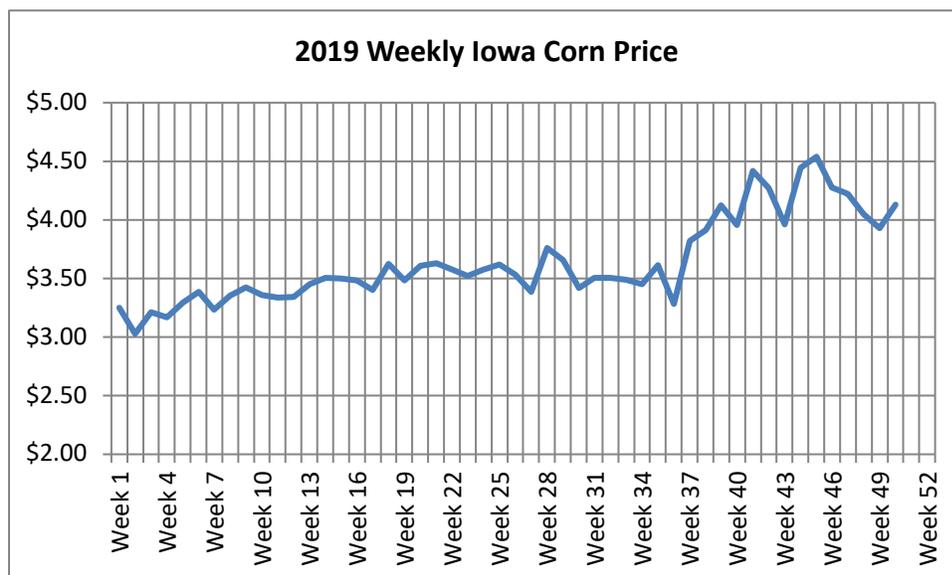
More recent crop progress data indicates that continued deterioration in the condition of the corn crop could be a significant factor. In its 18 August release, USDA reported that among the 18 states that produce 92 percent of the U.S. corn crop, the percent of the crop rated as poor increased to 11 percent from 10 percent during the prior week. The percent of the crop rated poor is increasing and is well above 8 percent of the crop rated poor for the same period in 2018. The percent of the crop rated good dropped to 46 percent from 47 percent the week earlier. While the changes in condition during the first half of August 2019 are relatively small, the decline in crop conditions underscores the potential volatility.

There are three critical stages of corn development that impact final yield: silking, dough, and denting. Per USDA's crop progress report, all three stages are lagging recent historical averages according to the USDA's National Agricultural Statistics Service (NASS). Given the number of degree days needed for full crop development, and the increased chance of weather variability in this late crop season, crop yields remain at risk.

Corn Crop Progress			
	18 August 2019	18 August 2018	5 year average
Silking	95%	100%	99%
Dough Stage	55%	83%	76%
Denting	15%	41%	30%

Source: USDA NASS, Crop Progress Report

This uncertainty has already led to volatility in the corn market to date, especially since the 1 March planting intentions report date (week 26 in the chart below).



Source: USDA

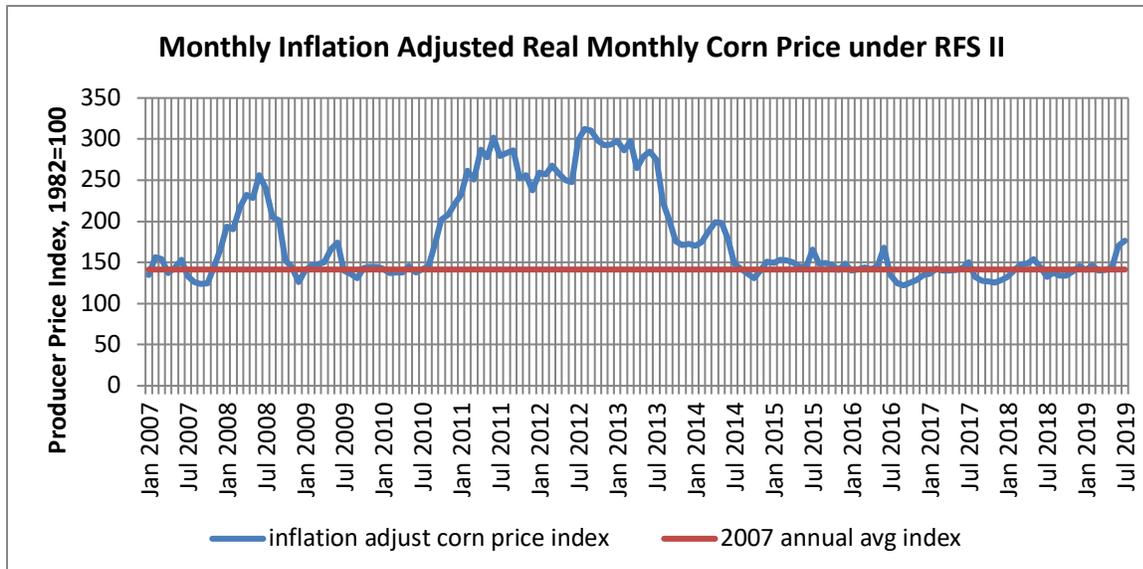
This year and the coming 2019/2020 crop year are following a similar pattern to the volatility that occurred in the market due to supply disruptions in 2008 and 2012/2013, which had a devastating impact on the broiler industry. As a recent report from CoBank² has analyzed:

The five-year period prior and including 2012 is in many ways a dark ages 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.*

Indeed, it is clear that the mandated use of ethanol under the RFS has not played a role in raising the 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 has been, as pointed out by CoBank’s analysis, highly destructive to the broiler industry.

