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6 BACKGROUND ON RENEWABLE IDENTIFICATION

7 NUMBERS UNDER THE RENEWABLE FUEL STANDARD

8 WEDNESDAY, JULY 25, 2018

9 House of Representatives

10 Subcommittee on Environment

11 Committee on Energy and Commerce

12 Washington, D.C.

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16 The subcommittee met, pursuant to call, at 9:15 a.m., in
17 Room 2322 Rayburn House Office Building, Hon. John Shimkus
18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Shimkus, McKinley, Harper,
20 Olson, Flores, Hudson, Walberg, Carter, Duncan, Walden (ex
21 officio), Tonko, Ruiz, Peters, McNerney, Cardenas, Pallone (ex
22 officio), and Loeb sack.

23 Staff present: Samantha Bopp, Staff Assistant; Kelly
24 Collins, Staff Assistant; Jerry Couri, Chief Environmental
25 Advisor; Wyatt Ellertson, Research Associate,

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26 Energy/Environment; Margaret Tucker Fogarty, Staff Assistant;
27 Adam Fromm, Director of Outreach and Coalitions; Jordan Haverly,
28 Policy Coordinator, Environment; Mary Martin, Deputy Chief
29 Counsel, Energy & Environment; Sarah Matthews, Press Secretary,
30 Energy & Environment; Drew McDowell, Executive Assistant; Brannon
31 Rains, Staff Assistant; Austin Stonebraker, Press Assistant;
32 Hamlin Wade, Special Advisor, External Affairs; Everett Winnick,
33 Director of Information Technology; Jean Fruci, Minority Energy
34 and Environment Policy Advisor; Tiffany Guarascio, Minority
35 Deputy Staff Director and Chief Health Advisor; Caitlin Haberman,
36 Minority Professional Staff Member; Rick Kessler, Minority Senior
37 Advisor and Staff Director, Energy and Environment; Alexander
38 Ratner, Minority Policy Analyst; and C.J. Young, Minority Press
39 Secretary.

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40 Mr. Shimkus. I'd like to call the Subcommittee on the
41 Environment hearing to order and recognize myself for five minutes
42 for an opening statement.

43 And, really, I start going through some prepared text, I
44 want to allow the interested parties that are -- oh, is that
45 Whitfield there? Former member of the committee. And I see
46 Kenny Hulshof, former member of the House. Good buddy of mine.

47 So a lot of other friends out there. To interest groups,
48 we plan to legislate and we are about ready to go on an August
49 break and I would encourage you to educate, especially members
50 of the subcommittee, take the time during the break and visit
51 with them as we try to move forward.

52 To my colleagues on both sides, I would encourage you to
53 do your homework on your free time so that when we come back we
54 can really have a good discussion.

55 I would like to have a really open process as we go through
56 -- actually put down original text and then go through some --
57 a markup that wouldn't be preordained but we would work through
58 some of the processes.

59 So that's just an editorial comment, and then I will start
60 with my prepared opening statement.

61 Today's hearing continues this subcommittee's ongoing
62 efforts to examine the future of our nation's transportation
63 fuels. One of the most significant programs that influences
64 transportation fuel in America is the Renewable Fuel

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65 Standard, today's topic of discussion.

66 More specifically, the focus on this hearing is to provide
67 members the opportunity to better understand Renewable
68 Identification Numbers, frequently referred to as RINs.

69 RINs are the main component of the Renewable Fuel Standard's
70 tradable credit system and serve as its compliance mechanism.

71
72 RINs are attached to renewable fuel gallons at the time of
73 production and they are separated when that renewable fuel is
74 blended into the nation's nonrenewable fuel supply, at which time
75 the blending party can use the RINs to comply with the RFS or
76 they can trade the RINs to another party.

77 Obligated parties, typically refineries, must submit RINs
78 to the EPA on a yearly basis to demonstrate compliance with their
79 annual renewable fuel obligations. So that's a mouthful.

80 The purpose of today's hearing is very much educational in
81 nature and is intended to promote greater understanding of how
82 RINs fit into the overall Renewable Fuel Standard.

83 In order to chart a legislative path forward, it is critical
84 that the subcommittee first gather the facts and comprehend the
85 various complexities of the RFS program.

86 With an emphasis on getting clear objective information and
87 answers about RINs, we have invited a panel of witnesses who can
88 provide independent impartial testimony based on their extensive
89 and varied experience working with RINs.

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90 Witnesses that are joining us today include Brent Yacobucci,
91 the research manager for the Energy and Minerals
92 Section of the Congressional Research Service, who has analyzed
93 and written on the RFS since the program's inception; Sandra
94 Dunphy, the director of Energy Compliance at Weaver Tidwell LLP
95 and a nationally recognized RINs expert who provides RFS-related
96 services to a diverse range of clients; Paul Niznik, an energy
97 consultant with Argus Media who specializes in RINs and will help
98 demystify the factors affecting RINs prices -- demystify; Dr.
99 Gabriel Lade, an assistant professor of Economics at Iowa State
100 University who has authored multiple academic publications on
101 the RFS, which have been cited by a wide range of RFS-related
102 stakeholders and industries; and Corey Lavinsky, the director
103 of Global Biofuels with Standard and Poor's, who will explain
104 how the RIN market works in comparison to other commodity and
105 environmental markets.

106 I'd like to thank these witnesses for their attendance and
107 participation and I look forward to hearing their perspectives
108 on a number of subjects, such as what factors
109 are influencing the RINs market, how the current RINs system
110 impacts various types of stakeholders including consumers, and
111 the prevalence and circumstances of RIN fraud.

112 While understanding that the topic of this morning's hearing
113 can bring about strong viewpoints, my hope and intent is that
114 this hearing will result in a constructive and

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115 productive dialogue that will further this subcommittee's effort
116 to improve the nation's transportation fuel policies.

117 And with that, I have 40 seconds remaining. Anybody wishing
118 for that time? Seeing none, I'll yield back the balance of my
119 time and yield to my friend the ranking member of the subcommittee,
120 Mr. Tonko, for five minutes.

121 [The prepared statement of Mr. Shimkus follows:]

122

123 *****INSERT 1*****

124 Mr. Tonko. Thank you, Mr. Chair, and thank you to our
125 witnesses for joining us this morning.

126 This is the latest in this subcommittee's series of hearings
127 on our nation's use of transportation fuels and the renewable
128 fuel standard program.

