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**AMENDMENT TO H.R.**  
**OFFERED BY MS. HERSETH SANDLIN OF SOUTH**  
**DAKOTA**

In title IX, after subtitle F, insert the following and make the necessary conforming changes in the table of contents:

1 **Subtitle A—BIOFUELS FOR EN-**  
2 **ERGY SECURITY AND TRANS-**  
3 **PORTATION**

4 **SEC. 9601. SHORT TITLE.**

5 This subtitle may be cited as the “Bioenergy Innova-  
6 tion, Optimal Fuel Utilization, and Energy Legacy  
7 (BIOFUEL) Act of 2007”.

8 **SEC. 9602. RENEWABLE BIOFUEL PROGRAM.**

9 (a) DEFINITIONS.—

10 (1) ADDITIONAL DEFINITIONS.—Section 211  
11 (o) of the Clean Air Act (42 U.S.C. 7545(o)) is  
12 amended by adding the following at the end of para-  
13 graph (1):

14 “(E) FUEL EMISSION BASELINE.—The  
15 term ‘fuel emission baseline’ means the average  
16 lifecycle greenhouse gas emissions of the aver-  
17 age of gasoline in commerce in the United

1 States during the period of calendar years 2005  
2 through 2007. This includes emissions attrib-  
3 utable to the extraction, refining, distribution,  
4 marketing and use of those fuels.

5 “(i) GREENHOUSE GAS.—The term  
6 ‘greenhouse gas’ means any of the fol-  
7 lowing—

8 “(I) carbon dioxide;

9 “(II) methane;

10 “(III) nitrous oxide;

11 “(IV) hydrofluorocarbons;

12 “(V) perfluorocarbons; and

13 “(VI) sulfur hexafluoride.

14 “(ii) LIFECYCLE GREENHOUSE GAS  
15 EMISSIONS.—The term ‘lifecycle green-  
16 house gas emissions’ means the aggregate  
17 quantity of greenhouse gases attributable  
18 to the manufacture, transportation, and  
19 use of transportation fuel, as modified by  
20 deducting, as determined by the Adminis-  
21 trator, in consultation with the Secretary  
22 of Agriculture, both of the following:

23 “(I) Any greenhouse gases cap-  
24 tured at the facility and sequestered.

1                   “(II) The carbon content, ex-  
2                   pressed in units of carbon dioxide  
3                   equivalent, of any feedstock that is re-  
4                   newable biomass.

5                   “(iii) ADVANCED BIOFUEL.—The  
6                   term ‘advanced biofuel’ means a renewable  
7                   fuel—

8                   “(I) that meets the requirements  
9                   of an appropriate American Society  
10                  for Testing and Materials standard;  
11                  and

12                  “(II) the lifecycle greenhouse gas  
13                  emissions of which are at least 50 per-  
14                  cent lower than the fuel emissions  
15                  baseline, as determined by the Admin-  
16                  istrator.

17                  “(iv) RENEWABLE BIOMASS.—

18                  “(I) IN GENERAL.—Except as  
19                  provided in subclause (II), the term  
20                  ‘renewable biomass’ means each of the  
21                  following:

22                         “(aa) Planted crops and  
23                         crop residue produced in compli-  
24                         ance with—

1                   “(AA) an approved con-  
2                   servation plan as defined in  
3                   section 1201 of the Food  
4                   Security Act of 1985 (16  
5                   U.S.C. 3801); or

6                   “(BB) Swampbuster  
7                   provisions for wetlands con-  
8                   servation prescribed in sec-  
9                   tion 1221 of the Food Secu-  
10                  rity Act of 1985 (16 U.S.C.  
11                  3821);

12                  “(bb) Planted trees and tree  
13                  residue from actively managed  
14                  tree plantations.

15                  “(cc) Animal waste material,  
16                  and animal byproducts.

17                  “(dd) Harvest residue and  
18                  pre-commercial thinnings from  
19                  non-Federal forestlands other  
20                  than old growth forest or late  
21                  successional forest.

