

August 17, 2018

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-2018-0167; FRL-9980-37-OAR; Renewable Fuel Standard Program: Standards for 2019 and Biomass-Based Diesel Volume for 2020

Dear Acting Administrator Wheeler:

The National Chicken Council (NCC) represents companies that produce and process more than 95 percent of the chicken in the United States.¹ According to data in the National Corn Growers' Association's (NCGA) 2018 World of Corn statistical report, the poultry sector, 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, chicken producers have faced \$63 billion in higher feed costs. As corn users, therefore, NCC's members are substantially impacted by RFS and its impacts on the corn market and feed supply.

2019 Proposed Volumes

EPA has proposed the following volume obligations for biofuels under the RFS for 2019, and for biodiesel in 2020:

Biofuel Category	2019	2020
Cellulosic	381 mgy	n/a
Biomass Biodiesel	2.1 bgy	2.34 bgy
Advanced Biofuel Total	4.88 bgy	n/a
Total Renewable Fuels	19.88 bgy	n/a
Implied Conventional Volume	15 bgy	n/a

Source: Federal Register

EPA's proposed required volume obligations (RVOs) boosts the overall biofuels volume to 19.88 billion gallons; that represents 10.88 percent of total over-the-road fuel use projected for 2019, including both gasoline and diesel. The proposed increase above the 2018 volume requirements is 590 million gallons, all of which would fall under the advanced biofuel category. Of that amount, EPA has proposed a 93 million gallon increase for cellulosic for a total of 381 million gallons.

The statutory requirement for cellulosic biofuel, however, is 8.5 billion gallons. EPA has exercised its full cellulosic waiver authority and reduced that volume for cellulosic fuel in 2019 by more than 8.1 billion gallons. This waiver again meets the conditions for the reset of the statutory volume targets provided under the Clean Air Act.

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

While NCC acknowledges that EPA did not solicit comments on the reset with the 2019 rule, the 2018 proposed rule did discuss the provisions of the reset trigger and noted that the Administrator had directed EPA staff to begin a technical analysis to inform a future rulemaking under the reset provision. Incorporated herein, by reference, as if fully set forth at this point, are NCC's comments on the provisions on the reference to the reset trigger as provided by the 2018 rule.

That reset process, per the statute, requires an analysis of, among other items:

... the impact of the use of renewable fuels on other factors, including job creation, the price and supply of agricultural commodities, rural economic development, and food prices.

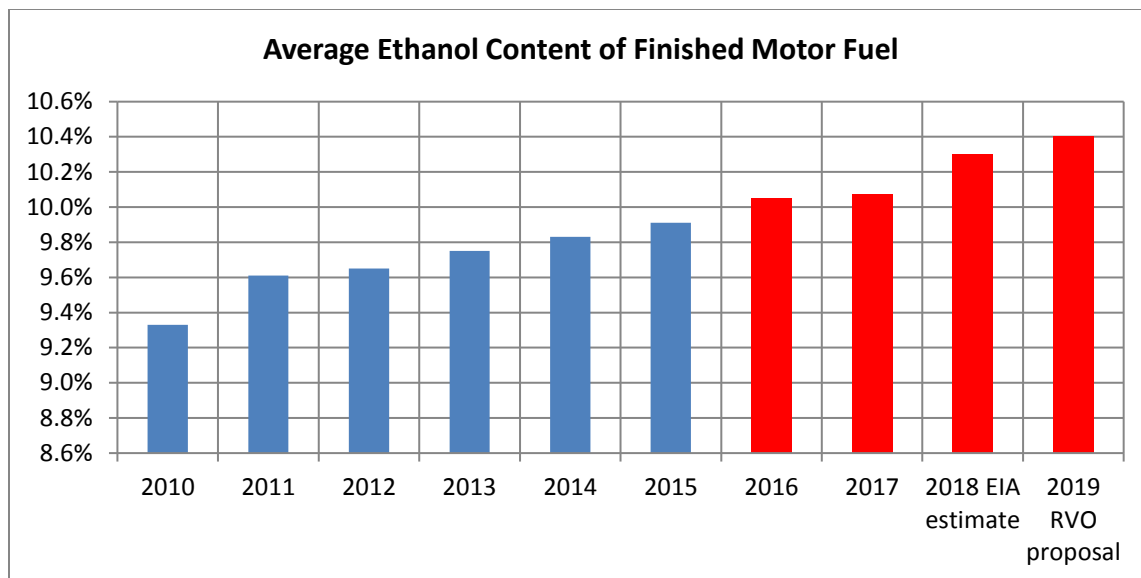
The economic impact of the RFS has carried over to feed prices and costs of production of broilers, as well as consumer costs for poultry products. Moreover, the RFS volumes to date have had an adverse impact on the poultry industry's ability to create and maintain jobs and provide economic development in rural areas. Thus, NCC will look forward to and welcome the opportunity to comment on the forthcoming reset rule.

