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Air and Radiation Docket and Information Center
Docket ID No. EPA-HQ-OAR-2013-0479
Environmental Protection Agency
Mailcode: 2822T
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Re: Docket No. EPA-HQ-OAR-2013-0479

Dear Administrator Jackson:

The National Chicken Council (NCC) is pleased to submit these comments in support of the Renewable Fuel Standard Program (RFS) targets proposed for 2014. ^{1/} The National Chicken Council represents companies that produce and process over 95 percent of the chicken in the United States, and NCC's members are substantially affected by the RFS's effects on the corn market.

NCC supports adjusting the conventional ethanol-based biofuels target to reflect the practical limits imposed by the blendwall and in proportion to the reductions in cellulosic biofuel target levels. NCC firmly believes this adjustment is most necessary from a scientific and technical perspective. NCC would support further reductions in the target level for conventional biofuels to account for the distorting effects the RFS has on the market for corn, substitute agricultural products, chicken prices, and food prices in general. The proposed target levels are an important step toward ensuring the RFS reflects reasoned economic and environmental policy.

The Impact of the RFS on Demand for Corn and on the Chicken Industry

The RFS's blending requirements substantially affect the chicken industry, and indeed nearly all food production. The vast majority of conventional ethanol produced to meet RFS requirements is derived from corn. Forced diversion of corn to ethanol production inflates corn prices. Corn is a direct or indirect input in a wide array of foods—including chickens, which are fed corn-based feed—so increases in corn prices directly drive up increases in food, especially chicken.

By far the two largest purchasers of corn are feed and food producers and ethanol refiners, although that has not always been the case. The RFS blending requirement has significantly disrupted the market for corn by requiring an ever-growing, predetermined amount be diverted to ethanol use. The RFS increases demand for corn by forcing more users to compete for a supply that has not kept pace with demand. Approximately 15 percent of the 2005/2006 corn crop was devoted to ethanol

^{1/} 78 Fed. Reg. 71732 (Nov. 29, 2013).

production. For the 2012//2013 harvest, ethanol production consumed over 43 percent of the crop.^{2/} Future RFS requirements will most likely consume an even greater percentage of the corn crop and drive corn prices even higher.

This pressure on corn prices is exacerbated by the fixed blending requirements. The fixed blending requirements create an inelastic demand curve for corn purchased by blenders. Blenders must purchase the predetermined amount of corn required by federal law regardless of the price and have only a limited ability to reduce production due to corn price increases. Because gasoline producers cannot meaningfully reduce consumption below the RFS mandate as prices increase,^{3/} the remaining 60 percent or so of corn purchasers are forced to absorb 100 percent of the increase in corn prices and adjust to the drastically decreased supply. This imbalance significantly upsets the natural equilibrium that would be achieved, with the result being inefficiently high levels of corn purchased by ethanol refiners and inefficiently low amounts of corn going to feed and food uses. With too little corn to go around and at too high of prices, corn-based food production—especially food animal production—decreases, and the price of these foods increases.

A secondary and equally troublesome effect has been increased corn price volatility caused by the RFS putting severe pressure on the market. Compared with 2005/06, corn price volatility has more than doubled since the RFS became law. The RFS has driven corn use growth faster than production. As a result, corn inventories are chronically depleted to minimum levels, causing market prices for corn and other agricultural commodities to gyrate dramatically, depending on the changes in the weather or unpredictable events.

The chicken industry is especially susceptible to these effects. Corn is far and away the primary source of nutrition for broiler chickens, rendering the industry captive to escalating, increasingly volatile corn prices. At least a dozen chicken companies have ceased operations, filed for bankruptcy protection, or have been acquired by another company. The financial harm caused by those business disruptions has reverberated from family farms that grow the chickens to processing companies to suppliers of inputs of goods and services. Based on actual tallying of industry feed costs, the following increase in feed costs can be noted: from October 2006 through 2013 chicken, companies have sustained \$54 billion in additional higher feed costs, turkey companies \$10 billion, and table egg producers \$9 billion. Combined, the real out-of-pocket costs for the poultry and egg industry totals over \$73 billion. Eventually, these costs will have to be passed on to consumers of poultry and egg products.

