State of the Chicken Industry: 2014

Hearing of the Subcommittee on Livestock, Rural Development and Credit Committee on Agriculture U.S. House of Representatives

The Honorable Eric A. "Rick" Crawford,
Chairman

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Longworth House Office Building
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Good morning, Chairman Crawford, Congressman Costa, and Members of the Subcommittee. Thank you, Chairman Crawford, for the opportunity to participate in this important and timely hearing on the status of the U.S. chicken industry and issues impacting the state of the poultry industry. On behalf of the National Chicken Council, I appreciate your invitation to provide comments and recommendations regarding a number of vital issues and difficult challenges confronting our industry. U.S. chicken producer/processors will certainly need the Subcommittee's support if the chicken industry is to overcome the increasingly broad array of difficult issues and challenges some of which I will outline in my statement.

I am Bill Roenigk and am presenting this statement on behalf of the National Chicken Council, the organization that represents companies that produce and process over 95 percent of the chicken in the United States. The 30-plus vertically-integrated firms that comprise the federally-inspected chicken industry, I can assure the committee, are a very dynamic, forward-looking and essential part of American agribusiness. Most importantly, these companies can be characterized as being "survivors." They work hard every day to continue to earn that status.

Snapshot of 2014 Chicken Production

USDA estimates that chicken production this year will reach a record high of 38.1 billion pounds on a ready-to-cook weight basis, 1.8 percent above 2013, a percentage increase very comparable to last year's rate. Current favorable market conditions would normally stimulate production to be somewhat higher, that is, a percentage increase more aligned with the long-run annual average of 4 percent. So, why are chicken producers not stepping-up production to better match the long-term average of 4 percent? We would if we could, but we can't. Yes, we would like to produce more pounds of chicken if we could, but unfortunately we, at this time, cannot.

The basic, primary reason for the industry's inability to step-up production can be attributed to problems caused by a failed policy that has been with us since 2006. The devastating impact of an inflexible renewable fuel standard for conventional biofuels, especially following the somewhat unprecedented

drought of 2012 that severely reduced the corn harvest continues to have broad and deep ramifications. Very high and very volatile corn prices even prior to 2012, most notably in 2009 when chicken production decreased almost 4 percent for only the third year since 1950 helped set the stage for the restrained production. Not only did chicken producers have to significantly adjust production downward to survive, but also the negative economic ripple effect of an inflexible RFS caused the primary broiler breeders to also significantly adjust their production downward. Further, broiler breeders had to curtail their production plans for the future. Primary breeders are the companies that are the lifeblood of our business because they generate the grandparents, great grandparent, and pedigree flocks. The primary breeders suffered significant financial strain during this time as orders for day-old pullet chicks were reduced or even cancelled by chicken producers who were also confronting severe financial pain because of an inflexible RFS. It is obviously taking the primary breeder companies time to rebuild their grandparent flocks that produce the day-old pullet chicks that mature in seven months into the mother hens for our chickens. In time the primary breeders will generate larger, more sufficiently-sized flocks. At that time they will again be able to provide pullet chicks at a more normally-expected rate. In turn, chicken companies will enlarge their hatchery supply flocks to better meet market needs. Until then, the chicken industry will continue to grow but it will be at a more measured pace.

We are especially aware that increased chicken production at this time and for the foreseeable future would be appreciated by consumers. As cattle and hog producers confront their own challenges to produce more beef and pork, many consumers, if not most consumers, increasingly find chicken a favorable alternative. When the competition provides an opportunity to better compete, it is a bit frustrating to find yourself, as the chicken industry does, in the position of "we would if we could but we can't," especially when we hear "It only takes seven weeks to grow a chicken."

In short, the state of the industry, at least for those surviving firms, is good in terms of net margins but the industry continues to be frustrated by the results of an inflexible renewable fuels policy and program. The often-dismissed fact, especially today as grain prices moderate, is that the RFS has inflicted

deep and sustained damage to chicken production. In the end, consumers are once again paying the price for a biofuels policy and program that are broken beyond repair.