22                  “(ee) Harvest residue and  
23                  pre-commercial thinnings from  
24                  National Forest System land or  
25                  public lands as defined by section

1 103 of the Federal Land Policy  
2 and Management Act of 1976  
3 (43 U.S.C. 1702) that are per-  
4 mitted by law, and in accordance  
5 with applicable land management  
6 plan and the requirements for  
7 old-growth maintenance, restora-  
8 tion, and management direction  
9 of paragraphs (2), (3), and (4) of  
10 subsection (e) and the require-  
11 ments for large-tree retention in  
12 subsection (f) of section 102 of  
13 the Healthy Forests Restoration  
14 Act.

15 “(ff) Biomass obtained for  
16 the purposes of protecting non-  
17 abandoned structures at risk  
18 from wildfire.

19 “(gg) Algae.

20 “(hh) Municipal solid waste.

21 “(II) EXCLUSION.—The term ‘re-  
22 newable biomass’ does not include—

23 “(aa) cultivated invasive or  
24 noxious plants, as determined by  
25 the Secretary of Interior (acting

1 through the United States Fish  
2 and Wildlife Service), the Sec-  
3 retary of Agriculture, or the head  
4 of an applicable State depart-  
5 ment or agriculture or applicable  
6 State conservation agency; or

7 “(bb) crops grown on land  
8 converted from native grassland  
9 after the enactment of this Act,  
10 as determined by the Secretary of  
11 Agriculture.”.

12 (2) MODIFICATION OF EXISTING DEFINI-  
13 TIONS.—

14 (A) Clause (ii) of subparagraph (C) of sec-  
15 tion 211 (o)(1) of the Clean Air Act (42 U.S.C.  
16 7545(o)(1)) is amended to read as follows:

17 “(ii) INCLUSION.—The term ‘renew-  
18 able fuel’ includes cellulosic biomass eth-  
19 anol, advanced biofuel, and waste derived  
20 ethanol.”.

21 (B) Subparagraph (C) of section 211  
22 (o)(1) of the Clean Air Act (42 U.S.C.  
23 7545(o)(1)) is amended by adding the following  
24 at the end thereof:

1                   “(iii) EXCLUSION.—The term ‘renew-  
2                   able fuel’ does not include biodiesel.”.

3           (b) STANDARD.—Paragraph (2) of section 211 (o) of  
4 the Clean Air Act (42 U.S.C. 7545(o)(2)) is amended to  
5 read as follows:

6                   “(2) RENEWABLE BIOFUEL STANDARD.—

7                   “(A) REGULATIONS.—

8                   “(i) IN GENERAL.—Not later than 1  
9                   year after the date of enactment of the  
10                  ‘Bioenergy Innovation, Optimal Fuel Utili-  
11                  zation, and Energy Legacy (BIOFUEL)  
12                  Act of 2007’, the Administrator shall  
13                  amend the regulations under this section  
14                  to reflect the amendments made by that  
15                  Act and to ensure that gasoline sold or in-  
16                  troduced into commerce in the United  
17                  States, on an annual average basis, con-  
18                  tains the applicable volume of renewable  
19                  fuel and advanced biofuels as determined  
20                  in accordance with subparagraph (B).

21                  “(ii) PROVISIONS OF REGULATIONS.—

22                  Regardless of the date of promulgation,  
23                  the regulations promulgated under clause  
24                  (i)—

1                   “(I) shall contain compliance pro-  
2                   visions applicable to refineries, blend-  
3                   ers, distributors, and importers, as  
4                   appropriate, to ensure that the re-  
5                   quirements of this paragraph are met;

6                   “(II) shall ensure that renewable  
7                   fuels produced from facilities that  
8                   commence operation after calendar  
9                   year 2007 achieve at least a 20 per-  
10                  cent reduction in life cycle greenhouse  
11                  gas emissions compared to gasoline;  
12                  but

13                  “(III) shall not restrict geo-  
14                  graphic areas in which renewable fuel  
15                  may be used or impose any per-gallon  
16                  obligation for the use of renewable  
17                  fuel.