129 Today, we will examine renewable identification numbers,
130 or RINs. As you know, RINs are unique 38-digit codes given to
131 each gallon of biofuel produced or imported into the United
132 States.

133 These credits are used to comply with the RFS. At the end
134 of each year each obligated party must have RINs to demonstrate
135 it has met its renewable volume obligation.

136 RFS compliance can be achieved in two ways -- either by
137 purchasing the required volume of biofuel and blending it into
138 the fuel supply to obtain RINs directly or by purchasing the
139 required number of RINs on the open market.

140 The debate over the future of the RFS cannot be separated from
141 the performance of the RIN marketplace. Earlier this Congress,
142 we received testimony on RIN price volatility and heard some
143 stakeholders support for a RIN price cap.

144 According to press reports, these have been among the issues
145 considered by members working on RFS reform, and while the RIN
146 market certainly has had price spikes, I do not think we should
147 ignore the political figure's ability to impact market stability.

148 With each White House meeting or EPA announcement, the RIN

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149 market can be put into flux. Over the years, the RFS has
150 experienced administrative issues in both Republican and
151 Democratic administrations such as missed RVO deadlines that have
152 impacted its ability to provide for that market certainty.

153 The latest example, which I have voiced my concerns about
154 in the past, is former EPA Administrator Pruitt's excessive use
155 of small refinery hardship exemptions.

156 In the past two years, nearly 50 exemptions, representing
157 approximately \$2.25 billion RINs worth of obligation have been
158 granted in virtual secrecy.

159 We still do not fully know whether these exemptions were
160 justified, whether those obligations were reallocated to larger
161 refiners, or how these waivers may have impacted RIN prices in
162 the biofuels market.

163 Secret exemptions are not good for the sake of a healthy
164 market and the lack of transparency is extremely troubling,
165 although it is reflective of standard operating procedures within
166 the RIN marketplace.

167 While RIN transactions are reported to EPA's moderated
168 transaction system, there are legitimate concerns that the market
169 lacks meaningful transparency.

170 Very little information on RIN transactions is made public
171 and the market is not subject to scrutiny by regulators similar
172 to other commodity markets.

173 This has led to numerous reported issues of RIN fraud in

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174 the past and leaves the door open for potential market
175 manipulation. Publicly available data may not be sufficient to
176 even know if market manipulation is indeed occurring. That is
177 a problem.

178 I know members of this committee hold a wide range of views
179 on the RFS. But regardless of your position, I hope that we can
180 agree that there should be sufficient transparency and oversight
181 of this marketplace in order to ensure that it is functioning
182 and functioning properly.

183 Thank you again for being here. I look forward to the
184 discussion.

185 And with that, Mr. Chair, I yield back.

186 Mr. Shimkus. Gentleman yields back his time.

187 The chair now recognizes the chairman of the full committee,
188 Chairman Walden, for five minutes.

189 The Chairman. Thank you, Mr. Chairman. Thanks for holding
190 yet another hearing on this overall topic. We appreciate it.

191 This is fifth hearing on the future of transportation fuels
192 and, as we have heard, this morning's topic is Renewable
193 Identification Numbers known as RINs.

194 And I would argue if we gave a test about what RINs are and
195 how the market works, perhaps within this room but I am sure
196 outside of this room, even our most learned members might not
197 test so well.

198 So that's why we are having this hearing. It's not to pit

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199 one side against the other or rip off Band-Aids or anything else.
200 It is to learn, to better inform our work so that we can address
201 the issues before this committee.

202 So I won't restate how RINs works. We have done that
203 already. But there are nuances. This does affect markets and
204 therefore it affects consumers, and we are going to put consumers
205 first.

206 So this hearing is intended to be educational, and for those
207 of you of a certain vintage, some of you may remember something
208 called encyclopedias like World Book or Britannica. There is
209 people here who are nodding and people who are scratching and
210 others are going right to Google.

211 This hearing will help the Environment Subcommittee better
212 fill out it's set of books on transportation renewable fuels more
213 generally.

214 Why? Well, as I've said before, it is my desire to move
215 legislation that will pave the future of transportation fuels
216 into the next decades in the United States and in order for this
217 to happen it's important that we understand what RINs are and
218 how they fit into the renewable fuel standard, a program that
219 in 2017 spurred the production of 15.8 billion gallons of ethanol
220 and 1.6 billion gallons of biodiesel in the United States.

221 That said, this hearing is not meant to drive a preordained
222 policy or to settle scores. It is intended to help members
223 understand the program so they can

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224 make informed decisions when the time comes for us to legislate.

225 So I want to thank our witnesses for being here. We
226 appreciate it. You've been asked to join us not just for your
227 extensive knowledge base on the complicated
228 matter but also for your demonstrated ability to be both
229 informative and objective when it comes to communicating the
230 fundamental elements of the RINs program.

231 So I look forward to hearing your testimony today. And so
232 we will proceed. I want to thank the chairman and other members
233 of this committee who have been working overtime on the broad
234 set of issues related to renewable fuels and how this committee
235 can move forward.

236 So we will move forward. Hearings are part of doing our
237 due diligence in business and we won't be talked out of them and
238 we are here today to hear from all of you.

239 So thank you very much, and with that, Mr. Chairman, I yield
240 back.

241 [The prepared statement of Mr. Walden follows:]

242

243 *****INSERT 2*****

244 Mr. Shimkus. The gentleman yields back his time.

245 The chair now recognizes the ranking member of the full
246 committee, Congressman Pallone from New Jersey, for five minutes.

247 Mr. Pallone. Thank you, Mr. Chairman.

248 Today we are here to talk about the renewable identification
249 number, or RIN. The RIN market provides a mechanism to bridge
250 the gap between biofuel supply and demand created by the renewable
251 fuel standard mandate.

252 And the market allows parties blending more than their
253 required gallons of biofuel to sell their excess RINs to parties
254 that blend less than their require gallons.

255 When the market functions properly, it lowers the cost of
256 compliance for all participants in the renewable fuels standards
257 program. But it must be fair, transparent, and well regulated.

258 It should also primarily serve the interests of RFS
259 participants, not the interests of speculators. Well, that's
260 how things are supposed to work. But today, they are not working
261 and I believe much of the recent volatility in the RIN market can
262 be attributed to the way the Trump administration has operated
263 the RFS program.

264 Press reports of the on again off again RFS negotiations
265 conducted by the White House over the past year or so have driven
266 RIN prices up and down, depending upon the headline of the day.