High and Volatile Corn Prices Force "Survivor" Chicken Companies to Cope

With the many difficult challenges chicken companies have faced and are facing in production, processing, and marketing, firms operating today have certainly earned the title of "survivor." Over the past five decades broiler production has decreased on an annual basis only three times: two years in the mid-'70s and then again in 2009. With the very steady track-record of increasing production, the industry's growth has offered increased opportunities for growers to expand their operations and build their net worth. Since the Renewable Fuels Standard (RFS) was implemented in 2006, that strong track record of growth has been in very serious jeopardy because an overabundance of corn is being diverted to fuel production and thus squeezing-out corn that should be available for feed, even when there is not an adequate supply of corn for all users.

In October 2008 when corn prices escalated to record high levels, it became more and more evident that the national policy regarding corn-based ethanol has been heavily tilted toward using corn for fuel rather than for food/feed. The need to re-balance the policy is long overdue. Picking one market for corn to be the winner at the expense of the loser should not be the function of government. Mandating the use of ethanol and protecting ethanol's feedstock from competition is double over-kill. Greater energy independence is a worthy goal for the United States, but the negative and unintended consequences of moving too far too fast with corn-based ethanol have become overly apparent. For the chicken industry, like other animal agriculture producers, fewer pounds of product have been produced and will also not be produced in the foreseeable years. Consumers who have sufficient income to devote to cover the higher costs of food will reach deeper into their pocketbooks and pay the higher food prices. Consumers in this country and around the world who cannot continue to afford animal protein in their diets will have to shift to other foods. However, with land

being a limiting factor in the production of food, it is most likely all foods will be higher in price, whether of animal origin or not.

It can reasonably be argued that U.S. animal agriculture when compared with ethanol producers and overseas buyers is the most vulnerable corn buyer whenever there is a shortfall in corn.

Renewable Fuel Standard for Conventional Biofuel: Time to Repeal

Recent market developments and government actions again re-confirm that the renewable fuel standard for conventional biofuels is broken beyond repair and, therefore, must be repealed. The RFS imposes biofuel blending requirements that greatly and negatively impact the chicken industry. When the original RFS was implemented during the 2005/06 crop year, ethanol consumed about 15 percent of the corn crop. By the 2012/13 crop year, ethanol's consumption reached more than 43 percent of the crop.

EPA has proposed a reduction in the RFS this year, but nonetheless, ethanol will consume about 40 percent of the 2013/14 U.S. corn crop. Despite EPA's proposed adjustment this year, under the statute providing for the RFS (the Energy Independence and Security Act of 2007) corn ethanol is still mandated to grow further.

The RFS has created a very uneven playing field for chicken companies to compete for necessary feedstuffs. Since the RFS was enacted, chicken companies have incurred over $44 billion in higher actual feed costs due to the RFS. Adding together the higher cumulative feed costs for chicken, turkey, table eggs, and hogs, the total is almost $100 billion in additional feed costs. Also higher feed costs for other agricultural animal producers, such as dairy and beef cattle, would add measurably to the $100 million cost. To put this $100 million of added feed cost in perspective, it can be noted that ethanol production has totaled a cumulative 85.4 billion gallons since the RFS was expanded in 2007. Spreading the $100 million over the 85.4 billion gallons of ethanol means poultry and swine producers have been forced to incur an additional $1.35 per gallon by paying these higher feed costs. This perspective, I suggest, helps illustrate the food versus fuel situation.

Most importantly, from 2007 through 2013, due in large part to high and volatile feed costs brought on by the RFS, at least a dozen chicken companies have ceased operations, filed for bankruptcy, or have been acquired by another company. And, the beat goes on, with two more chicken companies so far this year being acquired by other companies. While corn prices have moderated somewhat this year from their recent record highs, the chicken industry is only one drought away from another economic crisis.