18                  “(B) APPLICABLE VOLUME.—

19                  “(i) CALENDAR YEARS 2007 THROUGH  
20                  2022.—

21                  “(I) RENEWABLE FUEL.—For  
22                  the purpose of subparagraph (A), the  
23                  applicable volume for any of calendar  
24                  years 2007 through 2022 shall be de-



1 terminated in accordance with the fol-  
2 lowing table:

<b>“Calendar year :</b>	<b>Applicable volume of renew- able fuel (in billions of gal- lons):</b>
2007 .....	4.7
2008 .....	8.5
2009 .....	10.5
2010 .....	12.0
2011 .....	12.6
2012 .....	13.4
2013 .....	14.3
2014 .....	15.2
2015 .....	16.5
2016 .....	18.0
2017 .....	21.0
2018 .....	24.0
2019 .....	27.0
2020 .....	30.0
2021 .....	33.0
2022 .....	36.0

3 “(II) ADVANCED BIOFUELS.—  
4 For the purpose of subparagraph (A),  
5 of the volume of renewable fuel re-  
6 quired under this clause, the applica-  
7 ble volume of advanced biofuels for  
8 any of calendar years 2012 through  
9 2022 shall be determined in accord-  
10 ance with the following table:

<b>“Calendar year :</b>	<b>Applicable volume of advanced biofuels fuel (in billions of gallons):</b>
2012 .....	0.25
2013 .....	0.5
2014 .....	0.75
2015 .....	1.5
2016 .....	3.0
2017 .....	5.0
2018 .....	9.0
2019 .....	12.0
2020 .....	15.0

“Calendar year :	<b>Applicable volume of advanced biofuels fuel (in billions of gallons):</b>
2021 .....	18.0
2022 .....	21.0

1                                   “(ii) CALENDAR YEAR 2023 AND  
2                                   THEREAFTER.—Subject to clause (iii), for  
3                                   the purposes of subparagraph (A), the ap-  
4                                   plicable volume of renewable fuels and ad-  
5                                   vanced biofuels for calendar year 2023 and  
6                                   each calendar year thereafter shall be de-  
7                                   termined by the Administrator, in con-  
8                                   sultation with the Secretary of agriculture,  
9                                   based on a review of the implementation of  
10                                  the program during calendar years 2008  
11                                  through 2022, including a review of—

12                                  “(I) the impact of renewable  
13                                  fuels on the environment, air quality,  
14                                  job creation, rural economic develop-  
15                                  ment, and energy security of the  
16                                  United States;

17                                  “(II) the expected annual rate of  
18                                  future production of renewable fuels,  
19                                  including advanced biofuels; and

20                                  “(III) the impact of renewable  
21                                  fuels on the infrastructure of the  
22                                  United States, including deliverability  
23                                  of materials, goods, and products

1 other than renewable fuel, and the  
2 sufficiency of infrastructure to deliver  
3 renewable fuel.

4 “(iii) MINIMUM APPLICABLE VOL-  
5 UME.—For the purpose of subparagraph  
6 (A), the applicable volume of renewable  
7 fuel for calendar year 2023 and each cal-  
8 endar year thereafter shall be equal to the  
9 product obtained by multiplying—

10 “(I) the number of gallons of  
11 gasoline that the Administrator esti-  
12 mates will be sold or introduced into  
13 commerce in the calendar year; and

14 “(II) the ratio that—

15 “(aa) 36,000,000,000 gal-  
16 lons of renewable fuel; bears to

17 “(bb) the number of gallons  
18 of gasoline sold or introduced  
19 into commerce in calendar year  
20 2022.

21 “(iv) MINIMUM PERCENTAGE OF AD-  
22 VANCED BIOFUEL.—At least 60 percent of  
23 the minimum applicable volume of renew-  
24 able fuel for calendar year 2023 and each

1                   calendar year thereafter shall be advanced  
2                   biofuel.”.

3           (c) CREDIT PROGRAM.—Paragraph (5) of section  
4 211(o) of the Clean Air Act is amended by adding the  
5 following at the end thereof:

6                   “(E) PRODUCTION OF RENEWABLE FUEL  
7                   USING RENEWABLE ENERGY.—

8                   “(i) In this subparagraph:

9                                 “(I) The term ‘facility’ means a  
10                                facility used for the production of re-  
11                               newable fuel.