267 No new RINs were created or removed from the market in these
268 meetings and no changes to the program were made if the price

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269 fluctuated enough to create losses or gains for everyone involved
270 in the program over the costs of the last year -- over the course
271 of the last year.

272 Now, former EPA Administrator Pruitt also nearly doubled
273 the number of small refinery waivers that were granted last year,
274 which lowered the price of RINs. It appears that some of these
275 waivers were granted to refineries not experiencing financial
276 hardship which is required under the law.

277 If that's the case, then former Administrator Pruitt
278 intentionally misused this waiver authority to manipulate the
279 RIN market and undermine the RFS, and the lack of transparency
280 and accountability in the waiver program raises serious questions
281 about how this program is being managed.

282 Market mechanisms can work well. They can lower compliance
283 costs as long as they are not manipulated, which is what I fear
284 is happening under this administration.

285 And I guess we will find out more about it today. I don't
286 know if anybody else wants the time. Otherwise, I will yield
287 back, Mr. Chairman.

288 Mr. Shimkus. The gentleman yields back his time.

289 We now conclude with members' opening statements. The chair
290 would like to remind members that pursuant to committee rules,
291 all members' opening statements will be made part of the record.

292 We appreciate you all being here today. I've kind of done
293 the initial formal introduction in my opening statement. So I'll

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294 just turn to you. Your full statements are submitted for the
295 record. You'll have five minutes.

296 Again, this is very -- an educational process. So I am not
297 going to be Attila the Hun with the gavel. But as you see the
298 clock tick then kind of know that we should get to the end so
299 that we can get to members' questions.

300 So with that, I'd like to recognize Mr. Brent Yacobucci from
301 CRS for five minutes.

302 STATEMENTS OF BRENT YACOBUCCI, ENERGY AND MINERALS MANAGER,
303 CONGRESSIONAL RESEARCH SERVICE; SANDRA DUNPHY, DIRECTOR, ENERGY
304 COMPLIANCE SERVICES, WEAVER AND TIDWELL, LLP; PAUL NIZNIK, SENIOR
305 CONSULTANT, ARGUS MEDIA INCORPORATED; DR. GABRIEL E. LADE,
306 ASSISTANT PROFESSOR OF ECONOMICS, IOWA STATE UNIVERSITY; COREY
307 LAVINSKY, DIRECTOR OF GLOBAL BIOFUELS, S&P GLOBAL PLATTS
308 ANALYTICS

309

310 STATEMENT OF BRENT YACOBUCCI

311 Mr. Yacobucci. Good morning, Chairman Shimkus, Ranking
312 Member Tonko, and members of the subcommittee.

313 My name is Brent Yacobucci. I am the energy and mineral
314 section research manager for the Congressional Research Service.
315 Congressional guidelines on objectivity and nonpartisanship
316 require that I confine my testimony to technical, professional,
317 and non-advocate aspects of matters under consideration and that
318 I limit myself to areas within my knowledge and expertise.

319 Although I can discuss policy options and potential
320 ramifications, the service does not take a position on pending
321 or proposed legislation.

322 I've been with CRS for 19 years, providing analysis on
323 alternative fuels, automotive design, and transportation-related
324 provisions of the Clean Air Act.

325 I have a Bachelor's degree in mechanical engineering from
326 the Georgia Institute of Technology and a Master's degree in

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327 public policy from the George Washington University.

328 I am a member of the Society of Mechanical Engineers, the
329 Society of Automotive Engineers, and the Society of Petroleum
330 Engineers, although today I am representing only CRS.

331 The federal Renewable Fuel Standard was established by the
332 Energy Policy Act of 2005 and expanded in 2007 by the Energy
333 Independence and Security Act.

334 The RFS requires the use of renewable biofuels in
335 transportation. For 2018, the mandate is, roughly, 19.3 billion
336 gallons.

337 Within the larger mandate, there are sub-mandates for
338 advanced biofuels including biomass-based diesel and cellulosic
339 biofuels.

340 The RFS is a market-based program in which obligated parties,
341 typically refiners, must submit credits to cover their
342 obligations. These credits, renewable identification numbers,
343 or RINs, can be bought or sold like other commodities.

344 In general, for each gallon of renewable fuel produced, one
345 RIN is generated. A RIN is a 38-character number issued by the
346 biofuel producer or importer at the point of production or import.

347 Each qualifying gallon has its own unique RIN. The
348 characters signify various attributes to the batch of fuel,
349 including the decode, which identifies the category of fuel and
350 which part of the RFS that fuel satisfies -- D3 for cellulosic
351 biofuel, D4 for bio-based diesel, D5 for advanced biofuels, and

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352 D6 for unspecified biofuel -- typically, corn-based ethanol.

353 From the beginning of the RFS program there will be concerns
354 with RIN generation and the RIN market, in part to address concerns
355 over errors, inaccuracies, and potential fraud, when EPA
356 finalizes rules for the RFS in 2007, sometimes referred to as
357 the RFS 2, EPA also established a new EPA-moderated transaction
358 system, or EMTS.

359 EPA maintains that obligated parties must exercise due
360 diligence, and under their buyer beware system, those purchasing
361 RINs must certify the validity of those RINs on their own.

362 They are generally responsible for any invalid RINs they
363 pass on to others or submit to EPA for compliance. At times,
364 RIN prices have been volatile. Most RINs are initially bought
365 and sold through private contracts. But in the spot market for
366 RINs in 2013 spot prices for conventional ethanol RINs -- the
367 D6 RINs -- rose dramatically before dropping even more rapidly.

368 Stakeholders have identified various factors as potentially
369 causing the price increase, including whether submission amounts
370 of ethanol can be blended into gasoline to meet the RFS mandates
371 and the extent to which non-obligated parties are speculating
372 in RIN markets.

373 Further, some stakeholders have suggested that a few actors
374 could be actively working to manipulate those RIN markets.

375 Concerns have been raised about the volatility of RIN prices
376 on the secondary market and the potential effects on the costs

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377 faced by gasoline blenders and oil refiners, particularly those
378 refiners without the infrastructure to blend, as well as the
379 effects on consumer fuel prices.

380 The complex interactions among the prices for various
381 commodities makes such analysis difficult. Stakeholders who
382 propose various options to address some of these concerns
383 including limiting the participation of non-obligated parties
384 in the markets and in the EMTS, establishing a price cap for RINs,
385 requiring more public real-time reporting for RIN trading data,
386 and granting the Commodity Futures Trading Commission authority
387 to regulate the RIN market similarly to other agricultural
388 commodities.