The National Chicken Council believed at one time that the original RFS included a workable provision that provided for an "off ramp" in times of economic crisis. On at least two major occasions, that belief has proven to be very naïve. In 2012, the worst drought in more than 50 years coupled with record high and very volatile corn prices was deemed insufficient to trigger a temporary waiver of the RFS. Similarly, in 2008, historically high corn prices did not trigger the waiver under EPA's authority. At the same time with ethanol producers faced with domestic blend wall limits, the RFS gives ethanol producers such leverage that they are able to produce and export surplus ethanol, which further constrained the corn market in the United States. One has to ask if such exports and the import of Brazilian sugar cane based ethanol under the "advanced" category of the RFS further the law's intent to have the United States gain greater energy independence.

EPA's proposal for the 2014 RFS reflects again clear evidence that our nation's biofuels policy is broken, and broken well beyond repair. The issues of the blend wall, food versus fuel, mandates for non-existing cellulosic ethanol and other issues will not go away until Congress deals with the reality of the unworkable, unsustainable, imbalanced, and misnomered RFS.

The National Chicken Council strongly supports efforts to create a more reasonable and sustainable approach to the nation's energy policy. We recognize EPA's recently proposed action to adjust the RFS may prove to be a small first step. Nonetheless, Congress must provide a longer term, more certain solution by repealing the mandate for corn-based ethanol.

Over-Reaching GIPSA Regulations Need Addressing

In the 2008 Farm Act Congress directed the U.S. Department of Agriculture/ Grain Inspection, Packers and Stockyards Administration (GIPSA) to develop criteria in five areas of poultry and swine contracts. The five areas were:

- Undue or unreasonable contractual preferences/advantages to/for particular contracting parties;
- Whether a live poultry dealer or swine contractor has provided reasonable notice to a poultry grower or hog farmer of any suspension of delivery of birds or hogs;
- Reasonable requirements for additional capital investments over the life of a contract;
- Provide reasonable period of time for a poultry/swine grower to remedy a breach of contract; and
- Reasonable terms for arbitration in poultry and swine contracts.

When USDA published its proposed rule in the *Federal Register* on June 22, 2010, interested parties were given 60 days to comment on the rule. The very short comment period provided an insufficient time for a serious and thorough analysis of the rule. Further, there was no credible, adequate economic impact analysis accompanying the proposed rule. Most egregious, the proposed rule went far beyond what Congress had instructed USDA to consider. After significant debate, USDA extended the comment period an additional 90 days.

Six areas in the proposed rule where GIPSA went beyond what Congress instructed are as follows:

- Onerous recordkeeping requirements;
- Redefines "competitive injury" requirements;
- Redefines the term "fairness";
- Additional capital investment requirement for grower to recoup 80% of costs;
- Modification in the payment system to growers; and
- Disclosure and online publication of contracts.

The rule, as proposed, would have burdened the broiler industry with a cost impact of over $1 billion during the first five years, and further, would change the way companies and growers do business that has been successfully conducted for more than five decades. The vertically-integrated industry structure with growout contracts with family farmers is a system that has been successful and has made the U.S. chicken industry the most efficient and economically-viable in the world. The rule would have put the U.S. chicken industry at a global disadvantage, as other countries would not have to face these onerous requirements. The rule would have created greater uncertainty and cause unnecessary and costly regulatory and legal burdens in the marketplace by making it much more difficult for companies and contract growers to get competitive financing. In addition, companies would not have the incentive to use capital to improve and expand operations; rather there would be more of a financial incentive to restructure their businesses to include their own company growout operations. In short the rule has the government dictating private contract terms between businesses.

Since June 2010, when the rule was proposed, poultry and livestock producers have been working to have the GIPSA rule be compatible with Congressional intent. After the rule was proposed, Congress asked for an economic impact analysis of the rulemaking.

Despite objections raised by bipartisan opposition in Congress, GIPSA issued a final rule in December 2011 that still exceeded the agency's authority under the Packers and Stockyards Act and also failed to comply with the 2008 Farm Bill. Congress de-funded the rulemaking effort in the FY2012 Agriculture Appropriations bill.