^{2/} Energy Policy Research Foundation, Inc. (EPRINC), *Ethanol's Lost Promise: An Assessment of the Economic Consequences of the Renewable Fuels Mandate*, at 29, Sept. 14, 2012 [hereinafter EPRINC] and USDA's "World Agricultural Supply and Demand Estimates", January 10, 2014.

^{3/} See Wallace Tyner, Farzad Taheripour and Chris Hurt, *Potential Impacts of a Partial Waiver of the Ethanol Blending Rules*, at 3 (Aug. 16, 2012), <http://www.farmfoundation.org/news/articlefiles/1841-Perdue%20paper%20final.pdf> [hereinafter Purdue] ("[T]here has been an 8% fall in ethanol production over the past even weeks as the higher corn price puts pressure on ethanol margins. . . . Adjustments might have been greater in the absence of the mandate.").

The Effects of Reaching the Blendwall on Ethanol Production and Use

Observers of the RFS have long voiced concern about the blendwall, the point at which it is no longer technically feasible to supply the fuel supply with more ethanol. With domestic motor fuel consumption decreasing and increasing target ethanol blending requirements, the RFS had been approaching the blendwall and at accelerating rate, reaching it this year. In 2014, due to regulatory limits on ethanol content of gasoline and the engine characteristics of the nation's vehicle fleet, it will be impossible to supply the vehicle fleet with gasoline containing the statutorily targeted amount of ethanol. NCC is pleased EPA has recognized this fundamental limitation on the ability to supply the fleet with ethanol and is proposing to reduce the ethanol blending requirement accordingly.

Dr. Bill Lapp, president of Advanced Economic Solutions, at the EPA stakeholders hearing on December 5, 2013, presented his economic analysis of the agency's proposed RFS Mandates for 2014. NCC agrees with Dr. Lapp's analysis and conclusions. One of Dr. Lapp's most pertinent and important conclusion is as follows: "...to meet a mandate in excess of the blend wall, obligated partners would be forced to purchase RINs (primarily D6) to meet their obligations, utilize RINs from increased biodiesel production dramatically, and sell E85 at sharp discounts to their procurement cost." His analysis further notes the quantity of E85 usage would need to increase by at least 1.65 billion gallons, a ten-fold increase over 2013. To achieve a ten-fold expansion in the use of E85, the pump price for E85 would need to decrease significantly. To compensate for the loss of subsidies, E85 and for the higher cost of RINs, gasoline prices would need to be 8¢ to 30¢ per gallon higher than would otherwise be the situation. NCC suggests that higher gasoline prices would dampen the consumption of gasoline and would thus further compound the blend-wall problem.

Absent a reduction in the ethanol targets, blenders would be forced to exhaust their RINs and then to produce more gallons of blended ethanol and gasoline than could be used in vehicles to cover the difference. Doing so would create a surplus of blended motor fuel and would be antithetical to the RFS's environmental goals of decreasing the use of motor fuels.

There is nothing in the record to indicate that the issues presented by the blendwall will be limited to only the 2014 blending requirements. The supply limitations identified by EPA are technical in nature and result from deeply engrained regulatory and technical aspects of the nation's motor fuel supply. There is no reason to believe the blendwall will suddenly be materially higher for 2015. Moreover, reductions in blending requirements for 2014 will do nothing to relieve uncertainty about blending requirements for 2015. Accordingly, NCC recommends that EPA use this opportunity to set ethanol blending targets for both 2014 and 2015 to better establish ethanol blending expectations, as it proposes doing for biomass-based diesel. ^{4/} Doing so will provide greater certainty for all parties involved and will enable better longer-term economic decisionmaking.

The Clean Air Act Gives EPA the Authority to Issue These and Other Waivers

EPA has broad authority under the Clean Air Act to reduce or waive ethanol blending targets. The proposed course of action falls well within this statutory authority and is essential for the reasonable

^{4/} 78 Fed. Reg. 71732, 71751.

implementation of the RFS going forward. NCC supports the waivers announced and, as stated above, recommends that EPA announce blending requirements for 2015 in this same action.

