



1152 FIFTEENTH STREET NW, SUITE 430
WASHINGTON, DC 20005
PHONE: 202-296-2622
FAX: 202-293-4005

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

Re: Docket No. EPA-HQ-OAR-2015-0111; Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017; Proposed Rule

Dear Administrator McCarthy:

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 affected by the Renewable Fuel Standard's (RFS's) impacts on the corn market and feed supply.

NCC is supportive of EPA's proposed actions to adjust the biofuels targets for 2014, 2015, and 2016 to reflect the practical limits imposed by the blendwall. NCC strongly believes this adjustment is necessary and that lowering the proposed target levels from the recommended statutory levels prescribed by the Energy Independence and Security Act of 2007 (EISA) are an important step toward ensuring the RFS reflects reasoned economic and environmental policy.

NCC would, however, support further reductions in the target level for conventional biofuels for 2015 and 2016 to account for the distorting effects the RFS has on the market for corn, substitute feed products, chicken prices, and food prices in general.

EPA's Administration of the RFS

At the outset, we provide comments on how the Environmental Protection Agency's (EPA's) administration of the RFS has resulted in a program that departs from the underlying statutory goals of the Energy Independence and Security Act (EISA) of 2007.

The EPA has not met its statutory deadlines in establishing the required volume obligations under the RFS since 2009. Under the EISA statute, the required volume obligations are to

¹ In these comments, the terms "chicken" and "broiler" are used interchangeably.

be finalized by 30 November of the preceding year. The actual dates by which these levels were established are shown as follows:

- 2010 – finalized March 26, 2010
- 2011 – finalized December 9, 2011
- 2012 – finalized January 9, 2012
- 2013 – finalized August 5, 2013
- 2014 – proposed in November 2013, re-proposed in May 2015
- 2015 – proposed in May 2015

According to the Government Accountability Office, these late rulings "contribute to industry uncertainty, which can increase costs because industry cannot plan and budget effectively."

On May 29, 2015, EPA re-proposed the required volume obligations under the RFS for the market year 2014. This proposal also included required volume obligations for all categories of biofuels for 2015 and 2016 and for biodiesel in the year 2017. EPA's proposal was issued six full months after the 2014 market year ended. Moreover, the proposed volumes for 2014 will not be finalized until November 2015, nearly 11 full months after the 2014 market year ends (and two years late under the EISA statutory deadline). Thus, as the proposed rule states:

EPA is proposing to set the renewable fuel standards for 2014 at the levels that were actually produced and used as transportation fuel.

It should be noted for the record that those volumes "actually produced and used" – *i.e.*, that were not subject to a final and binding required volume obligation due to EPA missing its prescribed deadline - represent the highest use to date for corn-based ethanol. It further should be noted in analyzing the administration of the RFS that EPA's missed deadlines did not result in a reduced amount of biofuel available in the market as was predicted by the ethanol industry. In fact, the historic record levels of corn ethanol "actually produced and used" raise the question of whether the RFS is any longer necessary for the development of the corn ethanol industry in the United States?

To be clear, despite the biofuel industry's characterization of EPA's proposed 2015 and 2016 required volume obligations as reducing ethanol levels based on the benchmark of the volumes provided by the EISA, those proposed volumes actually increase the ethanol mandate beyond its record consumption levels.

The statutory levels were set in 2007 based on projections of fuel demand at the time according to the Energy Information Agency's (EIA) Annual Energy Outlook. That forecast projected motor gasoline use at a level much higher than actually occurred. In fact, 2007 proved to be the peak of motor gasoline use in the United States and demand has decreased since then due to long term trend factors such as increased mileage efficiency and the demographics of the driving age population. According to the 2007 Annual Energy Outlook, motor gasoline use was projected to be 150 billion gallons in 2014 and 152 billion gallons in 2015. But according to the EIA's Short Term Energy Outlook of June 2015, actual motor gasoline use in 2014 was 132 billion gallons and is forecast to be 133 billion gallons in 2015, effectively lowering the blend wall by a significant volume.