Defunding language was also included in both of the FY13 continuing resolutions and the FY2014 continuing resolution. Similar language needs to be included in the FY2015 Agriculture Appropriations bill. Such language or amendment mirrors the action taken by Congress in the appropriations bills and signed by the President four times. The defunding amendment was also offered during the July 2012 markup of the House version of the Farm Bill and passed with an overwhelming majority voice vote.

Defunding language has been passed by committee action and by the entire Congress five times over the past three years (FY12 appropriations bill, 1st FY13 CR, 2nd FY13 CR, House Agriculture Committee Farm Bill markup in July 2012, and House Agriculture Committee Farm Bill markup in May 2013). Clearly, the track record of passage by Congress reflects strong Congressional support to correct the GIPSA rule. The National Chicken Council urges the Subcommittee to support language to correct the GIPSA Rule in the FY2015 Appropriations bill.

Prompt Passage of Trade Promotion Authority Necessary/TPP and T-TIP Success Imperative

Congressional approval of Trade Promotion Authority (TPA) which was previously called "fast track authority" is necessary to ensure a more successful outcome for the on-going negotiations for the TransPacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (T-TIP). It is necessary to have TPA enacted because it will be essentially impossible to gain Congressional trade pact approval otherwise.

TPA legislation provides for an up or down vote in the House and Senate without the opportunity to provide amendments or make changes in the agreements. The previous authority expired in 2007 and this vacuum has given negotiators on the other side of the table an unnecessary excuse to drag their feet toward reaching a final, beneficial deal. The "heavy lifting" in negotiations is now taking place, as we have seen in recent reports.

Trade Promotion Authority legislation must receive prompt passage so that the position of the U.S. international trade negotiators is strengthened as they continue to move forward to successfully conclude these two critically important agreements. Both pacts are expected to include provisions of great importance and benefit to U.S. poultry interests.

At the T-TIP Stakeholders Forum held by USTR late last year accompanying the National Chicken Council statement were two letters that had been previously delivered to the U.S. Trade Representative in 2013. Both letters were signed by over 45 agricultural organizations. Both letters stated "(w)e strongly believe that a comprehensive and ambitious U.S./EU FTA will

generate economic growth, reduce market volatility, and create thousands of new jobs on both sides of the Atlantic. But such a momentous free trade agreement must be built on the foundation established by the United States in the TPP and other U.S. free trade agreements, which build, as you have said, 'the best trade policy for the future'". As the negotiators for both TTP and T-TIP move toward a conclusion, that statement is even more important.

At one time, Russia and China were the United States two largest poultry export markets, but these two markets have been severely disrupted with trade curtailed from previous levels. It is now more important than ever to expand poultry sales to other world markets. Passage of these trade agreements would cost U.S. taxpayers essentially nothing but would create thousands of jobs in the United States. It is difficult to think of a more appropriate time than now, to have TPA approved and for TTP and T-TIP to be successfully concluded. This is especially true if more jobs and an improved economy are indeed top national priorities.

Although international trade rules in the post-Uruguay Round world are certainly not perfect, they have been improved significantly and are generally accepted and observed by the majority of WTO member nations. Rules for enforcement of trade obligations have also been strengthened through an improved system of dispute settlement, and can be very effective if our government is willing to use those enforcement mechanisms and to insist on adherence by our trading partners to the rule of law.

NCC supports the move toward improved free and fair international trade. That position has been demonstrated and shared with Congress countless times. With more than 20 percent of our production being exported to over 100 other countries out outside-the-border customers are becoming more and more important, especially for our dark meat parts.

TTP, if successfully concluded for U.S. poultry, will expand U.S. chicken exports by at least $500 million annually and possibly more, if restrictive market access measures and sanitary/veterinary issues and other non-tariff trade barriers can be addressed.

T-TIP could benefit U.S. poultry exports by over $600 million yearly. Such increases would help generate more farm income, jobs in rural, districts, and improve the U.S. trade balance.