The Clean Air Act grants EPA authority to waive the ethanol blending requirements “in whole or in part” on the administrator’s initiative if “there is an inadequate domestic supply.” ^{5/} The Clean Air Act also allows the administrator to reduce the ethanol blending targets by the same amount as any reduction in cellulosic biofuel targets. ^{6/} This authority fully supports the proposed ethanol target reductions.

As EPA observes, the Clean Air Act provides EPA broad discretion in determining whether the “domestic supply” is adequate. The statute provides no limitations on what should be considered part of the “supply,” indicating that Congress has delegated that determination to EPA’s expertise. Any consideration of the domestic supply of biofuel must take into account the entire production and distribution chain, from crop planting all the way to use of the fuel by the engine. The domestic supply could be disrupted in a wide number of ways, from drought or pestilence affecting corn to an accident or breakdown at a refinery or blender to problems with the distribution system. A failure at any of these points would decrease domestic supply.

Similarly, the inability to provide blended ethanol due to regulatory or technical hurdles also acts to reduce the ability of the nation to supply its motor fleet with ethanol-blended gasoline. Regulatory hurdles—including limits on the use or availability of E15 and E85 gasoline—and technical hurdles—the inability of many engines to properly run on E15 or E85 gasoline—prevent any further ethanol from being provided for use by the motor fleet. According to *Oxford English Dictionary*, “supply” means “a stock, amount, or flow of something supplied or available for use.” ^{7/} Ethanol that cannot be added to an engine for technical or regulatory purposes is not ethanol that is “available for use” by that engine. The blendwall, therefore, represents a very real constraint on the ability of the nation to supply its motor fleet with ethanol-blended gasoline under the RFS. Reducing the blending targets in light of this supply limitation is wholly within the broad waiver authority provided in the Clean Air Act.

Indeed, failing to reduce the blending targets in this manner would lead to the absurd result of creating national policy calling for the production of blended fuel that cannot be added to any vehicle. This result would force the consumption of domestic fuel resources in a manner completely antithetical to the purposes of the RFS and demonstrates why Congress provided EPA broad authority to waive or reduce the blending target.

NCC also believes the Clean Air Act provides EPA adequate authority to reduce the renewable fuel volume requirements by the same or lesser amount as EPA reduces cellulosic biofuel targets. The statutory language plainly states that EPA may “reduce the applicable volume of renewable fuel . . .

^{5/} 42 U.S.C. § 7545(o)(7)(A)(ii).

^{6/} *Id.* § 7545(o)(7)(D). NCC also notes that EPA has authority to waive or reduce ethanol blending targets when the targets would “severely harm the economy or environment of a State; a region, or the United States.” *Id.* § 7545(o)(7)(A)(i).

^{7/} *Oxford English Dictionary* (3d ed. 2012), “Supply,” entry 7.

by the same or a lesser volume.” 8/ The Clean Air Act does not require that the renewable fuel volume be decreased in fixed proportion relative to the advanced biofuels requirement; the only point of reference in the statute is the cellulosic biofuel requirement. NCC therefore fully supports using this authority to reduce the renewable fuel target by the same amount as the cellulosic biofuel target is reduced.

Conclusion

NCC strongly supports efforts to create a more reasonable and sustainable approach to the nation’s fuel policy. The compelled diversion of corn from feed to fuel uses exacts a heavy toll on the domestic chicken industry and American consumers. NCC believes EPA is properly proposing to use its authority under the Clean Air Act to reduce ethanol blending requirements consistent with the blendwall and cellulosic biofuel targets and encourages EPA to establish 2015 requirements in the same action. NCC believes these reductions are an important first step in establishing a workable framework that promotes a sound energy policy that does not harm the nation’s food supply.

Sincerely,

A handwritten signature in blue ink, appearing to read "Michael Brown", is written over a light blue rectangular background.

Michael Brown
President, National Chicken Council

8/ 42 U.S.C. § 7545(o)(7)(D).