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



Source: Federal Reserve Bank of St. Louis, NCC

Restore the Off Ramp

Looking toward the 2020 RVOs, NCC believes that the potential for a similarly destructive pattern as 2008 and 2012/2013 poses a threat to the broiler industry during the 2020 RFS compliance year and 2019/2020 crop year.

- First, the corn market is still uncertain and volatile given the supply and demand situation, and EPA has set conventional ethanol volume at the statutory maximum.
- Second, EPA has already added more potential volatility given its waiver under the Clean Air Act (CAA) to allow the year-round use of E15 in finished motor fuel, which has the potential to utilize an amount of corn ethanol that exceeds the statutory maximum.

Thus NCC believes that it is imperative for EPA to comply with the statute and Congressional intent in the consideration of its use of the “off-ramp” waiver authority as provided under Section 211(o)(7)(A) of the statute, which provides that in the case whereby mandated biofuels volumes causing severe economic harm, EPA, in consultation with the Secretary of Agriculture and the Secretary of Energy, may waive the applicable volumes specified in the Act in whole or in part by the EPA Administrator on his own motion. Further, that provision allows for the waiver based on a petition by one or more States, or by any person subject to the requirements of the Act.

In the proposed rule, EPA states,

At this time, we do not believe that the circumstances exist that would justify further reductions in the volumes using the general waiver authority.

However, EPA also notes that the overall 20.04 billion gallon volume of total renewable fuel and the means that

... the market could make this volume available may still be generally relevant to whether and how EPA exercises its waiver authorities, such as our consideration of whether the volumes will cause severe economic harm.

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, now Secretary of Energy. 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 eight 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.

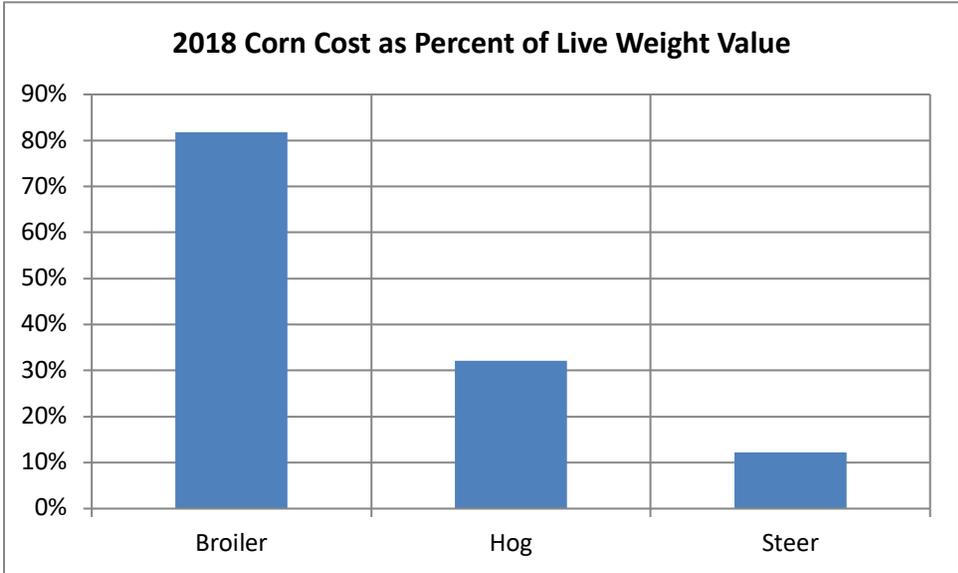
Unique Structure of the Broiler Industry

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.

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 that other species.



Source: NCC, USDA

Further, the feed value of distillers grains byproduct from ethanol has a very low nutritional value for poultry. According to PRX, the disposition of distillers grain 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 to be available for use in 2020 because of enhanced oil extraction from distillers grains. This distillers' corn oil (DCO) is used as feedstock for biodiesel. 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.

Distillers grains 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 included 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

Given the current uncertainty regarding the 2019/2020 crop year corn supply, NCC believes the proposed volume for 2020, coupled with the recent waiver that will increase the use of E15, is overly aggressive, overly reliant on corn-based ethanol, and will likely cause disruptions to the nation's feed supply. Therefore the proposed volumes, especially conventional ethanol, should be reduced in the final rule to more accurately reflect the availability of feedstock and the usage rate of biofuels.

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 for volatile markets.

Sincerely,



Mike Brown
President, National Chicken Council