12                               “(II) The term ‘renewable en-  
13                               ergy’ has the meaning given the term  
14                               in section 203(b) of the Energy Policy  
15                               Act of 2005 (42 U.S.C. 15852(b)) but  
16                               the term includes biogas produced  
17                               through the conversion of organic  
18                               matter from renewable biomass.

19                               “(ii) The Administrator shall provide  
20                               a credit under the program established  
21                               under this paragraph to the owner of a fa-  
22                               cility that uses renewable energy to dis-  
23                               place more than 90 percent of the fossil  
24                               fuel normally used in the production of re-  
25                               newable fuel.

1                   “(iii) The Administrator may provide  
2                   the credit in a quantity that is not more  
3                   than the equivalent of 1.5 gallons of re-  
4                   newable fuel for each gallon of renewable  
5                   fuel produced in a facility described in sub-  
6                   clause (I).”.

7           (d) WAIVERS.—Paragraph (7) of section 211(o) of  
8 the Clean Air Act (42 U.S.C. 7546(o)) is amended to read  
9 as follows:

10           “(7) WAIVERS.—

11                   “(A) IN GENERAL.—The Administrator, in  
12                   consultation with the Secretary of Energy and  
13                   the Secretary of Agriculture, may waive the re-  
14                   quirements of paragraph (2)(B) in whole or in  
15                   part on petition by 1 or more States by taking  
16                   any action described in clauses (i) through (iii)  
17                   of subparagraph (B), based on a determination,  
18                   after notice and opportunity for comment,  
19                   that——

20                           “(i) implementation of the require-  
21                           ment would severely harm the economy or  
22                           environment of a State, a region, or the  
23                           United States; or

24                           “(ii) extreme and unusual cir-  
25                           cumstances exist that prevent distribution

1 of an adequate supply of domestically-pro-  
2 duced renewable fuel to consumers in the  
3 United States.

4 “(B) AUTHORIZED ACTIONS.—In waiving  
5 the requirements of paragraph (2)(B) pursuant  
6 to subparagraph (A), the Administrator, in con-  
7 sultation with the Secretary of Energy and the  
8 Secretary of Agriculture, may——

9 “(i) reduce the applicable volume of  
10 renewable fuel required under paragraph  
11 (2)(B)(i)(I) or (2)(B)(ii);

12 “(ii) reduce the applicable volume of  
13 advanced biofuels required under para-  
14 graph (2)(B)(i)(II) or (2)(B)(iv) to a vol-  
15 ume equal to not less than the volume of  
16 advanced biofuels production certified by  
17 the Secretary of Energy; and

18 “(iii) make advanced biofuels credits  
19 available to refiners, blenders, and import-  
20 ers of advanced biofuels at a cost equal to  
21 the difference between——

22 “(I) \$3.00 per gallon of advanced  
23 biofuel (as adjusted for inflation); and

24 “(II) on the date on which the  
25 advanced biofuel credit is made avail-

1           able, the spot price per gallon of gaso-  
2           line on the New York Mercantile Ex-  
3           change, or any other comparable mar-  
4           ket, as determined by the Secretary of  
5           Energy.”.

6           (e) VOLUNTARY LABELING PROGRAM.—Section  
7 211(o) of the Clean Air Act (42 U.S.C. 7546(o)) is amend-  
8 ed by adding the following at the end thereof:

9           “(11) VOLUNTARY LABELING PROGRAM.—

10           “(A) IN GENERAL.—The Administrator  
11 shall establish criteria for a system of voluntary  
12 labeling of renewable fuels based on life cycle  
13 greenhouse gas emissions.

14           “(B) CONSUMER EDUCATION.—The Ad-  
15 ministrator shall ensure that the labeling sys-  
16 tem under this subsection provides useful infor-  
17 mation to consumers making fuel purchases.

18           “(C) FLEXIBILITY.—In carrying out this  
19 subsection, the Administrator may establish  
20 more than 1 label, as appropriate.”.