Regarding the 2019 rule, EPA is proposing an equal reduction for the overall advanced biofuel category and the renewable fuel total as it is exercised in the cellulosic waiver. 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.

EPA is proposing to leave the conventional ethanol implied mandate at 15 billion gallons, the statutory cap for that residual category of fuel. NCC urges that the effective conventional biofuel volume be reduced.

Conventional Biofuel Volume

The Energy Information Administration (EIA) estimates that in 2017 the 142.85 billion gallons of finished motor gasoline consumed in the U.S. contained about 14.39 billion gallons of fuel ethanol. That was an average blend of 10.07 percent. In the July 2018 Short Term Energy Outlook (STEO) published by EIA, total motor gasoline use in 2019 is forecast to rise to 9.4 million barrels per day, which is the equivalent of 144 billion gallons. That would be the highest level of annual average gasoline consumption on record, surpassing the previous record set in 2017. Nonetheless, even with a forecast for record gasoline consumption, the conventional ethanol RVO for 2019 implies an aggregate ethanol blending rate of 10.4 percent, which is considerably more than the E10 blend wall.



Source: NCC with EIA and EPA data

EPA explicitly recognizes the volume constraints imposed by the 10 percent blend wall. In the proposed rule, the agency cites the “constraints associated with the E10 blend wall” as a reason not to increase the rule’s estimated volume of imported sugar cane ethanol despite recognizing that the 590 million gallon increase in the advanced biofuel RVO would create an incentive for increased imports. EPA, therefore, is inconsistent in its approach to setting the RVO. The agency considered the impact of the blend wall on advanced ethanol but not on conventional ethanol.

In addition to the feed supply impacts which concern NCC, the RVO’s overreliance on conventional ethanol results in higher greenhouse gas emissions than would be the case with larger volumes for advanced ethanol fuels from non-corn starch ethanol developed through the RFS. The impact of this overreliance on conventional ethanol, and specifically that made with corn as the primary feedstock, is chronicled by EPA’s Office of Research and Development in its literature review of peer reviewed research cited in EPA’s Second Triennial Report to Congress on Biofuels and the Environment.

NCC urges EPA to effectively reduce the conventional ethanol volume to 14 billion gallons in order to more appropriately reflect the actual projected use of motor gasoline and to better meet the goals of the RFS in terms of reducing the lifecycle greenhouse gas emissions from fuel use.

Advanced Biofuel Volume

Based on the explanation in the proposed rule, EPA’s implicit assumption in setting the volume obligations for advanced biofuel is that the higher volume would be met with expanded domestic biodiesel production. With a reduction in biodiesel imports resulting from new duties on Argentinian and Indonesian biodiesel and renewable diesel, however, the amount of feedstock used for biodiesel production necessarily will increase. In addition

to virgin vegetable oils, EPA indicates that it expects increasing volumes of distillers' corn oil (DCO) to be used as feedstock for biodiesel.

DCO production results from oil extraction from co-product distillers grains produced during dry mill ethanol production. According to EIA, in 2016 DCO used as feedstock for biodiesel was 1.306 billion pounds. Next year it is projected to be 2.782 billion pounds. This production is driven almost exclusively by the EPA's aggressive RVO. The defatting of DDGS to produce DCO for biodiesel feedstock disadvantages broiler production as it limits options for feedstuffs.

Each bushel of corn made into ethanol via the dry mill process typically yields about 17.5 pounds of DDGS. Those 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 defatting DDGS 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. Last year, only about 60 percent of broiler production included some DDGS in the rations with average inclusion rates at 5 percent or lower.