Resolution of Poultry Trade Issues Would Expand Exports

Timely resolution of certain pending trade issues more specific to U.S. poultry would also greatly enhance the opportunity to increase U.S. chicken exports. It is recognized that the Office of the U.S. Trade Representative has an abundance of priorities on its agenda, but there are a number of international poultry trade disputes that require a greater sense of urgency.

Among the special concerns of the U.S. chicken industry are the following:

- The effectiveness of international rules in challenging unfair practices was demonstrated when the U.S. government challenged the unfair imposition of antidumping duties on U.S. poultry by the Republic of China. Prior to 2009, the United States was exporting approximately $700 million of chicken products to China. But in 2009, after the U.S. imposed safeguard duties on Chinese tires, and Congress discriminated against the Chinese by passing the so-called DeLauro Amendment that denied China the right to apply for USDA Food Safety and Inspection Service approval of some of its products (the only country Congress singled out for this treatment), China retaliated and imposed dumping duties on our poultry products. Unfortunately, because of the size and success of our exports, our industry became the target for retaliation and a pawn in this trade dispute between China and the United States.

  WTO ruled in August 2013 that China had violated numerous obligations when China imposed antidumping duties and countervailing duties on U.S. chicken. China did not accept the WTO finding and a WTO panel was established in March this year to determine if China's claim of consistence is valid.

  Also, quite irksome is China's statewide bans on poultry from Virginia, Arkansas, Wisconsin, New York, and Pennsylvania due to China's avian influenza concerns. China's bans are without merit and approval

of the states to again export poultry to China must be accomplished as soon as possible.

Regarding a related matter, I am sure members of this Committee, like the NCC, have received a volume of correspondence regarding the issue of "Chinese Chicken" coming into the United States. Our industry's ability to meet and exceed both domestic and international standards for wholesomeness, food safety, and quality has granted us unparalleled access to foreign markets and solidified our ability to compete effectively and efficiently on a global scale. We believe any country that is able to meet the stringent safety standards set by USDA especially those involving HACCP and pathogen reduction programs, should be able to compete in the U.S. marketplace.

In order to be effective, free trade must operate as a two-way street. If we expect fair treatment from trading partners based on sound science and analysis, it is right that we afford our trading partners the same fairness.

- India was taken to the WTO in February 2013 as a way to have India begin to open its market for U.S. poultry. A WTO Dispute Settlement Panel was established at that time to hear the case and determine a decision. India uses a variety of measures that prevent U.S. poultry the opportunity to have market access. Chief among the non-tariff trade barriers used by India is its position regarding avian influenza. India's stance is clearly inconsistent with the World Health Organization for Animal Health (OIE) guidelines and the WTO Agreement on Sanitary/Phytosanitary Measures (SPS). No country in the world exceeds the United States in being more aggressive, more comprehensive, and more rigorous in preventing, controlling, and eradicating avian influenza. A conservative estimate is that if India provided for fair market access for U.S. poultry annual sales would exceed $300 million.

- Indonesia's lack of providing market access for U.S. poultry is another WTO case that is pending. In September 2013 the United States joined

New Zealand and other countries in the effort to have the WTO determine if Indonesia's restriction on importing poultry are consistent with its WTO obligations. Indonesia uses a number of hurdles to prohibit poultry imports, including a non-automatic import licensing scheme, quotas, and other very difficult, costly paperwork. Having Indonesia open its market to poultry imports would greatly benefit U.S. exports.

- Mexico has a pending antidumping NAFTA Chapter 19 dispute against U.S. chicken leg quarters. Only three of the five NAFTA dispute-settlement process panelists have been appointed. This protracted procedure continues to create unnecessary uncertainty with poultry trade with Mexico. At the same time, Mexico has other commodity trade issues with the United States. U.S. chicken exporters are concerned that Mexico will take action against U.S. chicken as leverage to have other agricultural trade issues satisfactorily addressed by the United States. Mexico is using the dumping theory of the so-called "weighted average cost of production" which the WTO has determined to be both inconsistent with international trade rules and economically irrational. In similar WTO cases (China and South Africa) this theory was ruled to be in violation of WTO rules and the obligations of WTO member states.