	2010	2011	2012	2013	2014	2015
Amount 2007 EIA Projections Exceeded annual motor gasoline use <i>in billion gallons</i>	4	9	17	16	18	19
Amount 2007 EIA Projections Exceeded annual motor gasoline use <i>by percent</i>	3%	6%	12%	11%	12%	12%

Source: EIA 2007 AEO, STEO June 2015

Furthermore, the volume of ethanol “actually produced and used” in 2014 represents an increase from the levels that EPA originally proposed in its November 2013 Notice of Proposed Rulemaking (NPRM). This was to be expected based on EPA’s actions. Within a few months of releasing the NPRM, several public comments made by EPA officials indicated that the agency ultimately would raise the required volumes for biofuels in the final rule.² These comments were a very strong signal to ethanol producers to increase production beyond the levels suggested by the NPRM. This was a message which ethanol producers heeded. Later in the process, EPA communicated to the market that the re-issued 2014 volumes would be driven by the latest contemporaneous data, providing an economic backstop to the ethanol sector’s continued production.³

Among other impacts, this assurance that production and use would be accommodated catalyzed the increased export levels of ethanol. While increased exports of ethanol do put upward pressure on corn prices, they do nothing to improve domestic energy independence as is the stated goal of the EISA legislation.

According to the EIA,

Given the uncertainty surrounding Renewable Fuel Standard (RFS) targets and the lack of significant demand for higher ethanol blends in 2014, the growth in ethanol output had two primary outlets: it can either be blended into domestic gasoline or it can be exported. ... Additional volumes of ethanol beyond requirements for E10 blending and relatively small volumes used in higher ethanol blends such as E85 were exported in 2014.

EIA calculated 2014 ethanol exports at 826 million gallons, an increase of 33 percent over 2013. This amount of ethanol represents an additional 295 million bushels of corn diverted from the feed market beyond the utilization of corn by ethanol manufacturing to comply with the domestic fuel mandates of the RFS. This diversion is due, in part, to the impact of the RFS.

As EIA further noted:

Given the existing ethanol production capacity coupled with the ongoing constraints for blending ethanol into domestic gasoline, the United States likely will continue to remain a strong exporter of ethanol in 2015. Ultimately, the key drivers for ethanol

² Comments of Administrator Gina McCarthy, National Association of State Departments of Agriculture 2014 Winter Policy Conference, February 2014, <http://www.fuelsnews.com/renewables-weekly-4/>.

³ Comments of Administrator Gina McCarthy, North American Agricultural Journalists 61st Annual Meeting, April 2014.

exports this year are the finalized levels of RFS targets for 2014 and 2015, future corn crop yields, and ethanol producer profitability.

Indeed, through the first five months of 2015, ethanol exports are on pace to exceed 900 million gallons, which would represent more than 320 million bushels of corn diverted from the feed market in addition to that diverted by the domestic supply of ethanol.

When Congress set the 15 billion gallon cap on corn ethanol under the RFS, it did so to prevent ethanol production from diverting too great a volume of corn from the feed, food, seed, and industrial market for energy. With the increased required volume obligation for 2016 proposed at 14 billion gallons, and the projected trend in ethanol exports, conventional corn ethanol production will likely exceed 15 billion gallons in 2016.

As the Congressional Research Service has noted, implicit in the RFS there is:

considerable uncertainty regarding potential spillover effects in other markets and on other important policy goals. Emerging resource constraints related to the rapid expansion of U.S. corn ethanol production have provoked questions about its long-run sustainability and the possibility of unintended consequences in other markets

The rapid rise in ethanol exports is indeed a spillover effect that applies further pressure on the corn and feed market beyond Congressional intent under the RFS and is an urgent emerging resource constraint.

For these reasons, EPA's implementation of the RFS to date has resulted in a program that has departed from the underpinning statutory purposes. It is now all the more critical that EPA adopt appropriate standards in the present proposed rulemaking.

Impacts of Required Volume Obligations under the RFS

The diversion of corn into ethanol production, when mandated by the RFS or influenced by the RFS regulatory process as it was in 2014 absent final regulations, has created an uneven playing field for chicken companies to compete for necessary feedstuffs. Corn is the primary feed ingredient for the poultry industry. Since the RFS was enacted, chicken companies have faced more than \$50 billion in higher actual feed costs due to the RFS.