Impact of RINs

In the proposed rule, EPA requests comments on the impact that potential regulatory changes regarding renewable identification numbers (RINs) could have on the RIN market, as reducing the cost of RINs has been a priority of the Administration. RIN values reflect the cost of compliance with the RFS and are an implicit subsidy for biofuel production paid for by the obligated parties under the RFS.

As EPA states in the proposed rule

*... obligated parties, including small entities, are generally able to recover the cost of acquiring the RINs necessary for compliance with the RFS standards through higher sales prices of the petroleum products they sell than would be expected in the absence of the RFS program. This is true whether they acquire RINs by purchasing renewable fuels with attached RINs or purchase separated RINs. The costs of the RFS program are thus generally being passed on to consumers in the **highly competitive marketplace** (emphasis added).*

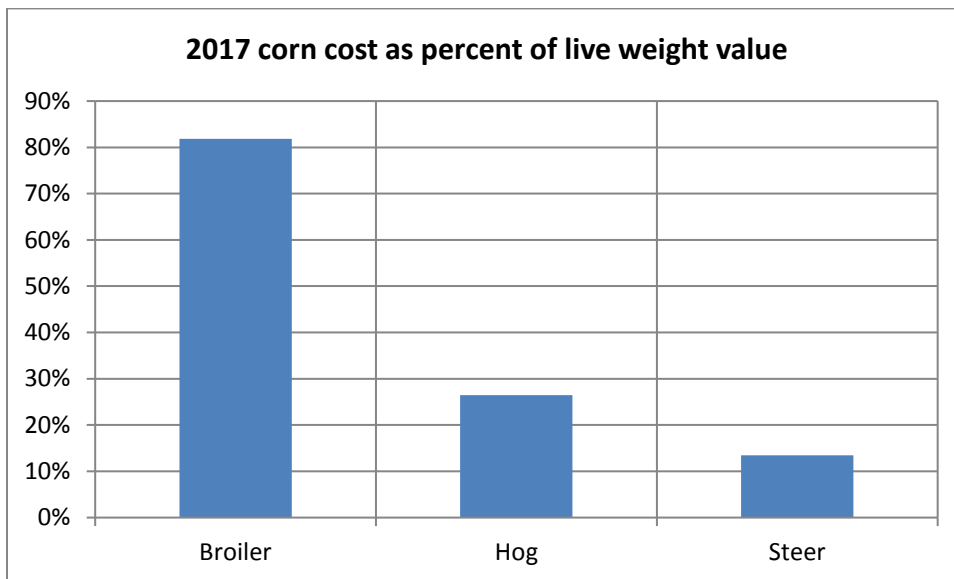
While the costs of compliance with the RFS is ultimately borne by consumers, including motorists, NCC takes exception to the characterization of a "highly competitive" fuel market being the reason RINs costs are passed on to motorists. RINs costs are passed on to

motorists because the RFS mandate precludes other fuels from competing in the market and mandates biofuels blends.

As an implicit subsidy, RINs become part of the value of each gallon of biofuel to which they are attached. Thus as the price of D6 RINs for conventional ethanol increases, so too does the ability for ethanol producers to bid up the price of corn. Conversely, when RINs prices drop, the impact on the price of corn can be limited.

Poultry producers must compete with ethanol mills for corn. With no mandate that establishes a minimum volume of chicken and products that must be consumed in the market, chicken producers must absorb the higher costs of corn that can be bid up by high RIN values. This impact on corn prices puts chicken producers at a competitive disadvantage in a truly competitive protein market. This is especially so as:

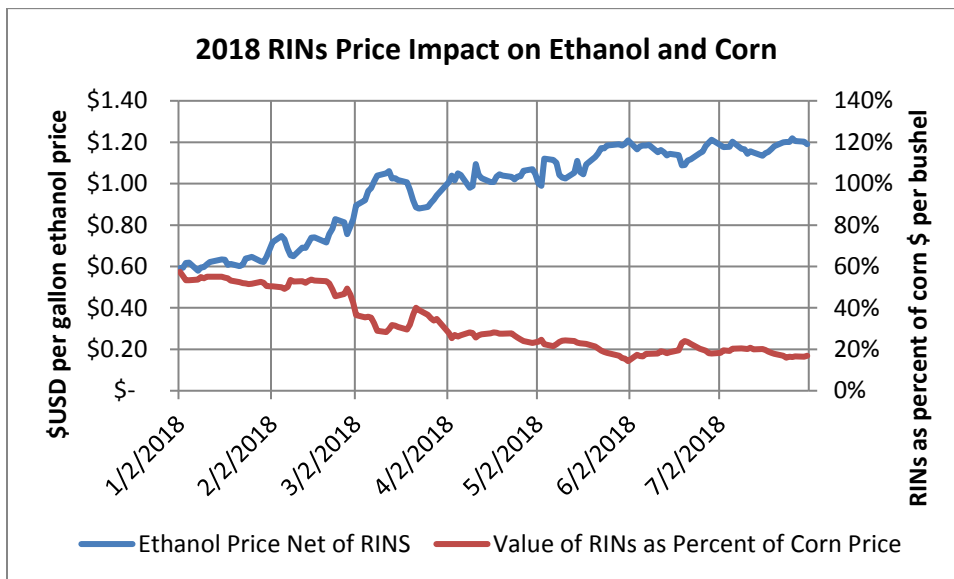
- chicken producers are less able to use DDGS as an alternative feedstuff compared to red meat production, as explained previously; and
- corn represents a considerably higher percentage as a cost of production compared to the average live weight value of chickens versus hogs and cattle.



Source: NCC with USDA data

Under the RFS, the effective cost to obligated parties is the cost of ethanol-net-of-RINs price. Thus, as RINs prices rise, the net marginal cost of blending ethanol at a fixed price is actually reduced for obligated parties, incentivizing increased blending. In the case of corn ethanol, higher RIN values can provide ethanol producers an economic advantage in purchasing corn over other corn users such as poultry and livestock feeders as the value of the RIN is imputed into the cost of the ethanol. Poultry producers and their customers receive no such relief and must absorb or pass on the higher costs of corn.

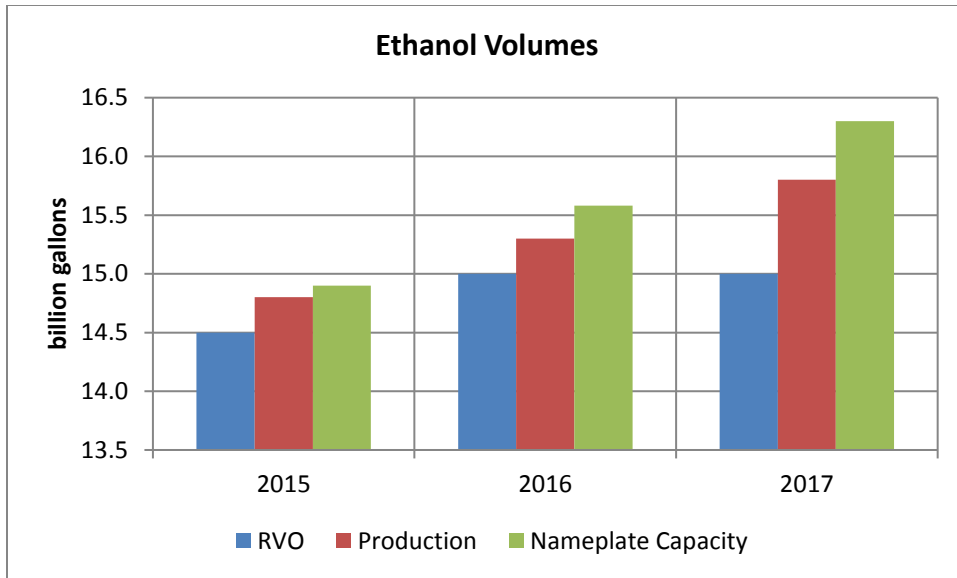
The chart below shows the dynamics of RINs values. As RINs prices rise, the net cost of ethanol drops for obligated parties, but the value of RINs as a percent of the price of a bushel of corn to poultry producers rises. The subsidy to ethanol producers and obligated parties is passed on to motorists consuming retail fuel as EPA notes, but it is also partially borne by chicken producers through corn prices. Thus, as RIN prices drop (as they have this year) the cost of ethanol to obligated parties increases and the value of RINs as a percent of corn decreases.