389 Each of these options could affect agricultural and biofuel
390 producers, gasoline suppliers, blenders, and consumers. But it
391 is beyond the scope of this testimony to address economic effects.

392 I thank the subcommittee for its time and I am happy to answer
393 any questions you have.

394 [The prepared statement of Mr. Yacobucci follows:]

395

396 *****INSERT 3*****

397 Mr. Shimkus. Thank you very much.

398 The chair now recognizes Ms. Dunphy for five minutes.

399 Thanks for being here.

400 STATEMENT OF SANDERS DUNPHY

401

402 Ms. Dunphy. Thank you very much, and good morning.

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Mr. Chairman, Mr. Ranking Member, and members of the subcommittee, my name is Sandra Dunphy and I am a director in the energy compliance services group of Weaver and Tidwell, a certified public accounting firm ranked among the 40 largest CPA firms in the U.S. My area of expertise is the RFS program.

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411

Weaver is the largest provider of attestation services under the EPA's gasoline and diesel programs and Weaver was the first auditor that the EPA approved under the RFS quality assurance plan program.

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In 2017, we verified more than 1.1 billion RINs and we are currently auditing about 50 renewable fuel producers. Weaver has a diverse client base for these RFS-related services -- renewable fuel producers, importers, exporters, blenders, and consumers.

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Our clients also include gasoline and diesel refiners and importers. These companies are classified as obligated parties under the RFS program because they must acquire RINs to comply with the renewable fuel blending targets set annually by the EPA.

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Because of this diverse base of customers, Weaver takes a neutral position on the RFS regulations. My comments to you today are intended to provide useful information as you explore potential revisions and updates to the RFS regulations, not to

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425 advocate for any particular position or provision.

426 Today, I've been asked to describe some of the nuances or
427 inconsistencies that exist in the regulations so that that will
428 be focus on my remarks today.

429 In order for companies to make the necessary investments
430 in new technologies and renewable fuel production facilities,
431 they need clear consistent long-term policies and regulations
432 and, of course, they need financial incentives.

433 Under the RFS program, that financial incentive comes
434 primarily from RINs. If new technologies and fuels can meet the
435 stringent feedstock production process and finished fuel
436 requirements of the RFS, then RINs are the reward.

437 But if any part of those feedstocks, processes, or fuels
438 fails to meet the requirements, no RINs can be generated and
439 facilities cannot acquire the funding needed to get built.

440 Let me provide just a few examples of things that are
441 currently either not allowed or where the regulations are so
442 stringent that few if any facilities can comply.

443 Some of the things currently not allowed, fuels that require
444 two separate facilities to be produced -- for example, one
445 facility converts wood, straw, grasses, or municipal solid waste,
446 feed stock into some type of liquid, and another facility, such
447 as a petroleum refinery, turns that liquid into a finished fuel,
448 then fuel cannot generate RINs.

449 Bio gas used to produce electricity that is then used to

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450 power motor vehicles, here the pathway exists in the regulations
451 but has not yet been implemented.

452 Renewable fuels used in ocean-going vessels is not available
453 for RINs. By comparison, renewable fuel used in jet planes that
454 leave the U.S. are eligible for RINs.

455 Here are examples of some feed stocks with stringent
456 requirements that often disqualify their fuels from earning RINs:
457 sawdust and wood chips from a lumber mill, waste wood pulled
458 from construction and demolition debris, old railroad ties, and
459 disease and insect-infected trees generally don't qualify.

460 Tree thinning and forest floor logging residues are also
461 very difficult to use, even if sustainably harvested. Bio gas
462 from digesters located at farms or wastewater treatment
463 facilities that take in a variety of wastes, some cellulosic and
464 some non, are only allowed to make noncellulosic RINs if they
465 could process any amount of noncellulosic material. Being able
466 to make only noncellulosic RINs often kills a project.

467 The fuels of the future depend on a renewable fuels
468 producers' ability not only to generate RINs but on the type and
469 quantity of RINs that can be made for each gallon of fuel.

470 This dependency holds true for both standalone renewable
471 fuel production facilities and for petroleum refineries wanting
472 to co-process renewable feed stocks in their facilities.

473 The RFS regulations, by their very nature, dictate winners
474 and losers in the renewable fuel market. Whatever changes you

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475 may propose to the RFS regulations, I encourage you to seek clear,
476 predictable, practical standards and take advantage of RINs as
477 a powerful market incentive toward change.

478 Again, thank you for the opportunity to testify today and
479 for your work in reviewing how RINs can help incentivize
480 production of the best fuels for the environment and the American
481 consumer.

482 Weaver stands ready to assist your committee in any way
483 possible as you consider different options for accomplishing
484 these goals.

485 Thank you.

486 [The prepared statement of Ms. Dunphy follows:]

487

488 *****INSERT 4*****

489 Mr. Shimkus. Thank you very much.

490 Now, next I'll turn to Mr. Niznik. You're recognized for
491 five minutes.

492 I think check the microphone. There is a button underneath
493 there and pull a little bit close.

494 STATEMENT OF PAUL NIZNIK

495

496 Mr. Niznik. Mr. Chairman, Mr. Ranking Member, and members
497 of the subcommittee, my name is Paul Niznik. I am a senior
498 consultant for Argus Media Incorporated.

499 I would like to thank you for the opportunity to testify
500 this morning on RINs prices and fuels markets.

501 Argus Media is a global commodity price reporting agency
502 with over 40 years of experience providing a broad range of
503 industries with objective and independent market assessments.

504 Billions of dollars of commodity prices are based on Argus
505 published indices which are produced in over 20 offices spread
506 across global market hubs.

507 Argus provides its services to entities within the
508 petroleum, biofuel, and power markets, among others. In my role
509 as a consultant, I provide strategic planning services,
510 investment due diligence and market research specifically in
511 biofuels and RINs markets.

512 Research on historic price data demonstrates that most RINs
513 price behavior can be explained in the context of four main factors
514 -- the RFS rules, commodities prices, fuel quality regulations,
515 and other incentives on the national and state level.

516 Historically, changes seen in any of these areas can have
517 quantifiable effects on RIN prices. In my experience with
518 clients, at every level of participation in the market,

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519 understanding the logic of RINs price behavior creates
520 opportunities for investment and opens chances to optimize
521 business efficiency.