To be sure, other – and normal – market factors, such as supply, demand, weather, global markets, and other influences have also affected the market prices for corn. But only the required volume obligations for ethanol under the RFS have the force of a federal mandate which requires obligated parties (*e.g.*, refiners, importers, and blenders) to utilize a minimum amount of corn based ethanol regardless of price or supply. While increased prices are a market signal to other corn buyers to reduce consumption, the RFS effectively masks this signal to the ethanol manufacturing sector. This has made the demand for corn by ethanol manufacturers more inelastic when compared to feed demand for corn.

The elasticity of demand is the degree to which demand for a good varies with its price. Elasticity is measured as the percent change in consumption of a good when the price changes by one percent. Under normal conditions, sales of a good increase with a drop in price and, in turn, decrease with a rise in price. When a rise in price has little or no impact

on demand, the demand is referred to as inelastic. As described by the Congressional Budget Office (CBO) in its publication *The Renewable Fuel Standard: Issues for 2014 and Beyond*, inelastic demand implies “that market prices will shift dramatically if decisions about consumption and production change, possibly even if those changes are small.” Because the RFS sets an enforceable mandate for the amount of corn that must be utilized as ethanol feedstock, regardless of the price of corn, or the supply of corn, the RFS-driven demand for corn as ethanol feedstock is highly inelastic and has had a dramatic impact on corn prices since 2007. Further, the corn market is only one supply shock away – e.g., drought, freeze, or flood – from another dramatic rise in prices.

According to the CBO, increasing the Renewable Volume Obligation (RVO) from the current 13 billion gallons to the statutory cap of 15 billion gallons (an increase of two billion gallons) would result in a corn price increase of about six percent, an estimate that also takes into account both an increase in corn production (responding to higher prices) and a reduction in non-ethanol uses of corn like livestock feed. This analysis, however, excluded consideration of ethanol exports. Thus, setting the required volumes obligations at levels that would allow the combined use of domestic ethanol and exports to meet or exceed 15 billion gallons would have even more drastic and long term negative effects on the chicken industry.

Indeed, that is the situation that the broiler industry has faced—increased prices of corn and a reduction in supply of feed. The very high and very volatile corn prices, particularly in 2009 and 2012, 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.

In short, the RFS provides ethanol mills with an advantage in buying corn, especially when there is some other economic shock to the market, like drought in previous years, or the flooding that has impacted corn prices so far this year. When EPA proposed the 2015 and 2016 required volume obligations on May 29, according to the USDA’s May 2015 World Agricultural Supply and Demand Estimates (WASDE) report, the average marketing year corn price was forecast to be in a range between \$3.20 and \$3.80 per bushel, with 5.2 billion bushels of corn forecast to be used by ethanol production and 5.3 billion bushels to be used for feed and residual use. Since then, the July 2015 WASDE report reduced by 100 million bushels the projected corn crop production and adjusted the utilization by increasing the forecast ethanol use of corn to 5.225 billion bushels and reducing the feed demand for

corn to 5.275 billion bushels based on an increase in the average marketing year corn price of \$3.45 to \$4.05 per bushel. These figures illustrate the dramatic advantage the RFS provides to the ethanol industry at the expense of other corn users, particularly when other factors drive up the price of corn.

EPA Proposed Renewable Fuel Standards for 2014, 2015, and 2016

EPA has proposed the following required volume obligations.

	2014	2015	2016	2017
Cellulosic	33 mgy	106 mgy	206 mgy	n/a
Biomass Biodiesel	1.63 bgy	1.70 bgy	1.80 bgy	1.9 bgy
Advanced Biofuel Total	2.68 bgy	2.90 bgy	3.40 bgy	n/a
Total Renewable Fuels	15.93 bgy	16.30 bgy	17.40 bgy	n/a
Implied Corn Volume	13.25 bgy	13.40 bgy	14.00 bgy	n/a

EPA proposes to use its waiver authority under the Clean Air Act to:

- Lower the volume of cellulosic biofuel below the volume specified in the statute and also reduce the applicable volumes of advanced biofuel and total renewable fuel by the same or a lesser amount; and
- Reduce the applicable volumes of any renewable fuel under the general waiver authority under certain conditions, including where there is “inadequate domestic supply.”