Source: NCC with USDA, EIA, OPIS data

In short, setting the RVO too high encourages the over-production of conventional corn based ethanol which triggers various economic dynamics that are damaging and/or potentially damaging to other non-biofuel, non-subsidized buyers in the corn market, such as broiler producers. Therefore the simplest way to reduce the burden of RINs prices and their distortion in the corn market is to lower the implied conventional ethanol volume mandate for the 2019 compliance year as requested above.

Meanwhile, despite the RVO, ethanol production and capacity continues to expand offering empirical evidence that U.S. ethanol production is a mature industry capable of competing in the fuel market. Evidence of the competitiveness of U.S. ethanol are the growing export volumes. Last year according to the Renewable Fuels Association the U.S. accounted for 58 percent of global ethanol production and exported 1.378 billion gallons according to EIA. This year, through May, exports are trending even 30 percent higher.



Source: NCC with EIA and RFA data

Restore the Off-Ramp

While the 2019 RVO proposed rule does not propose regulatory changes to address the cost of RINs, the rule does explicitly advise that should EPA decide to move forward on such policy changes, it would do so under a separate proposed rulemaking which would be informed by comments received in response to the 2019 RVO proposal. In that regard, NCC offers the following comments.

Since proposing the 2018 RFS volume requirements, EPA has held a number of meetings with stakeholders on RIN market operations and potential changes. These have included proposals to increase the volume of ethanol through a year-round waiver for E15, allow RINs to be generated for exports, capping RINs prices, and various approaches to providing waivers for small refineries and merchant refiners. However, EPA has neglected to consider the impact of RINs on the broiler industry, or for poultry and livestock feeders generally. As detailed above, RINs and the mandatory volumes of ethanol under the RFS have a direct impact on this sector.

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 statute providing for a relief mechanism known at the time of the RFS was passed by Congress as the "off ramp." Section 211(o)(7)(A) of the CAA provides that 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 based on a petition by one or more States, by any person subject to the requirements of the Act, or by the EPA Administrator on his own motion. Such a waiver must be based on a determination by the Administrator, after public notice and opportunity for comment that implementation of the requirement would severely harm the economy or the environment of a State, a region, or the United States.

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.

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 2008/09 and 2012, set the stage for longer term restrained production, as the impact was not only limited to broiler flocks but also affected breeding stock. This produced severe economic harm.

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.

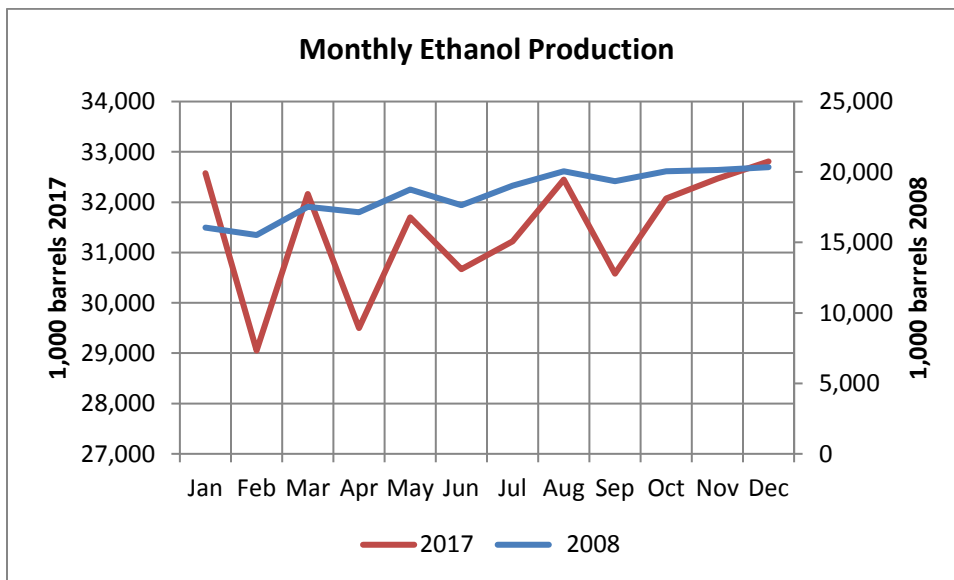
EPA states in the proposed rule its recognition that:

identifying severe economic harm caused by the implementation of RFS requirements is a difficult and complex issue and one of intense interest to a number of stakeholders.

