

# EXAMINING EPA'S MANAGEMENT OF THE RENEWABLE FUEL STANDARD PROGRAM

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON ENERGY POLICY,  
HEALTH CARE & ENTITLEMENTS,  
OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
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## EXAMINING EPA'S MANAGEMENT OF THE RENEWABLE FUEL STANDARD PROGRAM

Wednesday, December 10, 2014,

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON ENERGY POLICY, HEALTH CARE &  
ENTITLEMENTS,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 9:38 a.m., in room 2154, Rayburn House Office Building, Hon. James Lankford (chairman of the subcommittee) presiding.

Present: Representatives Lankford, Meehan, Farenthold, and Speier.

Also present: Representative Collins.

Staff present: Will L. Boyington, Majority Deputy Press Secretary; Molly Boyd, Majority Deputy General Counsel and Parliamentarian; Joseph A. Brazauskas, Majority Counsel; John Cuaderes, Majority Deputy Staff Director; Adam P. Fromm, Majority Director of Member Services and Committee Operations; Ryan M. Hambleton, Majority Senior Professional Staff Member; Erin Haas, Majority Senior Professional Staff Member; Laura L. Rush, Majority Deputy Chief Clerk; Sarah Vance, Majority Assistant Clerk; Jaron Bourke, Minority Administrative Director; Kelly Christl, Minority Counsel; Chris Knauer, Minority Senior Investigator; and Katie Teleky, Minority Staff Assistant.

Mr. LANKFORD. The committee will come to order.

Without objection, the chair is authorized to declare a recess of the committee at any time.

Let me give a quick update just on schedule, then I am going to slip into an opening Statement as well.

As many of you may know, we have quite a few things happening on the Hill this morning, including a lot of discussion about the omnibus package that went online last night. Both of our conferences are actually very engaged in going back and forth on that, so we will have fewer people on the dais. So Ms. McCabe, you will have to do this 9 hour hearing with just the two of us. Sorry. We will walk through the questions, and we are both well prepared to be able to walk through this together on it, so that is what you will see on the dais, is we are coming in and out.

I would like to begin by stating the Oversight Committee mission Statement. We exist to secure two fundamental principles: first, that Americans have the right to know that the money Washington takes from them is well spent; second, Americans deserve an efficient, effective Government that works for them. Our duty on the

Oversight and Government Reform Committee is to protect these rights.

Our solemn responsibility is to hold Government accountable to taxpayers, because taxpayers have the right to know what they get from their Government. We will work tirelessly in partnership with citizen watchdogs to deliver the facts to the American people and bring genuine reform to the Federal bureaucracy. This is the mission of the Oversight and Government Reform Committee.

This particular hearing deals with the renewable fuel standards. Creation of the RFS in 2005 and substantial expansion in 2007 together represent what the U.S. Government has done to take an enormous step to regulate gasoline usage. However, when this law was written we were living in a different time: the United States had yet to undergo its current energy boom, which is spurred by advanced drilling practices. This was also before the recession and the reduced gas usage across the Country and increased CAFE standards, which pushed down the demand for gasoline.

Much has changed since 2007, when then problems in the law had become acute and need to be addressed. This is why I held a hearing on this issue in June 2013 in the same committee. According to the market observers, the U.S. fuel supply is right at what is called the blend wall. This is the level where added ethanol will make up more than 10 percent of the domestic fuel supply.

This is not sustainable under current conditions in the American automobile market. Many auto makers will void warranties if motorists use this mixture, known as E15, in their cars because of the engine damage that it can cause. It can especially damage older cars, boat engines, and small non-vehicle motors.

In my home State of Oklahoma, consumers are worried about using gasoline containing ethanol. In fact, gas stations in my district will advertise the sale of zero percent ethanol gasoline, or will say 100 percent gas, to keep consumers at ease. It is a very in-demand product.

The lack of consumer demand, if not outright hostility, to high ethanol blends makes it more and more difficult for fuel makers to deliver a product that will actually sell. This constriction of the markets makes fuel prices increase, causing economic damage.

At the gas station down the street from my house, there is a gas pump there that has E85 marked on the tank, on the pump itself in a big logo and a big sign. But they don't sell E85 anymore there. For several years they tried to and the product went stale in the gas tank underground, and eventually they just swapped it out and now they have two E10 pumps there and no E85, but there is still a big E85 sign left over from the residual from the more than \$200,000 dollars that this station spent to put in that extra tank. It is a common issue that is happening around the Country, in my neighborhood and other places as well.

Because the creation of the RFS was such a large undertaking and the authors of this law knew that predictions for the future gas usage might not come true, the EPA was given waiver authority to waive or suspend RFS requirements. This is the waiver as written: It may waive if there is inadequate domestic fuel supply or implementation of a requirement would severely harm the economy or environment of a State, a region, or the United States.

We are all aware what EPA can do to help with this problem, and we went over that in depth in 2013 in that June hearing. Starting with our hearing, Christopher Grundler, Director of EPA's Office of Transportation Air Quality, subsequently appeared several times before Congress. Based on these appearances, I felt like we were making real progress. At his last appearance before Congress on this matter representing the agency, Mr. Grundler Stated, the truth is we have hit the ethanol blend wall. This appears to be a clear acknowledgment of the problem to me.

Shortly before this Statement was made, in November 2013, the EPA announced, in its proposal for 2014, it would use its available authority to ratchet down the ever-increasing amount of renewable additives to our Nation's gasoline and pull us away from the blend wall. The 2014 quandary for ethanol, the final one, was scheduled to be released November the 30th of 2013. We are now more than a year past that deadline. We have waited and we have waited to move from past proposed to final.

Finally, about 3 weeks ago, in late November 2014, we received word on what EPA would do next on determining the RFS obligation numbers for 2014, a year that is almost gone. Mind you, we received this announcement with roughly 6 weeks left in the year of 2014. What did this announcement say? It said EPA would not issue its 2014 blending requirements until some time in 2015. We are now over 370 days late and climbing, and the year will be entirely gone before we get the requirements for the year that is already past.

In addition to the problems with the 2014 numbers, this announcement means the 2015 numbers are already late as well. The statute requires that they are to be released by November the 30th of 2014.

In addition to such an egregious delay being a violation of law that created the RFS program, the notion of receiving blending requirements for a fuel produced in 2014 in the year 2015 is a little surreal.

Clearly, we have a problem. Also, unfortunately, we are moving backward, not forwards. Ethanol mandates were created in the mid-2000's to help us produce energy domestically because it was assumed we were running out of oil. The decreased exports; now we are talking about increased exports from us. We also wanted to be able to have the RFS to have a cleaner environment.

But, as Sierra Club and multiple other organizations have Stated, water usage has become a major problem in dealing with ethanol. There are also reports of increased ozone from ethanol use. It is not good for motorcycles and for boats, many cars, trucks, lawnmowers. This has become an issue that does need to be resolved not only in law at some point, but definitely in waivers in the meantime.

That is why we are here to be able to talk about this. Glad Ms. McCabe is joining us today. General McCabe is the Acting Chief of EPA's Office of Air and Radiation. She also signed the order pushing the decision to 2015. I look forward to hearing about the EPA process. I know you are in process; we have had a long conversation about this. I look forward to sharing the process, knowing what the facts are, and knowing what we can do from Congress to

make this better, and what we can do as a cooperative agreement between the executive branch and the legislative branch to be able to resolve this issue.

With that, I recognize the very distinguished member from California, Ms. Speier, for her opening Statement.

Ms. SPEIER. Mr. Chairman, thank you. Let me also say at the outset of this hearing to Senator-Elect Lankford how much I am going to miss him. He is really reflective of the kind of leadership I would love to see more of among my colleagues on the other side of the aisle. I have enjoyed working with you, I have enjoyed collaborating with you, and I am hopeful that this model will be one that we can see replicated among our colleagues in the future, because working together we can get so much more done. So I wish you great Godspeed as you move into the Senate and know that you are going to do very distinguished work there, as you have here in the House.

Mr. LANKFORD. Would the gentlelady yield?

Ms. SPEIER. I certainly will.

Mr. LANKFORD. It has absolutely been my honor. And I hope the process that we have had together in our committee, which apparently today has run off our other members, but I hope the process that we have had on this committee sets an example. We can find a lot of things to be able to work on together, and I have really appreciated working on it and I appreciate you making those kind words, because my wife is in the audience today as well.

Ms. SPEIER. Let's have her recognized.

Mr. LANKFORD. So always nice to be able to have nice words while my wife is here. My wife Cindy is right over there.

[Laughter.]

Mr. LANKFORD. Thank you for those kind words. I yield back.

Ms. SPEIER. So before we get further into the details of this hearing on renewable fuel standards, I want to take a step back and look at the big picture. There is a broad consensus among scientists that fossil fuel pollution has warmed the earth by more than a full degree over the past century, which has resulted in the sea rising by eight inches.

This is not an abstract problem to my constituents on the San Francisco Bay Peninsula, with more than 110,000 people and \$24 billion in property, and a major international airport at risk from rising seas.

This is also not an abstract problem for people around the world, where 2014 is on track to be the hottest year on record. And climate change is not an abstract problem to the Pentagon, which has linked climate change to the potential for increased terrorist activity and other forms of violence.