In proposing to reduce the cellulosic target volume and the applicable volumes for advanced fuel and total renewable fuels, EPA has applied its waiver authorities properly. 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 implementation of the RFS going forward.

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.”⁴ 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.⁵ This authority fully supports the proposed ethanol target reductions.

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

⁴ 42 U.S.C. § 7545(o)(7)(A)(ii).

⁵ *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).

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. As EPA has noted, the ultimate intent of the RFS is to supply blended fuel to motorists, and, as EPA further noted, the “adequacy of the supply would logically be understood in terms of the parties who use the supply of renewable fuel.” Thus, the inability to provide blended ethanol due to regulatory or technical hurdles also acts to reduce the ability to supply the 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.”⁶ 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.

Furthermore, constraints on the ability to deliver and use fuel with greater concentrations of ethanol result in a RIN supply that is inadequate to comply with the renewable fuel volumes Congress originally forecasted. Because RINs act as a license to sell fuel to consumers, if refiners and blenders cannot obtain enough RINs due to various constraints to meet the mandate, they would not be able to supply consumers with an adequate supply of blended transportation fuel.

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 . . . by the same or a lesser volume.”⁷ 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.

⁶ Oxford English Dictionary (3d ed. 2012), “Supply,” entry 7.

⁷ 42 U.S.C. § 7545(o)(7)(D).

Recommendations

The 2014 volume for conventional (corn) ethanol is set at actual volume of 13.25 billion gallons per year. This volume represents a record amount of conventional ethanol use. The 2015 implied volume for conventional corn ethanol represents an increase over the 2014 record level of consumption of 1.1 percent, despite a reduction in total corn supply (production, carry over and imports) of 0.9 percent. This proposed level is, to use EPA's phrase, "ambitious." Combined with the effects of the nine percent rate of growth in ethanol exports so far in 2015 (following 33 percent growth in 2014), NCC recommends that the 2015 required volume obligations be reduced so that the corn ethanol implied volume remains set at the 2014 levels.

The implied volume for conventional corn ethanol in 2016 under EPA's proposal is 14 billion gallons. This would exceed the blendwall projected by EIA's Short Term Energy Outlook published in July 2015 (13.9 billion gallons). EPA has made adjustments to the 2014 and 2015 required volume obligations in order to avoid exceeding the blendwall. This proposal is a reversal of that policy.

Establishing a volume that exceeds the blend wall would increase the value of RINs, which would impact gasoline prices and make ethanol's demand for corn more inelastic causing an increase in corn prices and shorting the feed market of corn. Moreover, increasing the volumes of biofuels above the blendwall also has an out-year, bow-wave effect. In 2016, any inventory of excess RINs would necessarily be used for compliance with the RFS. With higher RVOs, the market relies on RINs acquired and carried forward from earlier years to meet compliance. Maintaining RVO levels above the blend wall exhausts the supply of available RINs necessary to meet the obligation. Thus, the impact of exceeding the blendwall in 2016 will have spillover effects in 2017 and beyond.

Finally, combined with the trend toward ethanol exports, an implied volume of 14 billion gallons of conventional corn ethanol in 2016 under the RFS would almost certainly exceed the 15 billion gallon limit on ethanol production envisioned in the EISA statute. Therefore, NCC recommends a significant reduction in the 2016 required volume obligations sufficient to bring the conventional corn ethanol volume below the 10 percent blend wall.

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. NCC believes the volumes proposed for 2015 and 2016 should be further reduced to limit the disruptions to the corn market and nation's feed supply.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Brown', written over a light blue rectangular background.

Mike Brown
President, National Chicken Council

Sources:

US Government Accountability Office, Petroleum Refining: Industry's Outlook Depends on Market Changes and Key Environmental Regulations, 14 March 2014

Energy Information Agency, Annual Energy Outlook 2007

Energy Information Agency, Short Term Energy Outlook June 2015

Congressional Research Service, Renewable Fuel Standard: Overview and Issues, 14 March, 2013

Energy Information Administration Today in Energy, March 26, 2015

Congressional Budget Office, The Renewable Fuel Standard: Issues for 2014 and Beyond, June 6, 2014