522 Uncertainty around potential changes to the RFS or the
523 policies disrupts the logic of the market and creates RINs price
524 movements and volatility not normally seen under similar market
525 conditions.

526 Likewise, policy clarification and long-term guidance have
527 decreased RINs price volatility and returned the markets to
528 logical behavior in the past, such as the issuance of guidance
529 by EPA on the intention for annual RFS rulemaking in 2015 after
530 a multiple year lapse.

531 RFS price volatility, driven by policy news, as well as
532 policy uncertainty, are the two largest complaints about the RFS
533 that I hear from my clients, both RIN buyers such as petroleum
534 refiners, and RINs generators such as biofuels producers.

535 Thank you for the opportunity to testify. I look forward
536 to answering questions from members of the committee.

537 [The prepared statement of Mr. Niznik follows:]

538

539 *****INSERT 5*****

540 Mr. Shimkus. Well, you get a gold star for short five
541 minutes there. So thank you very much.

542 I will now turn to Dr. Lade. You're recognized for five
543 minutes.

544 STATEMENT OF GABRIEL LADE

545

546 Mr. Lade. Chairman Shimkus, Ranking Member Tonko, and other
547 members of the committee, thank you for the opportunity to
548 participate in today's hearing.

549 I am an assistant professor of economics at Iowa State
550 University, a visiting assistant professor in the Dyson School
551 of Applied Economics and Management at Cornell University, and
552 a faculty affiliate at the Center for Agricultural and Rural
553 Development, a public policy and economic research institute at
554 Iowa State University.

555 To these roles, I bring my expertise in environmental
556 economics and policy analysis. In recent years, I have
557 particularly focussed on state and federal policies that increase
558 the production and use of renewable transportation fuels
559 including the renewable fuel standard.

560 I published several peer reviewed and outreach articles on
561 RIN price determinants and their impacts on downstream consumer
562 markets, and this is the topic on which I will speak today, though
563 I will note that all my views expressed are my own and do not
564 reflect those of the entities that I am associated with.

565 RIN markets serve a vital role in enforcing the renewable
566 fuel standard. Key questions have arisen around the operation
567 and integrity of RIN markets, particularly since 2013, due to
568 observed volatility.

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569 These include have RIN markets operated as intended by the
570 enacting legislation, what changes can improve the RIN market
571 and limit volatility, and what impact would administrative or
572 legislative changes to the RFS have on RIN markets and biofuel
573 demand in the United States.

574 In the written testimony that I submitted to this committee,
575 I summarized RINs' accounting and economic purpose as well as
576 review the empirical evidence on RIN price determinants and their
577 impacts on downstream market prices.

578 I also address potential effects of proposed changes to the
579 RFS program, their likely impacts on RINs, and their implications
580 for biofuel demand in the United States.

581 I want to emphasize four points from my testimony here.
582 First, RINs serve a vital accounting role in RFS compliance.
583 However, their economic role is even more important.

584 RIN prices adjust to ensure that congressional biofuel
585 blending mandates are met each year and are a key market signal
586 about the value of investing in biofuel production and
587 distribution infrastructure.

588 Second, several features of RIN markets suggest that they
589 are efficient. Prices adjust quickly to changing compliance cost
590 expectations and market fundamentals, and most RIN price
591 volatility since 2013 can readily be attributed to ever changing
592 biofuel blending targets and uncertainty around future mandates.

593

594 However, publicly available data is insufficient to fully
595 determine whether the market is efficient or free of manipulation.

596 Greater transparency would allow researchers and regulators to
597 study these issues, and further transparency would make attempt
598 to manipulate the market more difficult and costly.

599 Third, we all know that fuel retailers and refiners are not
600 driven out of business every time states raise their fuel taxes.

601 Instead, consumer prices at the pump increase typically by the
602 full amount of the tax.

603 Fuel providers pay the tax bill but consumers ultimately
604 bear the tax cost. The same situation arises in RIN markets.

605 The empirical economics literature continues to show that
606 wholesale fuel prices on average rise one for one with refiners'
607 RIN costs.

608 This means that so long as refiners offset their RFS
609 compliance obligations as they accrue them, on average, they're
610 fully compensated for their RIN costs through higher wholesale
611 gasoline and diesel prices.

612 Finally, recent actions by the Environmental Protection
613 Agency likely undermined RIN markets. RIN markets are designed
614 to provide a signal about the value of biofuel production and
615 distribution in the United States. That signal becomes
616 unreliable when EPA decisions are unpredictable and lack
617 transparency.

618 Thank you, and I look forward to your questions.

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619

[The prepared statement of Mr. Lade follows:]

620

621

*****INSERT 6*****

622 Mr. Shimkus. Thank you very much.

623 Now I will turn to Mr. Lavinsky. You're recognized for five

624 minutes. Thanks for being here.

625 STATEMENT OF COREY LAVINSKY

626

627 Mr. Lavinsky. Okay. Good morning, Chairman Shimkus,
628 Ranking Member Tonko, and other members of the subcommittee.

629 Thank you for inviting me to speak today. I am grateful
630 for the opportunity to share information for this hearing.

631 My name is Corey Lavinsky and I am with S&P Global Platts
632 handling global biofuels analytics. S&P Global Platts is a
633 leading provider of energy and commodity market data. We provide
634 news, market commentary, fundamental data and analysis, thousands
635 of daily price assessments, and analytical tools to help customers
636 spot and seize opportunities with confidence.

637 I've been analyzing biofuels markets for nearly 10 years
638 during which I have seen conventional biofuel RINs rise from
639 pennies apiece to as much as \$1.40.

640 RINs, which are currently hovering around five-year lows,
641 are of great interest to our clients and to the agricultural
642 biofuels and petroleum industries in general.

643 RINs are the currency of the renewable fuel standard -- the
644 RFS. Refiners and importers that are subject to the RFS prove
645 compliance with their renewable volume obligations by retiring
646 RINs at the end of each compliance year.

647 Obligated parties can obtain RINs by physical blending or
648 by purchasing them on the open market. RINs are typically traded
649 on a bilateral basis and off exchange. Independent pricing

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650 organizations like S&P Global Platts have shined a light on the
651 opaque markets by publishing RIN price assessments.