The Intergovernmental Panel on Climate Change confirms that the best way to limit the damage is to reduce greenhouse gas emissions and to start proactively planning for the impacts. In its latest report on mitigating the effects of climate change, which was released last week, the IPCC says that it is not too late to limit warming to tolerable levels, but that, to do so, the world must act now.

The renewable fuel standard expanded by the Energy Independence and Security Act in 2007 is a bipartisan approach to con-



fronting that problem. President George W. Bush said, on the day that he signed this act, "Today we make a major step with the Energy Independence and Security Act. We make a major step toward reducing our dependence on oil, confronting global climate change, expanding the production of renewable fuels, and giving future generations of our Country a Nation that is stronger, cleaner, and more secure."

The RFS created a market for the advanced biofuel and cellulosic biofuel industry to innovate a better fuel for our cars. More than \$5.7 billion has been invested in advanced biofuels. Unlike traditional corn ethanol, this industry is still in its infancy and it is relying on the RFS mandates to propel it to the next level.

Along with this relatively new industry comes jobs. The ethanol industry has directly and indirectly created close to 400,000 jobs. In my district, we have significant investment in the types of biotechnology that can drive a clean energy revolution. From new types of grasses to make cellulosic biofuel to genetically engineered algae that can grow diesel gasoline in vats, Bay Area companies are showing that advanced biofuels can be one of the ways to a cleaner future.

Now, all this innovation is jeopardized by the EPA's failure to issue the 2014 renewable fuel standards. The EPA is required under statute to release these standards by November of the previous year, but has missed its deadline for each of the last 3 years.

Today we are having this hearing because the EPA is not issuing 2014 standards at all. They are essentially telling biofuel manufacturers and gasoline refiners that they will just have to guess how much biofuel they should have made for 2014.

Since there is no sign of a 2015 standard yet, the EPA is telling industry that they will just have to keep on guessing into the next year. This is no way to run a business and, frankly, no way to run an agency.

I am glad the chairman called this hearing today, because these delays in setting RFS standards are creating market instability across the board, in the agriculture, renewable fuel, and gasoline industries.

Today is an opportunity to find ways to move forward in a more productive manner on the RFS. I do not believe the answer is to throw away all the progress that the renewable fuel industry has made in reducing carbon emissions and driving technological innovation. But EPA has to do a better job if the RFS is to accomplish its goals.

It is my hope today to impress upon the EPA the need to act swiftly and set the RFS for 2014, 2015, and 2016, and to consider exercising its authority in executing multi-year rulemakings for the RFS. EPA must acknowledge that it cannot continue with ever-increasing delays in RFS rulemaking and find solutions that will provide more certainty to the businesses that depend on them doing their jobs.

I also think that Congress has to share some of the blame. In every case I can think of, Congress passes laws that require agencies to promulgate a rule just once. But the law establishing renewable fuel standards required EPA to issue a new rule every single year. And since the RFS came into effect in 2007, the EPA's budget

has been stagnant and they have lost over 2,000 full-time equivalent employees.

But I also do not want to lose sight of the larger picture. The United States is undergoing an unprecedented energy revolution. We have recently overtaken Saudi Arabia as the world's No. 1 oil producer. Energy security is important, but so is climate security. You can't drive on a road that is three feet underwater, no matter how cheap gas prices are.

Fossil fuels might be more inexpensive and more accessible than ever, but burning ever-more oil and gas will burn us out of a livable planet. That is why the RFS, while flawed, is important. The development of advanced biofuels is one of the most important tools we have to achieving a safe climate for future generations.

I look forward to hearing from EPA and Ms. McCabe about the barriers they face in implementing the RFS and how they plan to move forward and how we can be helpful to make sure you can do just that.

With that, I yield back.

Mr. LANKFORD. The members will have 7 days to submit opening Statements for the record.

We will now recognize our first and only panel. Ms. Janet McCabe is Acting Assistant Administrator for the Office of Air and Radiation at the U.S. Environmental Protection Agency.

Pursuant to committee rules, all witnesses are sworn in before they testify.

Ms. McCabe, if you would please rise, raise your right hand.

Do you solemnly swear or affirm the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you, God?

[Witness responds in the affirmative.]

Mr. LANKFORD. Thank you. You may be seated.

Let the record reflect that the witness has answered in the affirmative.

You have been through this before in this conversation. You know full well we would be glad to be able to receive your testimony. Your written testimony will be a part of the permanent record as well. If you would like to make any additional Statements, you are welcome to do that. You are recognized, Ms. McCabe.

**STATEMENT OF JANET G. MCCABE, ACTING ASSISTANT ADMINISTRATOR FOR AIR AND RADIATION, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Ms. MCCABE. Thank you. Thank you, Chairman Lankford and Ranking Member Speier. I was going to say other members of the subcommittee, so I will in the right spirit.

I very much appreciate the opportunity to testify on the renewable fuel standard program and the EPA's efforts to issue the most recent annual rule under the program that Congress established.

Annual RFS rules for the past years have generally reflected the Energy Independence and Security Act targets. Since 2010, how-

ever, it has been necessary for us to lower the volume for cellulosic biofuel based on our projections for production in the coming year.

In developing the proposed 2014 RFS volume requirements, we took market realities into account, including the lower production volume for cellulosic biofuels and a recent sustained decline in gasoline consumption as a result of improved vehicle fuel economy and other factors. We proposed to use authorities granted under the Clean Air Act to adjust the required cellulosic advanced and total volumes for 2014 below the target specified in the statute. We also proposed to maintain the biomass-based diesel volume requirement at 1.28 billion gallons, 280 million gallons more than the Act specifies as a minimum.

Our proposed rulemaking explained the need to reduce the cellulosic volume for 2014 and also considered the need to reduce the advanced and total volumes to account for the projected shortfall in cellulosic volumes. In that context, the proposal included a detailed discussion of what is known as the ethanol blend wall, which limits, at least in the short term, how much ethanol can be blended into gasoline given the existing vehicle mix and distribution infrastructure.

In proposing the 2014 RFS standards, EPA sought to advance the broader goal of the RFS program to spur long-term growth in renewable fuels while taking account of the need to overcome the constraints that exist in the market and the fuel system today.

The proposal generated significant comment and diverging views, particularly about how volumes should be set in light of lower gasoline consumption and whether and on what basis the statutory volumes for renewable fuels should be lowered. Most notably, commenters expressed concerns regarding the ability of the proposed approach to provide continued progress toward achieving the volumes of renewable fuel targeted by the statute.

These issues are both very challenging and very, very important to the future of the RFS program, and we recognize that our consideration of them has delayed the issuance of the 2014 standards. Accordingly, and as is Stated in the announcement we made on November 21st, EPA intends to take action on the 2014 standards in 2015, in the same timeframe we plan to take action on RFS standards for both 2015 and 2016. Issuing the rules every year has proven to be a significant implementation challenge, particularly in the last several years. Resolving the fundamental issues that we are facing as part of the 2014 standards, rulemaking should go a long way to enabling EPA to complete additional annual rulemakings on time.

This Administration strongly supports the statutory goal of the RFS program to increase the production and the use of renewable fuels, particularly advanced biofuels, over time. We have paved the way for increased use of higher level ethanol blends, including by granting partial waivers for the use of E15 in 2001 in newer light duty cars and trucks. We have improved the quality, transparency, and efficiency of our petition review process for new biofuel pathways that can count under the RFS program.

In September we updated our website to include new tools and resources that provide basic information quickly and easily for our stakeholders and to provide for a more user-friendly interface for

petitioners to guide them through the process of getting approval for new biofuel pathways. We also developed a new efficient producer petition process that expedites the processing of certain types of petitions. Since September, we have approved nine of these efficient producer petitions, and these are examples of the type of work that continues under this program.

EPA will continue to engage with our stakeholders and work in close consultation with the Departments of Agriculture and Energy as we move forward with completing the annual standards for 2014 and setting standards for 2015 and 2016. I want to emphasize that our intention is to put the annual standard setting process back on schedule.

Again, I thank you for the opportunity to appear as a witness at this hearing, and I look forward to your questions and our discussion.

Mr. LANKFORD. Thank you, Ms. McCabe. We are going to have just open dialog on the conversation here.

Let me ask a quick question, or multiple questions, I guess, as you go through on this. When do you start actually preparing for the proposed new target? So if it is to be released for the 2014 by November the 30th of 2013, when do you start working on that?

Ms. MCCABE. Well, as has been noted here, in the past few years it has been more and more challenging for us to meet that deadline.

Mr. LANKFORD. But when do you start working on that?

Ms. MCCABE. Well, we have staff who are working pretty continually on this program and paying attention to the information and the data that we are required to gather. That includes working with the EIA and getting projections on gasoline consumption from that agency. So there is no precise moment when people start working on a particular standard. Because this is an annual rule-making, we are in pretty continual work.

Mr. LANKFORD. So how many people work on that continually? What would be your guess? Is this three people, is this 10 people? What is your best guess on the staff that work on that?

Ms. MCCABE. There are people who work on it full-time and there are people who work on it part-time.

Mr. LANKFORD. So give us a ballpark.

Ms. MCCABE. There is a goodly number of people. Perhaps my colleague can help me here.

Mr. LANKFORD. Take a good shot at it.

Ms. MCCABE. So within our Office of Transportation and Air Quality, there are about three or four people who work on the program full-time and an equal number who work on the program half-time. But I will note that there are staff in our Office of General Counsel also who work on this program and others who help.