EPA goes on to state:

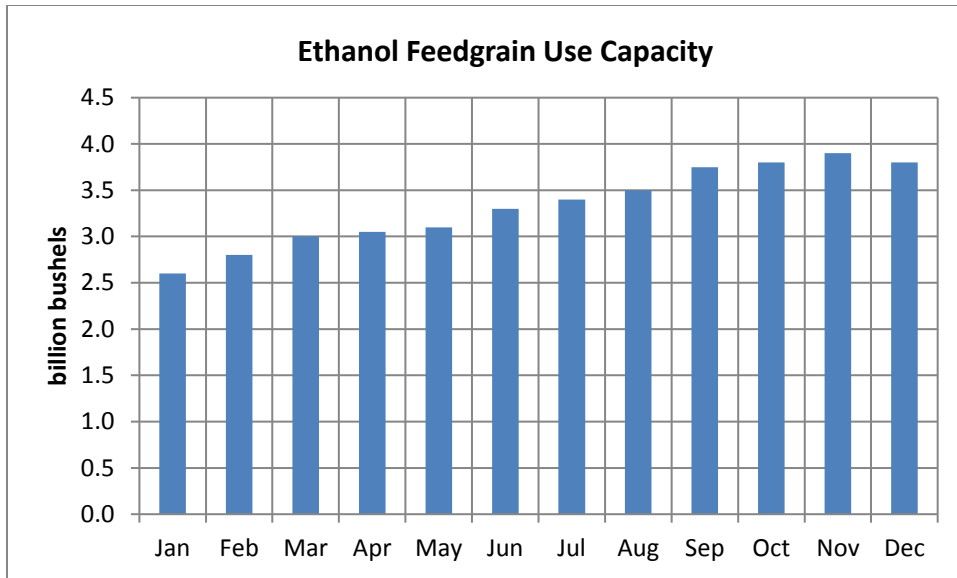
For example, in 2008, we examined modeling showing expected levels of production and price for both corn and ethanol with and without a waiver. We also provided quantitative estimates of the impact of a waiver on: Food expenditures for average and lowest quintile households; feeds costs for cattle, pigs, poultry and dairy; and gasoline prices and gasoline expenditures for average and lowest quintile households.

However, the situation in 2018 is vastly different than in 2008. In 2008, the first year under the expanded volumes of the RFS II, the demand for corn by ethanol producers was significantly more inelastic than today as the trend lines in the chart below illustrate. In fact, ethanol production in 2008 grew nearly 43 percent compared to 2007.



Source: NCC with EIA data

In 2008, ethanol plant operations were financed by investment capital, not operating margins, and with the new RFS mandate imposed on the corn market, ethanol producers were expanding rapidly to secure a market share. Driven by the expanding RFS schedule toward a 15 billion gallon RVO, feed grain use capacity by ethanol mills in 2008 grew 46 percent from January to December. The increased capacity in 2018 over 2017 is estimated by EIA's latest forecast to be 4.9 percent



Source: Kansas State Research and Extension (O'Brien and Wolverton, 2009)

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 poultry companies ceased operations, filed for bankruptcy, or were acquired by another company. That constitutes severe economic harm. The chicken industry remains just one flood, freeze, drought or other supply shock away from another crisis like in 2008-09 and 2012. Therefore, NCC suggests that EPA adopt a transparent and predictable off ramp when corn inventories are low.

NCC suggests that a predictable, transparent off ramp fair to all involved be based on the USDA stocks-to-use-ratio in the June 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%

Conclusion

NCC strongly supports efforts to create a more reasonable and sustainable approach to the nation's biofuel policy. The compelled diversion of corn from feed to fuel has exacted a heavy toll on the domestic chicken industry, American consumers, and results in higher fuel prices as EPA avers.

NCC believes the proposed volume for 2019 is overly aggressive, overly reliant on corn-based ethanol, and causes disruptions to the nation's feed supply. Therefore the proposed volumes, especially conventional ethanol, should be reduced in the final rule.

Finally, as EPA has indicated it is undertaking technical analysis to inform future rulemakings under the reset provision (per 2018 proposed rule) and to address RIN market operations (per the 2019 proposed rule), NCC looks forward to and welcomes the opportunity to comment on both, and specifically urges EPA to provide a more workable and transparent off-ramp process for times of economic stress on chicken producers.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Mike Brown', with a long horizontal flourish extending to the right.

Mike Brown
President, National Chicken Council