

U.S. Senator Heidi Heitkamp, Ranking Member

**Subcommittee on Regulatory Affairs and Federal Management Hearing: Re-examining
EPA's Management of the Renewable Fuel Standard Program**

Opening Statement – As Prepared for Delivery

I want to start today by saying I wish we weren't having this hearing. I wish that there was no question over the management of the Renewable Fuel Standard, or RFS, and the Environmental Protection Agency's ability to implement it as Congress intended.

But unfortunately we are in a place where EPA has created great uncertainty for our biofuels producers—from corn ethanol to biodiesel to cellulosic ethanol producers.

And this uncertainty and lack of predictability is costing us investments, it's costing us environmentally, and it's costing us jobs.

I am a strong supporter of a true all-of-the-above approach to energy policy and security. Coming from North Dakota, that means everything from coal and wind energy generation to oil exploration and biofuels expansion.

And that's why I'm a strong supporter of the RFS.

North Dakota is a major oil producer, but we're also a major biofuels player. In North Dakota alone, thanks to the RFS, the biofuels industry represents \$2.5 billion in annual economic output and 8,912 jobs. In Oklahoma, the RFS helps create 4,316 jobs. In Wisconsin, it provides \$4.2 billion in economic output and over 19,000 jobs. In Iowa, \$19.3 billion in output and 73,371 jobs. I could go on.

These numbers are important to highlight, because the RFS is critical to our economy, and that's why it's so important that it be administered as Congress intended.

I'm glad the EPA finally released a new proposed rule for 2014, 15 and 16 ethanol volumes as well as 2017 volumes for biodiesel. This is an important first step, and I thank Ms. McCabe for her leadership in making that happen.

Unfortunately, the proposal continues to ignore Congressional intent and reduces Congressionally-mandated blend volumes, citing availability of distribution capacity.

The statute only allows for an inadequate supply waiver for domestic biofuels supply, not distribution capacity.

In fact, the 2005 House bill included a waiver provision for distribution capacity, but the final bill passed by the House and Senate did not.

So I hope when the EPA puts out its final rule this November they will toss out this flawed and disallowed reasoning and return management of the program to the way Congress intended. If they do that, the program will work just fine, as it did for the first years of the RFS.

“Certainty” needs to be a top concern when it comes to federal regulation, legislation, or anything else we do here in Washington. Providing certainty for producers and businesses is absolutely critical so they can plan long-term and grow their businesses.

And Congress provided this certainty in 2005 and 2007 when it passed and amended the RFS by setting very clear volumes and guidance on when those volumes may be waived. The best way to get back on track and provide certainty is following these very clear mandates.

Because this uncertainty has real consequences. I mentioned earlier the contribution the RFS has made to our states. Well, when managed out of line with Congressional intent, there are negative consequences.

For example, the advanced and cellulosic biofuel sectors have already lost \$13.7 billion in investment due to the EPA’s flawed proposals and delay.

For biodiesel, 54 plants in 30 states have closed or idled because of the lack of certainty from EPA. In 2014, nearly 80 percent of U.S. biodiesel producers scaled back production, and almost 6 in 10 idled production altogether. Our Velva, ND, biodiesel plant stalled production of biodiesel for the first part of 2015 as a result of RVO delays.

However, I must emphasize again that this is not a problem with the RFS, but rather EPA’s administration of it. As one testimony for the record noted, “EPA’s failure to issue RFS rules in a timely manner that is consistent with the law should not be misconstrued as a sign that the program is broken. Up until 2013, the program worked as intended to spur innovation and growth in the advanced and cellulosic biofuels space.”

I look forward to hearing from Ms. McCabe on EPA’s past successful administration of the program and how they can get back to implementing the program as intended going forward.