Mr. LANKFORD. And Office of Information and Energy Information? There are other people in other agencies also working.

Ms. MCCABE. Absolutely. And the Department of Agriculture and Energy as well.

Ms. SPEIER. So it is not a lack of employees working on this in terms of not meeting the deadline?

Ms. MCCABE. No.

Ms. SPEIER. So we can't say that it is because you have had a loss of staff?

Ms. MCCABE. No.

Ms. SPEIER. All right. So you have enough staff.

Ms. MCCABE. Yes.

Mr. LANKFORD. So what is the key issue there? When you say this is difficult, situations change. Obviously, we have approached a new time with the corn-based ethanol, that we have hit the limits there. With the biodiesels and everything else, that is a different story. Obviously, there are some new things happening with cellulosic advanced fuels. We get that.

Ms. MCCABE. Yes.

Mr. LANKFORD. So we are trying to figure out the delay of over a year, why we are passing an entire year, and then we are going to set the totals for this year after this year is actually over. What would cause that if we had enough staff and this was predictable on what was happening, we could all see the trends that were occurring?

Ms. MCCABE. Well, in 2014 we faced two issues that we had not faced before, which have proven to be extremely challenging, and they are related, and you mentioned them both, Chairman Lankford, in your opening, and that is, as you know, in recent years we have had to address shortfalls in the production of cellulosic biofuels. We have done that through the waiver process.

But in 2014, for the first time, we were facing the ethanol blend wall in a way that required us to find a way to address that. And, as you noted, we have several authorities in the Act for us to do that, and, as you know, we proposed to use the inadequate domestic supply waiver authority. Not everybody agrees with us that that is an appropriate interpretation of the statute or that that is the appropriate policy place for the agency to land in that rule.

So 2014 proved to be the year where we were facing those quite challenging issues. We spend considerable time working with the stakeholders, many, many encounters with the stakeholders both at the staff level, at my level as well, trying to make sure that we fully understand the implications, what is going on in the market and what is the right outcome here, and also making sure that we understand our legal constraints and authorities and are applying those appropriately. So those two things have really been what we have been working on this year, and it proved to take longer than anybody would have liked.

Mr. LANKFORD. Which has increased dramatically the volatility in the RIN's market, as everyone is kind of waiting to see what the targets are going to be, all the RIN's credits that are out there. And the concern is that volatility only increases. When you talk about an increase in the price of the RINs, that is a purely manmade, Government-driven problem on that market, which increases the cost to consumers.

So as the price of gasoline goes down, we have the opportunity for it to go back up again not because of gasoline out there, but because of volatility created by lack of Government decisions. So this does affect the consumer directly, as well as just the predictability of the process and where we go from here.

Go ahead.

Ms. MCCABE. We understand the importance of certainty. We also understand that there are a number of factors that go into the price of RINs, including the price for feedstocks and that sort of thing. But absolutely we understand the importance of certainty.

Ms. SPEIER. So let's talk about the stakeholders. You have some very powerful stakeholders that are trying to pursue this in a manner that benefits them in particular, and then you have the threat of lawsuits. In fact, there is one, I believe, that has been already filed.

Ms. MCCABE. Yes.

Ms. SPEIER. So how does that impact your rulemaking process? Is it the fear of litigation that is somehow impacting your ability to get this rule out?

Ms. MCCABE. No, it isn't the fear of litigation. We understood and understand that we have missed the statutory deadline and that subjects us to a legal action, so it was not that. The issues are the substantive issues that I have mentioned, and, as with any challenging and important rulemaking, we want to make sure we are fully working through the various issues that are brought to our attention, the legal arguments. We certainly want to make sure that we are confident in our legal authority and when we render a rule, because if we are challenged on it, as we expected we would be, and it is overturned, that is further uncertainty for the market. So we work very hard to make sure that all of our rules are on very sound legal basis.

Ms. SPEIER. So we have to get this fixed. And while I understand that you are working very diligently at it, that you have enough staff to do it, it is still not giving me the confidence that we are fixing it. Would we be better served if it was a rule that was put in place for three to 5 years, versus one that you have to contemplate each and every year?

Ms. MCCABE. Well, Congresswoman, I really can't speak to the statute; that is not my job, to decide that.

Ms. SPEIER. Well, it is your job to help us figure out how to make this work better.

Ms. MCCABE. Well, and we would certainly be happy to provide technical assistance to you as you start thinking about that. An annual rulemaking is a challenging thing to accomplish, but I will just emphasize that this year in particular, because of these sort of watershed issues of the blend wall and the waiver, this year has been particularly challenging. We do think that, in 2015, we will be able to resolve 2014, 2015, and 2016, as our notice Stated that we intended to do, in order to get the program back on track and get us over the hump of dealing with these fundamental issues.

Mr. LANKFORD. So can I ask our obvious question? We were scheduled to get the 2014 numbers sometimes in 2014. That is not occurring. Now you are saying we are going to get the 2014, 2015 sometime in 2015. Can you give us a date certain when this will be settled in 2015? Because we are talking about 2014 settled in 2015; 2015, which is already late; and then trying to resolve 2016 to get that one on time, which would be terrific. And we will talk about the dynamics of 2016 and the waiver authorities and all those things in just a moment.

But can you give us a date certain? And then I want to recognize we have some other members that have joined us as well for some questioning. But can you give us a date certain when this is going to be resolved?

Ms. McCABE. I can't give you a date certain, Congressman, because rulemakings are not ones that I can——

Mr. LANKFORD. So give me a month.

Ms. McCABE. We will move as expeditiously as we can. We certainly——

Mr. LANKFORD. So this could be 2016 before this comes out, and we will miss 2 years.

Ms. McCABE. We are committed to getting these rules out in 2015 and meeting our deadline for the 2016 volumes.

Mr. LANKFORD. Well, let me just say my concern on it. My concern is that this is going to come out in time for November the 30th of 2015 to try to announce the 2016 time, and we are going to literally have 2 years in a row that we will not have anything sitting out there. Because to just say we will get it out in 2015 and be ready to go for 2016, that is November the 30th of 2015. That is even more problematic and even more volatility. It cannot take that long to promulgate a rule when the proposed rule is already done. I don't understand how the proposed rule can be done for a year and it takes a year to work through the comment period.

Ms. McCABE. We understand the importance of moving just as expeditiously as we can.

Ms. SPEIER. All right, then why don't you give us a date?

Ms. McCABE. I am not in a position——

Ms. SPEIER. Well, I understand that, but you could have a goal that your employees can work toward. I mean, to just have this kind of ephemeral "we will have it done some time in 2015" doesn't give the industry any confidence moving forward.

Ms. McCABE. We are working on the steps that we will need to take, the time that that will take.

Ms. SPEIER. That is gibberish, Ms. McCabe, I am sorry. Just be clear. What is your goal? Is it April, is it May? You have to have a goal that we can hang our hats on.

Ms. McCABE. My goal is to have these programs done as quickly as we can in 2015. And when we have a schedule that we can let people know about, we will do that.

Ms. SPEIER. Well, maybe, then, Members of Congress should introduce a bill to repeal it unless you have a rule out by a date certain. Will that be enough to encourage the actual issuing of that rule? I mean, I don't think we are asking for a lot here.

Mr. LANKFORD. No, we are not.

Ms. McCABE. We will certainly keep the committee informed.

Mr. LANKFORD. Well, you have kept the committee informed for the past year, telling us it is coming, and that is the problem. We have heard for a year it is coming. It is coming is not enough.

Let me recognize some other members here. Mr. Farenthold is here from Texas.

Mr. FARENTHOLD. Thank you, Mr. Chairman. Before I go on with my questions, I want to point out, in response to when are we going to get this information, my mother always taught me and I always grew up believing a promise isn't a promise unless there is

a deadline, and I would really encourage you, even if you are not willing to share that deadline with the committee, at least share it with some employees and hold them accountable.

We had a rather long and involved Republican conference, so I apologize for being late, and if I ask something that has already been answered, please bear with me.

I did want to ask how does the EPA see the growing supply of domestic oil and gas, along with lower domestic transportation fuel prices, affecting the RFS?

Ms. McCABE. One of the key issues in the RFS, as we look to try to implement rules that implement Congress's intent, is looking at the expectations of Congress and the expectations of fuel consumption that we get on a year-to-year basis from the EIA, and that has been a major factor in trying to determine how we set the volumes for the RFS. As we have noted, the consumption of gasoline is going down in the Country, and that has implications for how we implement the statute.

Mr. FARENTHOLD. Is the EPA taking into account any other diversions from traditional petrochemical products to corn or other biomass-based products? For instance, the water bottles we all drink from now, you are seeing a trend toward those being created, rather than traditional petrochemical-based plastics, being created from bioplastics, which is decreasing the demand for fossil fuels, increasing the demand for the biomass part. Is any of that taken into account and is there a possibility for perhaps getting RIN's credits for plastics manufacturing, for example, or other new technologies, moving away from petrochemical-based feedstock or raw materials and moving to biomass?

Ms. McCABE. Well, Congressman, we are focusing on implementing what the statute requires us to do, which is to look at the expected production of specific kinds of transportation fuels and the development of new advanced biofuels that meet the requirements of the statute. So that is what we look at, looking forward, what is the expected production of cellulosic biofuel and advanced biofuel, and those sort of things.