21 **SEC. 9603. BIODIESEL FUELS PROGRAM.**

22           (a) .—Section 211 of the Clean Air Act (42 U.S.C.  
23 7545) is amended by inserting after subsection (o) the fol-  
24 lowing:

25           “(p) BIODIESEL FUEL.—

- 1           “(1) DEFINITIONS.—In this subsection:
- 2                   “(A) ASTM.—The term ‘ASTM’ means the
- 3           American Society of Testing and Materials.
- 4                   “(B) BIO-BASED DIESEL REPLACEMENT.—
- 5           The term ‘bio-based diesel replacement’ means
- 6           any type of bio-based renewable fuel derived
- 7           from plant or animal matter that—
- 8                   “(i) may be used as a substitute for
- 9                   standard diesel fuel; and
- 10                   “(ii) meets—
- 11                       “(I) the registration require-
- 12                       ments for fuels and fuel additives
- 13                       under this section; and
- 14                       “(II) the requirements of applica-
- 15                       ble ASTM standards.
- 16           “(C) BIODIESEL.—
- 17                   “(i) IN GENERAL.—The term ‘bio-
- 18                   diesel’ means the monoalkyl esters of long
- 19                   chain fatty acids derived from plant or ani-
- 20                   mal matter that meet—
- 21                       “(I) the registration require-
- 22                       ments for fuels and fuel additives
- 23                       under this section; and
- 24                       “(II) the requirements of ASTM
- 25                       standard D6751.



1                   “(ii) INCLUSION.—For the purpose of  
2                   measuring the applicable volume of the  
3                   biodiesel fuel standard under paragraph  
4                   (2), the term ‘biodiesel’ includes any bio-  
5                   based diesel replacement that meets—

6                                 “(I) applicable registration re-  
7                                 quirements for fuels and fuel additives  
8                                 under this section; or

9                                 “(II) applicable ASTM stand-  
10                                ards.

11                   “(D) BIODIESEL BLEND.—The term ‘bio-  
12                   diesel blend’ means a blend of biodiesel fuel  
13                   that meets the requirements of ASTM standard  
14                   D6751 with petroleum-based diesel fuel.

15                   “(2) BIODIESEL FUEL STANDARD.—

16                                 “(A) IN GENERAL.—Not later than 1 year  
17                                 after the date of enactment of this subsection,  
18                                 the Administrator shall promulgate regulations  
19                                 to ensure that diesel fuel sold or introduced into  
20                                 commerce in the United States, on an annual  
21                                 average basis, contains the applicable volume of  
22                                 biodiesel determined in accordance with sub-  
23                                 paragraphs (B) and (C).

24                                 “(B) CALENDAR YEARS 2008 THROUGH  
25                                 2012.—For the purpose of subparagraph (A),

1 the applicable volume for any of calendar years  
 2 2008 through 2012 shall be determined in ac-  
 3 cordance with the following table:

<b>“Calendar year:</b>	<b>Applicable volume of biodiesel (in millions of gallons):</b>
2008 .....	450
2009 .....	625
2010 .....	800
2011 .....	1,000
2012 .....	1,250

4 “(C) CALENDAR YEAR 2013 AND THERE-  
 5 AFTER.—For the purpose of subparagraph (A),  
 6 the applicable volume for calendar year 2013  
 7 and each calendar year thereafter shall be de-  
 8 termined by the Administrator, in consultation  
 9 with the Secretary and the Secretary of Agri-  
 10 culture, based on a review of the implementa-  
 11 tion of the program during calendar years 2008  
 12 through 2012, including a review of—

13 “(i) the impact of the use of renew-  
 14 able fuels on the environment, air quality,  
 15 energy security, job creation, and rural  
 16 economic development; and

17 “(ii) the expected annual rate of fu-  
 18 ture production of biodiesel.

19 “(D) MINIMUM PERCENTAGE OF BIO-  
 20 DIESEL.—For the purpose of subparagraph  
 21 (B), not more than 20 percent of the minimum  
 22 applicable volume for each of calendar years

*bio-based diesel*

1 2008 through 2012 shall be ~~bio-diesel~~ replace-  
2 ment.