652 Some RINs are more versatile than others and can be used
653 to satisfy multiple mandates. For instance, a D4 RIN with the
654 production of biodiesel can be used to satisfy three of the four
655 mandates. The most common RIN, a D6 RIN, generated from corn
656 ethanol, can only be used toward the total renewable fuel mandate.

657 Adding to flexibility, all RINs have a two calendar year
658 lifespan. Unused RINs can be carried over to the next year with
659 some limitations.

660 The government publishes extensive aggregated monthly data
661 on RIN generation and renewable fuel production. It's also
662 responsible for making decisions on small refinery hardship
663 exemptions.

664 Exemptions lower the number of RINs needed to satisfy the
665 annual mandates. Currently, small refinery hardship exemption
666 decisions are not make public. This makes analyzing RIN supply
667 and demand challenging.

668 Earlier this month, S&P Global Platts and other news
669 organizations broke news as to how many small refinery exemptions
670 were issued.

671 In a letter to Senator Grassley, the government confirmed
672 that it had granted 19 out of 20 waivers for 2016. Further, for
673 2017, 29 of 33 petitioners were granted exemptions with the four
674 remaining still pending.

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675 In total, 48 exemptions have been granted over the past two
676 years with a total exempted renewable fuel volume obligation of
677 approximately 2.25 billion RINs.

678 Recent court decisions have also had an effect on RIN supply.
679 A few cases including one that was decided by the Fourth Circuit
680 Court of Appeals last Friday have overturned denials of waiver
681 petitions.

682 In Ergon-West Virginia vs. EPA, the court vacated a denial
683 of the small refinery exemption, saying that it was arbitrary
684 and capricious. If this decision opens the door to more
685 litigation that leads to restatement of retired RINs, supply
686 demand in prices would be affected.

687 When compared to other policy-driven environmental
688 commodity markets, a key distinguishing characteristic of the
689 RINs market is that it is a floor and trade system rather than
690 a cap and trade system.

691 This ensures that a minimum volume of biofuels is blended
692 into the transportation pool. Cap and trade sets a cap for
693 behavior that the government seeks to limit and penalizes
694 companies that exceed the cap.

695 On the other hand, under the RFS, the government sets the
696 floor and companies are penalized if they don't blend enough to
697 meet their RVOs or do not acquire a sufficient amount of RINs
698 in lieu of blending.

699 RINs of the same year and category are priced the same

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700 anywhere in the country. RINs do not have the same complications
701 across state lines that renewable energy certificates often have.

702 Unlike the RINs market, renewable energy certificate
703 policies are set by individual states and require electricity
704 suppliers to account for a certain percentage of the final sales
705 customers with particular kinds of renewable power.

706 Renewable energy generation creates certificates which are
707 regional tracking systems. Individual states decide targets and
708 which types of certificates can be used for compliance.

709 Thank you for the opportunity to provide the statement at
710 such an important time. I welcome any questions you might have.

711

712 [The prepared statement of Mr. Lavinsky follows:]

713

714 *****INSERT 7*****

715 Mr. Shimkus. Thank you very much and I thank you all for
716 your testimony and we'll now move to the question asking portion
717 of the hearing. I will begin the questioning and recognize myself
718 for five minutes.

719 I understand RINs are used by obligated parties to
720 demonstrate compliance with the renewable volume obligations set
721 by the EPA and that those volumes are based upon energy information
722 and administrative numbers and projections.

723 Ms. Dunphy, are those Energy Information Administration
724 projections and, by extension, the RVOs based solely on past
725 biofuel production levels or do they reflect realistic growth
726 in biofuel production capacity?

727 Ms. Dunphy. Thank you, Mr. Chairman.

728 The annual RVOs are set by EPA using the EIA forecast for
729 gasoline and diesel demand for the coming year, and if you think
730 of the way the allocations work amongst the refineries, the EPA's
731 job is to come up with a percentage that each refinery can use
732 to calculate their obligation and there's a percentage for each
733 of the four compliance categories that they multiply how much
734 gasoline and diesel they may buy.

735 To come up with that, they forecast what renewable fuel is
736 going to be available for introduction into the U.S. market.
737 That becomes the numerator of the fraction. The denominator is
738 gasoline and diesel. You come up with a percentage for all four
739 categories.

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740 So it actually is a forward looking fraction, if you will,
741 that creates this percentage that the oil companies use in the
742 next year.

743 Mr. Shimkus. Thank you.

744 Mr. Lavinsky, in your testimony you note that in your 10
745 years of analyzing biofuels you have seen RIN prices go from
746 pennies to as much as \$1.40.

747 What usually causes such changes to the price? Is it market
748 related or more affected by regulations and policy actions?

749 Mr. Lavinsky. Thank you for your question.

750 Historically, large movements in RIN prices can be tied to
751 spikes in ethanol prices due to higher feedstock costs. Higher
752 mandates also contribute.

753 In 2013 when RIN prices reached their peak, corn prices were
754 over \$7 per bushel and they're currently only around \$3.25 now,
755 and while ethanol prices were about \$1.18 per gallon more than
756 they are now.

757 There are usually small policy bumps in prices each year
758 as new mandates are proposed in the spring and finalized around
759 November. But they're not comparable in size to the spike five
760 years ago.

761 Currently, the low RIN prices now are the result of a record
762 domestic ethanol production and consumption and this abnormally
763 high RIN bank.

764 Mr. Shimkus. Thank you. Some stakeholders had expressed

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765 frustration with the transparency of the RIN market -- I think
766 we've heard that today from some of you all -- including what
767 information is available to the public, when it's available, and
768 what information is deemed confidential business information and
769 who is trading in the market, among other concerns.

770 Is there a RIN market transparency issue and, if so, quickly,
771 what would be some of the benefits of a more transparent market?

772 And this is for the whole table. So Mr. Yacobucci, if you
773 would start and then we'll just go down the table.

774 Mr. Yacobucci. Certainly, there is limited information
775 that's available. For example, EPA maintains a spreadsheet of
776 literally thousands of companies that are required to comply with
777 various fuel requirements under the Clean Air Act.

778 It is difficult from that current database to figure out
779 which RIN participants are individual trading companies versus
780 subsidiaries of a large company and so being able to suss out
781 who is performing, trading, and participating in the MTS as an
782 independent third party versus a subsidiary of a biofuel company
783 or an oil company with refining. Those sorts of information is
784 very difficult to suss out currently.