Mr. FARENTHOLD. And can you tell me to what degree, if any, it is being taken into account the effect on food prices, particularly in developing countries, as agricultural acreage that could be devoted to producing corn fit for human consumption is diverted to creating corn—I use corn as an example, it could be any biofuel—is being diverted for biofuel away from food and, again, what effect that is having and how you all are considering it?

Ms. McCABE. In the initial rulemaking that established the RFS program, there was an extensive study and there have been studies by other agencies on those sorts of issues, and that is all available and we would be happy to provide you more information if you would like it.

Mr. FARENTHOLD. I guess my concern, both with the food prices and the diversion into plastics and other manufacturing, we don't want to get caught in a hard rulemaking or hard law decisions, not taking into account new technologies and new development in the marketplaces, and I would be particularly interested in knowing what, if anything, Congress needs to do to take those into account or make sure that you guys are taking those into account. So if you



could include that in what you are providing us, I would appreciate it.

Ms. MCCABE. Sure.

Mr. FARENTHOLD. Finally, I have two other quick questions, if you are OK, Mr. Chairman.

So does the EPA still recognize the blend wall and some of the technology issues, as it did in the proposed rules in multiple hearings last year?

Ms. MCCABE. We do.

Mr. FARENTHOLD. And you testified last year before the Energy and Commerce Commission about liability concerns being one of the biggest hurdles with the penetration of E15. Has anything changed, technologically or otherwise, that would alleviate these concerns?

Ms. MCCABE. I am not aware of any new information on that. There is a range of opinions about the concerns with E15, and with respect to motor vehicles 2001 and newer, our information shows that there are not problems with using that fuel in those vehicles.

Mr. FARENTHOLD. All right, thank you very much.

Mr. Chairman, thank you.

Mr. LANKFORD. Mr. Meehan.

Mr. MEEHAN. I thank the chairman and I thank the ranking member, an opportunity to sit again on a panel together.

And I thank you, Ms. McCabe, for being with you here today. This is an important issue, and let me tell you a little bit about my district and the refineries that closed in my district until there were innovative companies who found a new and better way to take advantage of the fuel supply, including utilization of Bakken, among other kinds of things.

Important to their retaining this significant job-producing piece in my district, they were also critical on numerous occasions, but when there were challenges like the storm, it was their presence which assured a fuel supply that kept New York City functioning. So the ability for these refineries to be operable has very real and genuine national security impacts.

They are also facing, as all in the industry are, real economic pressures, but included among those pressures is the remarkable uncertainty which this particular policy impacts. And I know you appreciate that, but my problem is not only is the uncertainty that is associated with it, it is the fact that, in addition, we have speculation in this market. You are creating markets by your activity or your failure to act, and they don't care about the jobs in my district and they don't care about the availability of fuel; they care about the ability to make money on a hedge. And that does not serve our national interests, so what you do has a lot at stake.

So let me ask you, if I may, a number of questions.

When you are now setting the 2014 mandate, how are you going to be doing this when you still have variables that are somewhat uncertain with both the transportation fuel consumed and the renewable fuel consumed? I mean, all this speculation is around things that you are trying to predict with some degree of uncertainty. How are you going to do that and give us some degree of certainty?

Ms. MCCABE. Well, Congressman, with respect to 2014 and moving forward with 2014, we recognize the calendar and that we are significantly through the calendar year 2014 and that, as we have said, we intend to finalize this rule in 2015. So we will be all the way through the calendar 2014 year, and we will clearly take the fact of the calendar and the history that has occurred in 2014 in making a determination about final 2014 volumes.

Mr. MEEHAN. So I mean, to a certain extent, then, you will be able to use actual numbers with regard to 2014.

Ms. MCCABE. That is correct.

Mr. MEEHAN. But the problem is every time we delay, and I know this is some of what my colleagues are getting to, you are into the next year's obligation. So is it your intention to rely on 2014 or are we going to blend 2014, 2015? How do you handle the uncertainty about looking at future predictions as being part of it? Do you expect that you will include parts of both not only what past history has shown, but what you expect in the future? And what authority do you have to do both?

Ms. MCCABE. We expect to set annual volumes for the individual years based on appropriate data for each of those, and that will be different. And we intend, as I have said, by issuing the 2016 rule in 2015, to get the program back on track so that refines and all other stakeholders will have the certainty that the statute calls for.

Mr. MEEHAN. So you do expect that there will be some degree of certainty.

Ms. MCCABE. Yes.

Mr. MEEHAN. How do you respond to the concern I raised about speculation in the market and should you be involved in allowing that kind of, you know, these RINs and other kinds of things, you appreciate the dramatic escalation in the cost of a RINs. And because you have this on the refiner, and not a blender, because it is unique to the refiner and it starts to create remarkable spikes in the cost, it has a genuine impact on the bottom line. So my concern, then, is, with respect to that impact, how do you address that and the speculation?

Ms. MCCABE. Well, as I have said, there are a number of factors that affect RIN prices, and that is a tradeable commodity and not a market that is controlled by EPA.

Mr. MEEHAN. No, it is not controlled, but it is almost uniquely influenced.

Ms. MCCABE. Our actions, I agree, have impact on the market, as do other things as well. Our information actually, Congressman, is that the vast majority of trading that is going on in the system is between the refiners and the blenders and reflects their anticipation and the cost that they are experiencing.

Mr. MEEHAN. Mr. Chairman, I have other questions, but I don't want to monopolize, so I would be glad to come back to some other questions.

Mr. LANKFORD. No, be glad to, Mr. Meehan. We are opening up, this is a free-flowing conversation based on our panel and the topic, and a conversation that all of us want to be able to have on the same issue.

Mr. LANKFORD. Can I ask a question?

Mr. Meehan, feel free to be able to jump in at any time as well.

The issue is you have mentioned a couple times and alluded to that EPA is looking to see what they can do to spur growth in this. I would assume that means increased usage of ethanol. Is that what you mean, to use more ethanol in our system?

Ms. McCABE. The key objective of the statute was to focus on the increased development and use of advanced biofuels which have the most benefit for energy, security for the greenhouse gas reduction. So a focus of the statute, as you can see looking at the volumes, is to increase the volumes of advanced and cellulosic biofuels, and a lot of our focus—

Mr. LANKFORD. But the uncertainty right now is based on corn-based ethanol, though, am I correct? Right now, because you have hit this unique year, not based on those. Those, you already know how to deal with. This delay is based on the other area, am I correct?

Ms. McCABE. Right. When you hit that blend wall and you have saturated the 10 percent market there are ways to use additional ethanol in the system.

Mr. LANKFORD. Correct. OK, so give me an example.

Ms. McCABE. E15 and E85 are two ways to do that, and, as I said, we are in touch with the stakeholders significantly to understand how those fuels are moving, and we are seeing some gradual increases in it.

Mr. LANKFORD. So I guess my question is we have this number that was an arbitrary number set by Congress, now almost 10 years ago, anticipating increased gasoline usage across the Country that now we don't have increased gasoline usage across the Country, have a decline of that based on CAFE standards and the economy and everything else. So we all know that fact.

But EPA is committed to try to figure out how we can just use more ethanol anyway, rather than try to hit the waiver and say the intent of Congress was that we would match up ethanol with gasoline usage. We have less gasoline usage, but we want to continue to use more ethanol anyway. Is that what you are saying? When you talk about spurring usage, I am trying to figure out why.

Ms. McCABE. We are trying to implement the statute as best we can.

Mr. LANKFORD. But you want back to the intent, though. The intent of it wasn't to increase ethanol usage, it was energy independence. If we are using less energy as a Country, why is the intent to try to continue to use more and more ethanol anyway?

Ms. McCABE. The intent is to do our best to meet Congress's statutory—

Mr. LANKFORD. So you need clarity from Congress in a piece of legislation on what this would be to be able to help you in this decision.

Ms. McCABE. We need to look at the information; we need to keep in mind the purposes of the statute; we need to look at our legal authorities and apply those appropriately.

Mr. LANKFORD. Well, let me ask one more question. I don't want to hog this conversation as well, but you mentioned earlier about past 2001 vehicles. EPA has Stated that past 2001 vehicles can use the E15.

Can I have a slide come up there dealing with just the gas cap? I want to be able to show.

[Slide.]

Mr. LANKFORD. This is something Mr. Grundler and I had a long conversation on as well. Most vehicle warranties will be void if they use the E15. This is a picture of a gas cap from a 2013 Toyota. Now, this same gas cap is used for Toyota and for Lexus vehicles. It clearly States do not use the E15. It is not just E85; don't use the E15. Most manufacturers will State they will void your warranty if you use it.

I also have another chart here that shows the manufacturers that can use the E15.

[Slide.]

Mr. LANKFORD. This shows a list of all manufacturers, those that have said they would recommend usage of E15. And you will see the years, beginning with 2001 all the way to 2014. The greens or the yellows note that they would be OK with it, that they have at least some models that are OK with using E15. Now, this is a real point of contention with EPA we have bumped into several times. EPA continues to say we have checked; 2001 and on is fine. But the actual owner of that vehicle, if they use it, lose their warranty in that area.

Now, I don't think EPA is willing to go ahead and cover any costs of repairs, and the American taxpayer most definitely is not willing to cover those repairs for vehicles because their warranty was voided. This is a big issue for us. So when we talk about pushing more E15, the manufacturers of the vehicles are saying, don't do it to the consumer and EPA is telling the consumer, you are going to have to do it because we have this arbitrary goal we are not willing to do a waiver on that we have the statutory to do the waiver on, but we are choosing not to, so you are going to use more E15 whether your car wants it or not, but whether you want to buy it or not. That is a problem.