3 “(E) COMPLIANCE.—The regulations pro-  
4 mulgated under subparagraph (A) shall contain  
5 compliance provisions applicable to refineries,  
6 blenders, distributors, and importers, as appro-  
7 priate, to ensure that the requirements of this  
8 paragraph are met, but shall not—

9 “(i) restrict geographic areas in which  
10 biodiesel may be used; or

11 “(ii) impose any per-gallon obligation  
12 for the use of biodiesel.

13 “(F) PREEMPTION OF STATE BIODIESEL  
14 MANDATES.—Notwithstanding any provision of  
15 law to the contrary, no State shall enact a re-  
16 quirement mandating the use of biodiesel and  
17 any such requirements are hereby preempted,  
18 except—

19 “(i) it shall not apply to any State  
20 biodiesel mandate that has been enacted as  
21 of January 1, 2008; and

22 “(ii) States may continue to mandate  
23 the use of biodiesel in State and munici-  
24 pally-owned vehicles.

1           “(G) STATE INCENTIVES.—Nothing in  
2           subparagraph (F) shall be construed to pre-  
3           clude States from enacting financial incentives  
4           to promote the voluntary use of biodiesel.

5           “(3) BIODIESEL QUALITY.—

6           “(A) QUALITY REGULATIONS.—Not later  
7           than 180 days after the date of enactment of  
8           this subsection, the Administrator, in consulta-  
9           tion with the Secretary of Energy and the Sec-  
10          retary of Agriculture, shall promulgate regula-  
11          tions to ensure that only high-quality biodiesel  
12          that is consistent with appropriate ASTM  
13          International standards for biodiesel and bio-  
14          diesel blends is introduced into commerce.

15          “(B) ENFORCEMENT.—The Administrator  
16          shall establish an inspection program to ensure  
17          that biodiesel and biodiesel blends entering  
18          commerce meets the standards established  
19          under subparagraph (A).

20          “(C) VIOLATIONS.—Regardless of whether  
21          the Administrator promulgates regulations  
22          under subparagraph (A), it shall be a violation  
23          of this Act to produce or distribute—

1           “(i) biodiesel or any bio-based diesel  
2 replacement that does not meet the re-  
3 quirements of ASTM standard D6751; or

4           “(ii) a biodiesel blend that does not  
5 meet the equivalent ASTM standard, as  
6 determined by the Administrator.

7           “(D) FUNDING.—There are authorized to  
8 be appropriated to carry out this paragraph  
9 \$3,000,000 for each of fiscal years 2008  
10 through 2010.

11          “(4) BIODIESEL LABELING.—

12           “(A) IN GENERAL.—Each retail diesel fuel  
13 pump shall be labeled in a manner that informs  
14 consumers of the percent of biodiesel that is  
15 contained in the biodiesel blend that is offered  
16 for sale, as determined by the Administrator.

17           “(B) LABELING REQUIREMENTS.—Not  
18 later than 180 days after the date of enactment  
19 of this subsection, the Administrator shall pro-  
20 mulgate biodiesel labeling requirements as fol-  
21 lows:

22           “(i) Biodiesel blends that contain less  
23 than or equal to 5 percent biodiesel by vol-  
24 ume and that meet ASTM D975 diesel

1 specifications shall not require any addi-  
2 tional labels.

3 “(ii) Biodiesel blends that contain  
4 more than 5 percent biodiesel by volume  
5 but not more than 20 percent by volume  
6 shall be labeled contains biodiesel in quan-  
7 tities between 5 percent and 20 percent.

8 “(iii) Biodiesel blends that contain  
9 more than 20 percent biodiesel by volume  
10 shall be labeled contains more than 20 per-  
11 cent biodiesel.”.

12 (b) PENALTIES AND ENFORCEMENT.—Section  
13 211(d) of the Clean Air Act (42 U.S.C.7545(d)) is amend-  
14 ed as follows:

15 (1) In paragraph (1)\_\_\_

16 (A) in the first sentence, by striking “or  
17 (o)” each place it appears and inserting “(o), or  
18 (p)”; and

19 (B) in the second sentence, by striking “or  
20 (o)” and inserting “(o), or (p)”; and

21 (2) in the first sentence of paragraph (2), by  
22 striking “and (o)” each place it appears and insert-  
23 ing “(o), and (p)”.