- African Growth and Opportunity Act (AGOA) provides special duty preferences to the countries of sub-Saharan Africa, including the Republic of South Africa and a number of other important and potentially-important export markets for U.S. poultry. In 2000, the United States extended the benefits of AGOA to South Africa and in the same year (2000) South Africa imposed prohibitively high and illegal antidumping duties on U.S. poultry. Since 2000, U.S. poultry exports to South Africa have been essentially zero. Congress is now considering another extension of AGOA for South Africa and other countries.

  Earlier this year the National Chicken Council presented a statement to the U.S. International Trade Commission hearing regarding AGOA.

NCC at the ITC hearing stated that unless South Africa changes its policies, lifts its imposition of dumping duties against our poultry products, and allows trade to resume fairly and without restraint, NCC and other members of the U.S. poultry industry will strongly oppose any further extension of AGOA preferences to the Republic of South Africa. Fourteen years to be illegally shut-out of a market is far too long. Perhaps, being shut-out of the EU for 17 years is the only more egregious situation. The time has passed for the U.S. government to initiate a WTO Dispute Settlement case against South Africa. It is now time, actually well-passed time, for South Africa to remove its restrictions against U.S. poultry. U.S. poultry is entitled to have the opportunity to again have market access and give South Africa consumers an option to purchase U.S. poultry that is one-third the cost of South African chicken.

Congressional Attention Regarding Other Challenges Would Improve the State of the U.S. Chicken

In brief, there are a number of other challenges confronting chicken producers/processors. Chief among these issues are the need for immigration reform, especially a strengthened and more reliable E-verify system that allows employers to better secure a legal workforce; the need for a much better rail transportation system that has a greater capacity to more adequately and efficiently move grain, oilseeds, and other feedstuffs with rail rates that are fair to both the transporter and the rail transportation user; and the need for greater oversight and foresight regarding the supply of propane and related gases, especially during times of unusual cold weather conditions.

Conclusion

While there are many issues impacting the state of the chicken industry, I have limited my statement to what the National Chicken Council considers to be some of the top priorities. To summarize those priorities, I note the following:

- The rules of the game must be balanced and the playing field should be leveled to permit chicken producers and other animal agriculture producers to more fairly compete for the supplies of corn, especially in

years of short grain supplies. Since there is apparently no workable mechanism to adjust the RFS when necessary, Congress must repeal the RFS for conventional biofuels.

- With respect to the USDA/Grain Inspection Packers and Stockyards Administration's proposed rule addressing competition and contracting the poultry and livestock industries, Congress should approve defunding language, preferably permanently, regarding the provisions where USDA went beyond the instructions of Congress and the basic statute.
- Regarding the trade promotion agreements being negotiated, the National Chicken Council suggests, as have other groups, that these agreements be called U.S. job-creation agreements. Increased poultry exports as the result of implementing these agreements would definitely result in more jobs in the poultry industry and more family farmers growing poultry. Also, the more specific international trade actions being taken by the United States through the World Trade Organization must be pursued with more intense effort, and with a heightened sense of reaching a successful outcome in a timely manner.

The National Chicken Council, its members, and the many allied industry companies that support poultry production, processing and marketing look forward to working more closely with the Subcommittee and others in Congress so that poultry producers have a better opportunity to successfully manage the increasingly difficult challenges and issues. Improving the state of the poultry industry not only helps poultry companies and poultry farmers but, perhaps, more importantly will allow consumers of poultry products to continue to enjoy an ongoing, adequate supply of wholesome, quality chicken at reasonable prices.

Thank you, Chairman Crawford, Congressman Costa, and Members of the Subcommittee, for the opportunity to share the thoughts, comments, and recommendations of the National Chicken Council. I request that the National Chicken Council complete statement be entered into the record of the hearing. I look forward to your questions and comments.