Ms. MCCABE. If I can respond, Congressman.

Mr. LANKFORD. Sure.

Ms. MCCABE. We have proposed to use the waiver. We are not requiring, through this rule, for any consumer to use any particular type of gasoline. In fact, our job in estimating and predicting the volumes and setting the volumes, takes into account what is happening in the market. And you reflected, I think, the limited number of E15 stations.

Mr. LANKFORD. Right. E85.

Can you go two slides forward, there, I think? Let me show you this, too.

[Slide.]

Mr. LANKFORD. This is the station down the street from my house. You can see the pump is clearly marked this is an E85 pump, but you can look on the actual handle there, there is no E85 sold there anymore. And when I talked to the owner of that station, he said we couldn't sell the E85 gas; we spent \$200,000 putting in tanks and the gas would go stale because there wasn't enough demand for it. So now they have just shifted to two E10's and he is very concerned that he is going to be pushed to have an E15 as a requirement to be there as well.

If you go back one slide there as well.

[Slide.]

Mr. LANKFORD. This is what they sell now, and that is frequent; that was taken last weekend down the street from my house. By the way, I want to brag at \$2.21 gasoline prices in my neighborhood as well.

Ms. SPEIER. Just add another one and that is what it is in my neighborhood, \$3.21.

Mr. LANKFORD. It is \$20.21 in San Francisco?

[Laughter.]

Mr. LANKFORD. So this unique challenge that not only the consumer is facing, that the blenders are facing and the refiners are facing, but also every single small gas station around the Country is also facing, what are we about to be required to do to hit a target that, yes, is a statutory target, but EPA was given waiver authority for just an occasion just like this so it doesn't cause every station to spend \$200,000 on new tanks to hit an arbitrary total to help us hit energy independence when it is not needed.

Ms. MCCABE. That is exactly why we proposed the waiver. It is why we have been working—

Mr. LANKFORD. But not finalized it.

Ms. MCCABE. But not finalized it yet.

Ms. SPEIER. Let me just point out that the high performance cars at NASCAR use E15 gas, for what it is worth, so there is some value in encouraging the auto manufacturers to make vehicles that can accommodate E15 gas.

But I would like to go back to something you said earlier, Ms. McCabe, and ask unanimous consent that we put into the record Statements by the Advanced Biofuels Association, the Algae Biofuel Organization, Biotechnology Industry Organization, and the National Biodiesel Board into the record.

Mr. LANKFORD. Without objection.

Ms. SPEIER. I am going to read from a Statement from the Advanced Biofuels Association. "At this point, we suggest that, at a minimum, the EPA should move expeditiously to post a new cellulosic RIN value for the 2015 calendar year, which we have been waiting for for nearly 2 years. It is absurd that the current corn RIN is valued above the cost of RINs for the cellulosic pool. The way this program is being run today, we are effectively regressing, providing price supports only to those fuels that are already at full scale production at the expense of the advanced fuels that Congress intended to develop when it enacted the RFS2 program."

So you said earlier that you wanted to, indeed, expand the use of advanced biofuels, and that is part of the charge of the legislation. And yet you have this pent-up demand from all of these companies and, as I understand it, there are some 30 new biofuel pathways that have been awaiting agency review and approval for over 2 years, and they still can't get an answer. I mean, this is no way to run an agency, and certainty is one of the hallmarks of businesses being able to succeed. I mean, we are going to kill off the goose that could lay the golden egg if we don't start acting more expeditiously.

Would you please respond to that?

Ms. McCABE. Yes, certainly. We agree that encouraging and providing a path forward for innovative and new renewable fuels is absolutely an intent of the statute and——

Ms. SPEIER. OK, I understand that. I believe you, but what are you doing about it? They have been waiting for 2 years.

Ms. McCABE. Yes.

Ms. SPEIER. What is it going to take?

Ms. McCABE. We undertook, over the course of the summer, a total re-look at our process for reviewing applications for pathways approvals, which we finalized in September, so we have completely redone the information that we lay out so that people can bring us applications that are ready to be processed. So we have created a streamlined approach for what we call these efficient producers.

And as I mentioned in my opening Statement, since we finished that re-look at the process, we have signed off on nine of those pending applications. So we agree with you that moving these things through promptly is important; that is why we undertook a re-look of our process, and we have seen the results of being able to move things through quickly.

Ms. SPEIER. So why are all of these Statements, then, suggesting that there is no action?

Ms. McCABE. I am not familiar with the Statements, Congresswoman, so I don't know, but this is a relatively new adjustment and changes to our process. They may not be aware of the changes that we have made, but we are now able to process things more quickly and to help people who want to come to us with applications know better what they need to put in their applications so that we will be able to process it promptly when it comes in.

Ms. SPEIER. So for the 30 applications that have been pending, or pathways, I should say—I don't know how many applications are pending—should they resubmit under this new streamlined program that you have created?

Ms. McCABE. Well, each one would be in a different situation, and our staff is certainly available to work with anybody who has a pending application to help them know whether there is additional information that should be submitted. I don't think we are asking people to start all over again, but these changes is speeding up and freeing up the entire system for us to be able to take a look at all the ones that we have and the ones that continue to come in.

Ms. SPEIER. All right, thank you.

Mr. LANKFORD. Before I recognize Mr. Meehan, can you define quickly for me? You said this is moving more quickly. What does that mean for someone that is in this process? How many weeks, how many months will it take for them to go start to finish?

Ms. McCABE. You know, I don't have that information, Congressman. I would be happy to——

Mr. LANKFORD. Give us a guess. Is this a 2-year process, is this a 90-day process?

Ms. McCABE. It really depends on the particular application. There is a whole range of pathways that people bring to us. Some of them are very complex, some of them are much more straightforward in terms of being similar to other things that we have seen. So there is not a standard.

Mr. LANKFORD. So the struggle that we would have here is to define quickly, then, and to say this process has changed. How much faster is it now than what it used to be?

Ms. MCCABE. We can provide those numbers for you, Congressman.

Mr. LANKFORD. Please do.

Ms. MCCABE. But I can tell you that we have approved nine here in the last 2 months, and that is certainly more than in the months that I have been——

Mr. LANKFORD. But those nine that have been approved, when did they start in the process?

Ms. MCCABE. I don't know that.

Mr. LANKFORD. The definition of quickly is when you are on the other side of the desk waiting to get an answer, rather than this hit my desk, but it was actually on someone else's desk before and was on someone else's desk before. So the challenge is trying to figure out, start to finish, when they start the process, when are they getting approval.

Ms. MCCABE. We would be happy to provide you with more information on that.

Mr. LANKFORD. Please do.

Mr. MEEHAN.

Mr. MEEHAN. Thank you, Mr. Chairman. I want to sort of followup, and it may not be exactly the same issue, but I think it is the same genuine general concern, and it is trying to understand how you make some of these decisions and then what we can do to assist you, if we need to, in expedited activity.

I articulated the concern about having small refiners. How do you deal with those who are petitioning for some kind of relief under what may be rulemaking that you do? Do you use criteria to determine whether a small refiner may have a reason why they would be enabled to not have to abide by the same standards as perhaps a much larger refiner?

Ms. MCCABE. You are referring to the petition process for small refiners to get waivers.

Mr. MEEHAN. Yes.

Ms. MCCABE. We work with the Department of Energy, as we are required to, on evaluating any of those and, yes, there is a set of criteria that relate to that particular refiner's situation that we would look at.

Mr. MEEHAN. What are those criteria?

Ms. MCCABE. If you give me a minute, I will find them.

Mr. MEEHAN. If you are able to get it real quickly.

Ms. MCCABE. I have them here.

Mr. MEEHAN. OK, thank you.

Ms. MCCABE. So these are the kinds of things, and the Department of Energy developed these metrics back in 2011 for this purpose, so they are things like access to capital and credit, other business lines besides refining and marketing, local market acceptance of renewable fuels, the percent of diesel——

Mr. MEEHAN. OK, so you look at those other kinds of factors, but, in effect, you are tying it back to some sort of parent company responsibility that influences that kind of a determination?

Ms. MCCABE. Well, the Department of Energy and we, together, look at these factors, but we look at the particular company that is asking for the petition. They are asking for the waiver in light of their particular circumstance.

Mr. MEEHAN. And that is the question, and I should be careful, because I am not, but I am looking at a bottom line problem in which I have an industry which really isn't in the refining business, but they have made a particular effort to see if they can help control the greatest driver of their costs, which is fuel.

And the unique circumstance they face is, after having found a way to deliver a product to market for them and the rest of the aviation fuel industry, that has saved the jobs, because they found a way to produce this product at a competitive price, until you introduce RINs, and then, suddenly, I have this artificial market that is completely influencing the bottom line of this refinery, and the thing is, well, we will just get out of that line of work. It is not a vertical organization; this is a product which has been utilized to support something in an industry.

So when you are looking at the larger industry, why should the activities in a completely different area be influencing the decisions that are made about a unique part of the issue, which is refining unto itself, as opposed to what the rest of the capital of an organization is?