785 Mr. Shimkus. Okay. Let me go to Ms. Dunphy.

786 Ms. Dunphy. Yes. The other --

787 Mr. Shimkus. And I only have a minute left so try to be
788 real --

789 Ms. Dunphy. Yes. Other panellists are probably more

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790 expert on this --

791 Mr. Shimkus. Okay.

792 Ms. Dunphy. -- but there are private contracts where the
793 RINs transact on the intraday basis. So it's not public
794 information.

795 Mr. Shimkus. Okay. Mr. Niznik.

796 Mr. Niznik. Yes. Argus Media is a price reporting agency
797 that tracks data and marketplace transactions.

798 Sorry -- here. We track RINs transactions from real market
799 participants' reporting of actual trades. So that's how we
800 gather data on pricing.

801 Mr. Shimkus. Okay.

802 Mr. Niznik. And still, even at that level, we can't have
803 the understanding of full volumes of the marketplace at any one
804 given time that would be able to elucidate any issues on market
805 manipulation.

806 Mr. Shimkus. Dr. Lade.

807 Mr. Lade. I echo a lot of the other participants' statements
808 here. However, I would say, you know, more on the transparency
809 side it's really the policy signal that has been driving much
810 of the volatility recently.

811 Mr. Shimkus. Mr. Lavinsky.

812 Mr. Lavinsky. I mean, with my five seconds -- and some
813 companies occasionally report that they received a waiver in the
814 public filings. So sometimes we get additional information

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815 through the public filings that wouldn't otherwise be available.

816 Mr. Shimkus. That's awesome. Thank you very much.

817 I yield back my time and turn to the ranking member, Mr.
818 Tonko, for five minutes.

819 Mr. Tonko. Thank you, Mr. Chair, and Mr. Yacobucci, thank
820 you for your work with CRS.

821 Some questions -- EPA signed a memorandum of understanding
822 with the Commodity Futures Trading Commission in 2016. As I
823 understand it, only EPA has the authority over the RIN market.

824 Is that true?

825 Mr. Yacobucci. Currently that is the case that EPA has the
826 only regulatory authority. Congress has not granted CFTC
827 specific authority to regulate that market.

828 Mr. Tonko. Thank you. So rules that government other
829 markets -- regulations prohibiting speculative practices like
830 spoofing where a buyer initiates an order for a commodity they
831 do not intend to complete for the purposes of influencing the
832 price of that commodity -- do not apply to the RIN market. Is
833 that correct?

834 Mr. Yacobucci. As I understand it, but this is more out
835 of my area of expertise. I am not as familiar with CFTC
836 regulations.

837 Mr. Tonko. Is there any way to track this type of thing
838 with EPA's monitoring system?

839 Mr. Yacobucci. Certainly that has been one of the

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840 criticisms is because there is such limited data publicly
841 available that it's hard to tell, again, who's participating and
842 what actions they might be taking.

843 Mr. Tonko. Thank you. And if Congress were to subject this
844 market to a regulator, would the CFTC be the most appropriate
845 regulator?

846 Mr. Yacobucci. I would defer to Congress on their decisions
847 on that.

848 Mr. Tonko. Thank you. Proper functioning of markets
849 requires transparency and market participants need to have
850 reliable information about prices and supplies.

851 You point out in your testimony there is little public
852 information on the volume or price of RIN trades. This doesn't
853 sound very transparent to me.

854 How can buyers and sellers be sure they are trading at a
855 fair price?

856 Mr. Yacobucci. I would defer to some of the other witnesses
857 on that question.

858 Mr. Tonko. Okay. Anyone on the panel want to take a stab
859 at a comment there?

860 Mr. Niznik. Well, the price-reporting agencies do have the
861 ability to do price discovery and most of the transactions that
862 occur, both from buyer and seller, are usually benchmarked to
863 RINs prices published by either my company or, if I am being
864 generous, Mr. Lavinsky's company also, and those are private price

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865 discovery agencies, though, requiring subscriptions.

866 Mr. Tonko. Anyone else want to comment on that?

867 Mr. Lavinsky. I mean, I am part of the analytics team, not
868 the pricing team, but I can discuss it with them and provide you
869 with an answer for the record after the hearing.

870 Mr. Tonko. Thank you. And Dr. Lade?

871 Mr. Lade. I would argue that most of the uncertainty is
872 around trading volumes rather than the price.

873 Mr. Tonko. Thank you.

874 RINs are created and sold within a compliance year with some
875 limited ability to carry over some RINs into the next compliance
876 year.

877 What effect does a delay in the release of the annual RVO
878 have on the RIN markets? Anyone?

879 Ms. Dunphy. I will go ahead and try to answer that, sir.

880 Mr. Tonko. Thank you.

881 Ms. Dunphy. So the RVO, more recently in the last couple
882 of years, have come out on a timely basis -- by November the 30th
883 is what's required by law.

884 Mr. Tonko. Thank you. And we are referring to the RIN
885 market as if there is only one type of RIN. But, of course, that's
886 not the case.

887 RINs attach to biodiesel or advanced biofuels trade at
888 different prices than RINs or conventional ethanol. What is the
889 effect of RIN prices on the development and production of advanced

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890 biofuels?

891 Mr. Niznik. I will answer that. I work on due diligence
892 for people who are investing in -- particularly in advanced
893 biofuel projects.

894 The -- for advanced biofuel projects that might use an
895 advanced RIN or a D4 RIN or a cellulosic RIN -- those are the
896 top three category RINs -- the advanced biofuel RINs -- the
897 variability in that area and, more importantly, on certainty of
898 the policy moving forward are critical because none of those
899 projects can go forward without the RFS RINs price incentive
900 making those fuels possible to be blended in the marketplace
901 economically.

902 Mr. Tonko. Thank you. Has RIN market volatility affected
903 all biofuel markets to the same degree?

904 Mr. Niznik. No, it has not, sir. The biofuel markets for
905 D4 RINs from biodiesel are more stable than the biofuel markets
906 for D6 RINs from ethanol primarily because of D4's ability within
907 the rules to replace the costs of a D6. They are a market setter.

908
909 When the D6 RIN is short, you replace them with a D4 RIN
910 so that if it's a short D6 marketplace, the D6 RIN is now suddenly
911 at the D4 price. But when the D6 volume -- the D6 marketplace
912 is long and oversupplied, then it can drift downward to another
913 level and so volatility can be higher in that space.

914 It almost has a binary value. Essentially, under current

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915 market conditions if you had more than enough D6 RINs, the D6
916 RINs would be essentially around 3 cents or zero because it's
917 very, very economical to blend ethanol to gasoline.