Ms. MCCABE. Well, Congressman, I wasn't involved in the development of these criteria, so I can't speak to them specifically, but we would certainly be happy to followup with you with any questions related to—

Mr. MEEHAN. Well, I am particularly interested in, as we are looking through the concept of hardship petitions and meaningful response to the petitions. And I appreciate, then, if you are working with the Department of Energy.

Let me ask one other question about this area, because, again, it goes back to the supply of RINs, and you have within your authority the issue to look at inadequate domestic supplies of certain things. How do you make those calculations? How are you moving along on that process and how do you calculate whether there is an adequate supply of RINs?

Ms. MCCABE. That really goes to the heart of the matter and the responsibility that we have in setting the volumes for a given year, in particular now that we are experiencing the blend wall issues that we are experiencing. So we look hard and try to gather the best information that we can from EIA and other agencies and the industry, as well, to get as good a sense as we can get about what reasonable expectations are, what growth expectations are, and then try to make sure that we are doing the best job that we can to balance and make good assessments about those judgments. As the history of the program has shown, the development and production has not moved along as quickly as Congress anticipated, so that particular inquiry is quite a challenging one.

Mr. MEEHAN. Well, some of it is because of the nature of the market itself. I mean, some of this is counterproductive. They are not moving because they said the market doesn't exist for the fuel that people are being required to generate. And what is frustrating to me is somebody who cares about our environment, in the end,



in order to produce these, the overall carbon impact is even larger. It is counterintuitive that we are driving forward with this for a variety of different reasons, including the carbon footprint of the overall impact of what we are doing.

Ms. McCABE. Well, I think one encouraging thing, Congressman, is that we do see growth in advanced fuels and in cellulosic fuels. And as the Congressman noted, there are companies out there coming up with processes, coming up with innovative processes, and we do very much want to encourage all of that.

Mr. MEEHAN. Is it growth? I mean, is it growth that is being shoe-horned in by virtue, because I know it is Hobbesian choice. I would love to see the continuing development of some of that, but at what point in time? Is it growing because it is being supported and pushed into something, as opposed to being able to actually be accepted in the market?

Ms. McCABE. Well, I think that there are smart and innovative companies out there that, for a variety of reasons, are motivated to move forward with these exciting businesses and new processes, and there is a lot of ingenuity out there that results in all the petitions that we have for the requests for pathway approvals that we have pending.

Mr. MEEHAN. Well, there is, and I actually have visited very similar things and am impressed by them and want to see them, but, again, I want to make sure that the carbon footprint, again, is one aspect of things and the competitive nature to make sure—

Ms. McCABE. Yes.

Mr. MEEHAN. All right. Well, I want to thank you. I would like to see if we can, on the staff side, followup on some of the more particular questions with respect to the hardship petitions and things of that nature.

Ms. McCABE. Absolutely.

Mr. MEEHAN. So I thank you for your work in this area.

Ms. McCABE. We would be glad to do that.

Mr. LANKFORD. Mr. Collins.

Mr. COLLINS. Thank you, Mr. Chairman.

I am sitting here listening, and one of the frustrating things of being in this committee, and I appreciate the chairman's question actually coming from yesterday, what is quickly. I never thought we would have to define quickly. Yesterday we were in this room describing it glacial pace, biblical pace.

Quickly, to most people, means relatively short time; few weeks, maybe month. And to continue this process to keep looking reminds me of the story that was told just the other day by another member about four frogs on a log, three decided to jump off, how many were left on the log? Four, because only three decided to; they didn't do anything.

And that is exactly your answer just a moment ago described that perfectly: well, we are looking at it, we are looking to see what is the best bet, we are going to try, we are looking again, we will make a decision. But we never seem to get to the decision. And I think that is the concern for this hearing and looking at it.

Then what was really interesting was is your discussion right then discussed the new technologies coming out in spite of the inac-

tivity and in spite of everything, or maybe because of. So maybe it is a backward twisted mentality to say, if we don't do anything, all these folks are going to go out there, be so frustrated they are going to come up with something else.

And we can talk about fuels and the footprints that were discussed, but there is also another aspect to this, and this is a question from my area dealing especially with poultry and dealing with others, is the cost aspect. We have not talked about numbers and, again, I have really not heard a good reason why. It was amazing to me you said that this past summer we completely reworked how we were looking at this. Well, this is not like it has been working. It has not been working for a long time, so we stopped to figure out how we can get more processed.

The brokenness of this system is just amazing. But when you look at the brokenness and why it is broken, and the effects it has on other industries, not just this side, you know, from just my area, Georgia, there are 102 counties in Georgia which produce more than \$1 million of poultry at the farm level, at the absolute farm level, 47 percent. It is the largest segment of Georgia's agriculture. Thirty-eight billion is poultry's annual contribution to Georgia's economy from farms, processing, further processing, and satellite businesses. A hundred and thirty-eight thousand jobs depend on the poultry industry, whether indirectly or directly. And then there comes this: \$44 billion is the higher actual feed cost producers have incurred due to RFS.

The problem that we are seeing here and the problem that I would like to understand is maybe the question is is there other impact decisions when dealing with RFS besides the very narrow tube of RIN and other things on that we produce? The impacts in other areas of the economy, is that even thought about? And especially your inactivity in being able to come forward with a standard.

Ms. McCABE. Yes, Congressman, we absolutely understand that there are implications for this program to a variety of industries, and the poultry industry is certainly one, and other agricultural industries. That is one reason why there is such a divergence of views among the industry stakeholders on how EPA should proceed with this program. We are very mindful of those implications.

Mr. COLLINS. Well, then at a certain point in time, at this point, the paralysis that is going on here through analysis and other decisions, and all the conflicting reports and Members of Congress—and I am not denying that—and interest groups, at a certain point in time there needs to be decisions made on when you sort of weights and balances, and I think that was discussed by Mr. Meehan as well, the carbon footprint is actually larger, there are other issues here.

Why are we continuing down a path in which we are charging more to put in our mouth and trying to fix what we are putting in our car? That is the problem that I am having a hard time understanding. We want to help average Americans who are struggling when their food costs are going up, and we are trying different ways that actually are struggling in their gas tank. The only thing that I have frankly seen that RFS standard actually does is help small engine repair. Because you want to screw up a small en-

gine? Put the ethanol in it and let it sit. So small engines are flourishing.

But past that you are hurting agriculture, you are hurting poultry, you are hurting livestock, you are hurting those who want to get into this industry maybe to investments who say we want to find cleaner energies, we want to find cleaner alternatives. But going through this process it would be hard for an investor to sit there and look at maybe these newer technologies that are developing when they look at this process and say it is so broken.

What do you say to those who may side on the fact we need to focus more on the environmental protection side of it and maybe not the economic impact? What do you even say to them to say, well, don't worry, we will get our act together so that we can actually give you some help?

Ms. McCABE. Well, our job, Congressman, is to implement the statute that Congress passed using the authorities that are in it, and that is what we are trying to do to the best of our ability, balancing all of these factors. Congress set certain volumes that the agency is supposed to implement unless we find that one of the reasons is present that we can exercise the waiver authority. And that is what we propose to do and those are the issues that have been discussed over the last year, and those are the issues that need to be resolved, and we intend to do that.

Mr. COLLINS. Well, I think that is the other issue in 2008 and 2012 as well, also, was the supposed off-ramps during the economic crisis, things like that, that would help some of these producers and, again, just basically got passed over due to other concerns. I think that is the part for the workers, for the agriculture community, for the others. We can have the conversation about the standards. I think the interesting point of what you just said, though, is you are tasked to make a decision. There is nowhere probably in that law that says task if you can come up with a consensus; task if you can think about it; task if you.

That is the problem that people have with this city. They don't get it. They view bills like this as job creation for people inside the Beltway. It is job creation. We will farm this out; we will council this; we will get a consultant here; we will get another economic report.

And it all works great inside the Beltway, but to the farmer paying and to poultry farms, and for full disclosure, my wife and her sister still run their daddy's chicken farm, and I have other folks in the 9th District who run a lot more poultry. When you get to them and their costs are going up, their costs are rising and their pay is not going up, that is the problem. The inactivity costs you more than a hearing; it costs people jobs, it costs people's lives, and it changes their input. That is what is broken about the system. Inactivity is no excuse any longer. It is time to make a decision.

Mr. Chairman, I yield back.

Mr. LANKFORD. Ms. McCabe, can I ask about 2016? This is a big issue for us. Obviously, the reset is coming, 2016. You know in the statute full well if there are 2 years prior to that where there is a reduction of 20 percent or more, 50 percent or greater, there is a reset that is built into this. How is that factoring into your decisions for 2014 and 2015 and the delay? Is that in the back of your

mind at this point, saying 2016 is almost here, we have to make sure 2014 and 2015 are right because there is an impact on that?

Ms. MCCABE. Well, Congressman, I believe, and I will confirm with my colleague here, so the statute says that the first year we could effectuate a reset is after 2016, so that would be 2017.

Mr. LANKFORD. Right.

Ms. MCCABE. So as we are looking at 2016 and as we are looking at 2014 and 2015, of course, we are very mindful of those triggers, and thinking about—really, I said before that we have sort of a continual effort to be thinking about this program and trying to think far ahead. So, yes, we are thinking about the implications for our obligations under a reset scenario.

Mr. LANKFORD. Quick clarification, then I am going to yield to the ranking member. When you are talking about 2015, 2016, is that calendar year or the RFS year? How are you defining that? Or fiscal year? So when you look at that, as far as determining we have the reset time coming based on the two previous years, how are you defining previous years?

Ms. MCCABE. The RFS year is the calendar year.

Mr. LANKFORD. OK. But what I am trying to figure out is you are looking at it right now setting the 2015 number. Before you set the 2017, you are actually doing that in 2016, 2015.

Ms. MCCABE. Right.

Mr. LANKFORD. How are you evaluating that for when that decision has to be made?

Ms. MCCABE. In 2015, we intend to set the volumes for the years 2014, 2015, and 2016. So we would not be doing a reset in any of those 3 years.

Mr. LANKFORD. But then would assume that would occur, then, in 2016 you would the following year.

Ms. MCCABE. For the 2017 year.

Mr. LANKFORD. So by November the 30th, 2016, you would set and the reset would be complete for 2017 and on.

Ms. MCCABE. That is my understanding of the schedule that would be required.

Mr. LANKFORD. Thank you.

Let me yield to the ranking member.

Ms. SPEIER. Mr. Chairman, thank you.

Ms. McCabe, I know you are a person of goodwill, and this hearing was an effort to try and illuminate where some of the problems areas are and to get us focused on fixing them. I, frankly, don't think we have achieved that goal. I would really encourage you to provide us with some kind of a document that spells out what you need in order to do your job, because it is not getting done.

And there is a lot of frustration by those who are trying to play by the rules of this law. We want this law to work, and, if it doesn't work, the 20 or so bills that have already been introduced to repeal it or modify it are going to gain a lot more traction. So help us help you do your job.

With that, I yield back, Mr. Chairman.

Unfortunately, I have to leave, and I thank you very much for being here.

Ms. MCCABE. Thank you.

Mr. LANKFORD. I have a couple quick questions, then we are going to close up in a moment as well.

I don't know of a single agency that doesn't plan and prepare and doesn't have targeted time lines. This is the decision that needs to be made: we are going to have a draft by this point; we are going to have 3 months with the draft; we are going to send it to OMB and OIRA to take a look at it; we are going to evaluate it from there; they are going to get it back to us by this time period. Every single one of these decisions has time lines.

What I find unrealistic is for you to say to us we don't have any; it will be sometime in 2015. We all know better. There is a document that you all have worked through setting time lines when this decision is going to be made, when comments are going to be closed, when we are finished replying to comments, when OIRA is going to sign off. All those things exist. We are just asking a simple question: What is the date? Even if it is just the date that you are sending it to OMB and OIRA to look at, what is the date?

Ms. MCCABE. In all honesty, Congressman, that document for this rulemaking does not exist at this time because we are in the process of figuring out what that schedule will be.

Mr. LANKFORD. So you are saying you have looked at this for 2 years and there is no time line of when you will make this decision?

Ms. MCCABE. We made the decision in late November that we were not able to finalize this year. That is causing us to re-look at our schedule and the anticipated work that we need to do in order to finalize 2014 and also accomplish 2015 and 2016 in the next calendar year.

Mr. LANKFORD. So in June 2013, when Mr. Grundler was in front of this same committee, the conversation was we are going to have a proposed rule out for 2014 and get it out, and that occurred.

Ms. MCCABE. Yes.

Mr. LANKFORD. So that means at least before that was leading up there was conversation about what that would be, and then for an entire year of that. So you are saying there is no time line, this is just floating out there for at least since June 2013 on when the time line to finalize 2014 would be.

Ms. MCCABE. Our intent was to finalize the rule as quickly as we could, and we found that we were unable to do so for all the reasons that we have discussed today.

Mr. LANKFORD. But that means there was never a plan to finalize this. I don't mean to be caustic on it. If there is no time line and there is no goal written anywhere, it is a we will get to it when we get to it; there is really no plan. And to say 2015 is not acceptable when we are over a year late for 2014 and we are already late for 2015. And to say we will make sure we get 2016 on time is tough to swallow.

Ms. MCCABE. I appreciate the frustration you are expressing, Congressman. I can assure you this is not a we will get to it when we get to it effort.

Mr. LANKFORD. Well, if there is no plan and there is no deadline, other than sometime in 2015, for something that was due a year ago, there is no sense of urgency to get this done.

Let me shift subject, because I hear where you are at. We are not going to get a date.

There was a study that came out, Northwestern University and the University of Singapore, studied through San Paolo, Brazil and the shift that they made in ozone. You may be very familiar with this. I know you are very familiar with all the ozone issues as well. With the new ozone regulations that are coming out and that are being proposed by the Administration, I have some concerns; and this comes from several articles dated from April of this year.

When they studied what happened when there was a shift to using ethanol in San Paolo in that environment, they saw a rise in ozone. Their hypothesis they have in great detail, the scientific research they did on it, and how ethanol reacts different in the environment than does traditional gasoline, and the ethanol actually increased ground level ozone.

Now, the concern is, as we lean into E15 and E85, at the same time the Administration is also focusing on ground level ozone, we may have a causal effect between the two here if this really holds to be true in the research. Are you familiar with this and are tracking this at all?

Ms. MCCABE. I am definitely familiar with the issue about NOx emissions related to ethanol, yes.

Mr. LANKFORD. What is your concern on that?

Ms. MCCABE. Well, I would go back to the point of the real emphasis of the renewable fuel standard increasing volumes of these advanced fuels that are particularly beneficial for the environment. I think it is an issue that we need to be very mindful of. Ozone is a complex pollutant that is affected by a number of factors, and we spend a lot of time looking at expected ozone levels, running models that can adjust for the complicated chemistry in light of various expectations about emissions that would be existing in different areas. So it is an issue that we definitely have on our radar screen.

Mr. LANKFORD. So NOx-based for ground level ozone, sugar-based, corn-based ethanol has a greater effect on ground level ozone than does some of the advanced, is that what you are saying?

Ms. MCCABE. I don't know that I am comfortable answering that question exactly as you have asked it, Congressman, because I think there are a lot of factors that come into play.

Mr. LANKFORD. But this is an issue that some types of ethanol do increase ground level ozone.

Ms. MCCABE. There can be an increase in NOx emissions.

Mr. LANKFORD. Right. Which affects the ozone.

Ms. MCCABE. Which can affect ozone, yes.

Mr. LANKFORD. OK. So somehow we have to figure out how we have a mandate over here to increase ethanol usage and we have a mandate over here to bring down ozone when this could help cause some of this and at least be a factor in part of it, and we have competing priorities here coming from the Federal Government.

Ms. MCCABE. Well, an important factor is the scale of what we are talking about here, the contributions that might come from ethanol compared to the pool of NOx emissions from a variety of sources.

Mr. LANKFORD. Sure. But if the Federal Government plans to tell certain manufacturers you have to manufacture different, when at the same time encouraging NOx emissions in other ways based on another mandate, we have a problem, because this manufacturer is now spending more money for this and the gas station is now spending more money to put in a certain tank to be able to drive a certain vehicle that actually does increase NOx. You see what I am talking about? This, at some point, makes every person that does electricity or does any kind of manufacturing, their head spin, to say how can the Federal Government require both of these.

Ms. McCABE. I just point out again that what we are doing in this program is implementing Congress's statute.

Mr. LANKFORD. So this is clearly an error we have to get back to statute on. I would say to you we are not going to let go of this. Obviously, Ms. Speier and I are very, very passionate about this, as are a lot of folks that were not here on the dais based on other meetings that are happening today. This is a very big issue that we have got to get some certainty on, and 2015 sometime I think is 2015 November 30th. I think that is the real date that is hanging out there, and I think that is an even bigger problem when we are 2 years late on 2014 and a full year late on 2015; 2016 comes out and then immediately followed by a reset for 2017.

I think the Administration is holding on to this and I think that is a problem. And what I am telling you is we are not going to let go of this. It is the responsible thing to do to hit the deadlines and be able to get it out and provide some stability into the market what is required, and what has been requested and what was considered in law at the very beginning when this was done.

So I really thank you for being here and for answering the questions that you could or would answer for us, and we will continue to followup in the days ahead. Thank you, Ms. McCabe.

Ms. McCABE. Thank you.

Mr. LANKFORD. This hearing is adjourned.

[Whereupon, at 11 a.m., the subcommittee was adjourned.]





## **APPENDIX**

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Questions For The Record Following the December 10, 2014 Hearing Entitled,  
"Examining EPA's Management of the Renewable Fuel Standard Program"**

**Subcommittee on Energy Policy, Health Care and Entitlements  
Committee on Oversight and Government Reform**

***Questions from Chairman Lankford***

**1. Does EPA plan to retain the methodology it proposed for the 2014 RFS calculations for 2015 and beyond? If not, what methodology will EPA use? Will it still recognize the blend wall?**

**Response:**

The EPA is currently in the process of developing the notice of proposed rulemaking (NPRM) that would establish volume standards under the RFS program in 2015 and 2016. Because we are still in that process, we cannot comment on what methodology (or methodologies) will be used in the NPRM for 2015 and beyond. As soon as we have information on our approach, EPA will work with the Committee to describe the approach and answer any questions.

**2. Will EPA finalize a rule using the existing proposal, or does it plan to withdraw the rule and re-propose the rule? If it is withdrawing and re-proposing, what is the reason?**

**Response:**

The EPA is still considering our options regarding treatment of the existing 2014 RFS proposed rule. As we take action on the 2014 RFS standards, however, we will take into account where we are in the calendar (namely, that 2014 has passed, and that any standards for 2014 will necessarily need to account for this).

**3. Does EPA believe it will trigger its reset authority? If so, when will this occur? Has EPA started to consider how it might implement its obligations under the reset?**

**Response:**

The statute requires that EPA take certain actions to "reset" particular volume targets if certain conditions are met. Specifically, the re-set requirement is triggered when any of the four statutory volume targets are waived 20% for two consecutive years, or 50% in a single year. That condition has not been met for biomass-based diesel, advanced biofuel or total renewable fuel, and it would be speculative to try to predict when such conditions might

occur. EPA is considering how we might implement this provision, including ways to minimize disruption and delay.

**4. In November of last year, EPA issued its proposed 2014 RFS numbers. Since then, the Agency has worked through comments and other public input to the point where it was able to submit a final rule to OMB in August of this year. What issues did OMB raise that were not raised during interagency review prior to the proposed rule? Has anything in the fuels market materially changed since EPA proposed its rule? Have there been any market incidents or trends that could lead to EPA delaying and then possibly changing in a significant way its November 2013 proposal?**

**Response:**

The 2014 RFS volume proposal generated significant comment and diverging views, particularly about how volumes should be set in light of lower gasoline consumption and its relationship to the blendwall, and whether and on what basis the statutory volumes for renewable fuels should be lowered. Most notably, commenters expressed concerns regarding the ability of the proposed approach to provide incentives for continued progress towards achieving the volumes of renewable fuel targeted by the statute. Both prior to submittal of the draft final rule to OMB and subsequent to that point, EPA, in consultation with other federal agencies, has been in the process of evaluating these issues in light of the purposes of the statute and the Administration's commitment to its goals.

**5. After EPA's November announcement, it is understood that the final rule will be released after the compliance year is over. What operational flexibility will obligated parties have to retroactively comply?**

**Response:**

Renewable fuels were produced and consumed, and obligated parties procured RINs throughout 2014 in anticipation of final standards. Obligated parties will continue to have the ability to procure RINs for 2014 compliance for some period of time (to be determined in the rulemaking) after the final 2014 standards are established. In addition, there are a number of existing compliance flexibilities available to them to enable them to comply with the 2014 standards. These include the use of banked carryover RINs and carrying a deficit into 2015.

As we take action on the 2014 RFS standards, however, we will take into account where we are in the calendar (namely, that 2014 has passed, and that any standard for 2014 will necessarily need to account for this).

**6. What cost-benefit analysis has EPA performed on the impacts of its options for implementing the RFS?**

**Response:**

The rulemaking that implemented the RFS2 program in 2010 contained an assessment of many of the costs and impacts of the program when it is fully phased in according to the volumes provided by Congress in the Clean Air Act (CAA, or Act). The subsequent annual rulemakings largely rely on the cost and impacts assessments conducted for the 2010 rulemaking.

**7. Overall uncertainty in the RFS program has caused price volatility in the RIN market. How does EPA intend to address this issue? Has EPA considered other economic factors, such as what impact this non-decision may have on company obligations under tax and accounting regulations?**

**Response:**

It is our goal to get back on the statutory timetable for issuing rules. It is our hope that in doing so, the RFS program can continue to spur growth in renewable fuels and provide greater certainty to investors and other market participants.

Price volatility in the RIN market can be caused by a wide variety of factors; however, we are intending to establish the 2014, 2015, and 2016 standards this year in order to bring more certainty to the market. Other sources of uncertainty that are outside the purview of EPA's action, and that influence the RIN market and market volatility, include corn and soybean prices, crude oil prices, federal tax credit policies, and banking and trading of RINs in preparation for program compliance.

**8. Please provide copies of all draft and final documents the Agency has prepared relating to EPA's schedule for releasing RVOs for the years 2014, 2015, and 2016.**

**Response:**

Given the extent of the issues the Agency intends to cover this year in setting multi-year standards, it is vital to conduct a comprehensive evaluation of all the factors necessary to accomplish this work and the timing under which the work can be completed. While we do not yet have a fully defined schedule, the Administrator has stated that the Agency intends to issue notices this spring. It is our hope that in doing so, the RFS program can continue to spur growth in renewable fuels, provide greater certainty to investors and other market participants and get back on schedule in setting the annual standards.

***Questions from Chairman Lankford and Ranking Member Speier***

**1. We were alarmed by the lack of specifics regarding the release of the renewable fuel standards for 2014, 2015, and 2016. Given that both the 2014 and 2015 standards are already late, we require more information regarding EPA's release plan. Please provide us with a timeline for the years 2015 and 2016, detailing when the EPA will release each Notice of Proposed Rulemaking, and estimating when each Final Rule is planned to be released. Please also provide us with your timeline for finalizing the 2014 rule.**

**Response:**

As stated in an announcement we made on November 21, 2014, EPA intends to take action on the 2014 standards in 2015. We also intend to take action on the 2015 and 2016 RFS standards this year so that we get back on a more predictable, timely schedule for issuing such rules. It is our hope that in doing so, the RFS program can continue to spur growth in renewable fuels and provide greater certainty to investors and other market participants.

We will share information concerning our schedule with the Committee as soon as possible.

**2. During the hearing, Ms. McCabe was unable to provide us with specific details regarding why the release of renewable fuel standards has become increasingly delayed. Please provide us with a detailed explanation of how EPA will ensure that future rulemakings occur on schedule. Please also include information on additional resources or authorities that EPA requires in order to release future rulemakings in a timely fashion.**

**Response:**

As stated in an announcement we made on November 21, 2014, EPA intends to take action on the 2014 standards in 2015. We also intend to take action on the 2015 and 2016 RFS standards this year so that we get back on a more predictable, timely schedule for issuing such rules. It is our hope that in doing so, the RFS program can continue to spur growth in renewable fuels and provide greater certainty to investors and other market participants.

Completing, within a year's time, a rulemaking that requires the collection and analysis of significant amounts of data and that is of significant interest to a diverse set of stakeholders is a challenging task. And, as discussed during the hearing, issuing the RVO every year has proven to be a significant implementation challenge for the EPA, particularly in the last several years as the gasoline fuel pool has become saturated with ethanol blends at the 10 percent volume level (E10), raising concerns about the pace of further expansion of renewable fuel use. Resolving the fundamental issues that we are facing as part of the 2014 standards rulemaking should go a long way to enabling EPA to complete annual rulemakings on time in the future.

*Questions from Congresswoman Duckworth*

**1. The fact that the RFS rulemaking has become so unpredictable is chipping away at the credibility of the process and frozen investment in next generation fuels. How does EPA plan to get the program back on track in 2015 and to make rulemaking timely, predictable, and true to the policy goal of blending an increasing amount of biofuels into the nation's motor fuel supply? Can you lay out potential paths forward to ensure that future years provide certainty for biofuels producers?**

**Response:**

The EPA believes the best plan to enhancing predictability and certainty for RFS stakeholders is to act on RFS standards for 2014, 2015 and 2016 within this calendar year and get back on schedule in setting annual standards.

**2. How is the EPA aligning the goals of reducing greenhouse gas emissions, reducing tailpipe emissions, and reducing our dependence on fossil fuels in the transportation sector through the rulemaking and implementation of the CAFE/Greenhouse Gas Emissions rule, the TIER III emissions reductions rules, and the Renewable Fuel Standard as all three have similar goals and should reinforce each other.**

**Response:**

These three rulemakings are all aimed at reducing the environmental impact of passenger vehicles. The light duty greenhouse gas emission rulemakings require a substantial reduction in GHG emissions, from the vehicles, and the Tier 3 vehicle emissions and fuel standards rule will result in significant reductions in emissions of tailpipe criteria pollutants and air toxics. The RFS program complements these programs with the goal to achieve reductions in lifecycle GHG emissions (specifically including emissions "upstream" from the tailpipe) associated with the production and distribution of transportation fuel. We note that gasoline consumption has declined in recent years, and this trend is projected to continue for a number of reasons, including the GHG and fuel economy standards. For the RFS program, this decline has meant that the E10 blendwall on gasoline blending occurred sooner and at a lower overall volume of ethanol than was generally expected.

**3. Independent science and research conducted by national laboratories and universities have documented the significant reductions in greenhouse gas emissions realized from ethanol (40 to 50% reductions) through the Renewable Fuel Standard at a price per gallon which is still less than gasoline. Given the interest by the President and the Administration in reducing greenhouse gas emissions, when will EPA provide industry, the consumers, and the Administration the credit they deserve for these significant reductions? Will EPA consider updating their models that analyze the greenhouse gas emissions associated with ethanol under the RFS?**

**Response:**

As part of the RFS program, EPA has determined that several ethanol pathways achieve significant reductions in greenhouse gas emissions. For example, EPA has determined that ethanol produced from sugarcane, separated food waste, certain types of algae, and grain sorghum using certain advanced processing technologies meet the 50% GHG emission reductions threshold necessary to qualify as advanced biofuel. EPA has also determined that ethanol produced from cellulosic materials meets the 60% GHG emission reduction threshold to qualify as cellulosic biofuel. EPA has made technical updates to the models used for conducting lifecycle GHG analysis of new feedstocks under the RFS program and will continue to do so as necessary. Furthermore, as part of the recently updated Efficient Producer Petition Process, EPA allows ethanol producers to demonstrate their individual GHG reduction values to EPA for approval under the RFS program.