918 But when that marketplace is short because of the regulations
919 or otherwise, it will jump up to the D4 price.

920 Mr. Tonko. Thank you, and I yield back, Mr. Chairman.

921 Mr. Shimkus. Clear as mud, right? Clear as mud. You got
922 that.

923 [Laughter.]

924 Mr. Niznik. That's how it is. Sorry.

925 Mr. Shimkus. The chair recognizes the chairman of the full
926 committee, Chairman Walden, for five minutes.

927 The Chairman. Yes. Thank you for this enlightening
928 discussion.

929 I am sitting here wondering what all this costs consumers
930 but we'll get to that at another time.

931 You know, as an Oregonian, we've had a lot of talk about
932 biomass and what we can do with these -- the wastes from the forests
933 and all -- and I know, Ms. Dunphy, in your testimony you talked
934 about the inconsistencies and barriers that prevent some
935 renewable fuels from qualifying for RINs.

936 Do you think we are missing out on some opportunities to
937 better integrate woody biomass into the fuel supply due to the
938 way the RFS regulations are written?

939 Ms. Dunphy. Yes, and I think history has proven that. We

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940 only have one company today in the U.S. after all these years
941 of the program using woody biomass as a feedstock to produce a
942 renewable fuel that makes RINs.

943 The Chairman. So is that something -- well, something we'll
944 look at, I guess. Probably have to change it congressionally,
945 right? Is that something --

946 Ms. Dunphy. I think we need clarification in the current
947 regulatory language to enable EPA to determine which of the woody
948 biomass feedstocks falls under the existing categories.

949 So the pathways exist today but they need clarification.

950 The Chairman. Okay.

951 Mr. Yacobucci. And I would just add that there is a much
952 more complex definition of what qualifies as qualified biomass
953 under the 2007 law than was in the original 2005 law and that
954 has added to that complexity. So there are regulatory definition
955 issues but there's also the statutory definition as well.

956 The Chairman. I remember those debates on this committee
957 when some of the advocates for this tried to argue that woody
958 biomass of a federal forest was somehow not renewable energy but
959 if it was on the other side of the line -- the same trees falling
960 different sides -- then it would be and it's, like, it had no
961 scientific basis. It was all political and results in this
962 complicated mess.

963 Mr. Lavinsky and Yacobucci, what are the key challenges you
964 see facing this RINs market now and, I mean, what do we need to

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965 do here, if anything, from your perspectives?

966 What are -- you may not want to -- some may not want to suggest
967 policy so I will ask it in the other way. What are the challenges
968 facing the RINs market?

969 Mr. Lavinsky. I would say one challenge is managing the
970 opposing opinions as to whether RIN obligations need to be
971 reallocated from the granting of small refinery waivers.

972 Small refinery waivers are mostly issued after the year has
973 ended and obligated parties have already submitted their RINs
974 and compliance.

975 So, to date, waivers have been issued retroactively.
976 Retired RINs have been reinstated. But RIN obligations have not
977 been reallocated.

978 Mr. Yacobucci. And I would just add to that, I mean, it's
979 not just the small refinery exemptions. It is the time line for
980 rulemakings.

981 It is the level that EPA sets because under the statute the
982 EPA has the authority to lower the targets from what they were
983 -- the targets set in law. All of these different pieces, whether
984 it's the specific waivers against the overall caps, individual
985 waivers for companies, whether you're talking about refiners,
986 you're talking about biofuel producers, all the participants in
987 the market have raised issues in one form or other about
988 uncertainty and that's what drives a lot of this, and Mr. Niznik
989 has talked about how that's affected the markets and there's just

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990 all these questions about what is the current demand for fuel,
991 given the different levels as they change.

992 The Chairman. So for any of you, what's your assessment
993 with how well the EPA has overseen the RINs market and
994 implementation and where is there room for improvement there?

995 Ms. Dunphy. So I think the EPA does a pretty good job at
996 administering the regulations as they were written. But the RIN
997 market oversight is missing. There's really not any oversight
998 of the trading activity of RINs by the --

999 The Chairman. Anywhere? Is there anywhere?

1000 Ms. Dunphy. Not to my knowledge.

1001 The Chairman. Should there be?

1002 Ms. Dunphy. That's your call.

1003 The Chairman. Oh, I see how this works. Yes.

1004 Anybody else want to weigh in on that topic, about the EPA's
1005 oversight and what we should or shouldn't do?

1006 Mr. Niznik. There's some hardworking folks down there and
1007 they are administering --

1008 The Chairman. Oh, yes.

1009 Mr. Niznik. -- and they're administering very well. If
1010 you look at the public record on the rulemakings you can see a
1011 lot of input from multiple departments, some of which I've worked
1012 with under consulting before and there's a broad base of
1013 information being put into the decision making from both the USDA
1014 and EIA at every step.

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1015 So the ability to make a good decision as best as humanly
1016 possible is there, in my opinion, based on the regulations and
1017 the review process necessary to do so. Whether or not the
1018 ultimate human decision at the end is qualifiably good is up to
1019 this body, Mr. Chairman.

1020 The Chairman. Well said. Thank you. All right. That's
1021 my time. Thank you, Mr. Chair.

1022 Mr. Shimkus. The chairman yields back his time.

1023 The chair now recognizes the gentleman from California, Mr.
1024 McNerney for five minutes.

1025 You don't want to go?

1026 Mr. McNerney. I do. I just thought that the ranking member
1027 of the full committee was here. Thank you.

1028 Well, I hear from the testimony this morning that there's
1029 a -- that the RINs volatility is due to three factors. One is
1030 commodity prices, one is uncertainty in the market, and the other
1031 is fraud. Is there anything I am missing in that list?

1032 Mr. Niznik. I would also -- there are other fuel quality
1033 regulations and state and local incentives for biofuels usage
1034 or petroleum usage that can weigh in onto the RINs price.

1035 Mr. McNerney. So it might be good then to have federal
1036 standards that override state rules?

1037 Mr. Niznik. If you want another civil war.

1038 [Laughter.]

1039 Mr. Shimkus. Would the gentleman yield?

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1040 Mr. McNerney. Sure.

1041 Mr. Shimkus. But isn't that like when a state might provide
1042 an incentive through a local percentage or tax incentive or
1043 something that -- I mean, it's not just a fuel incentive. It
1044 could be just in a policy incentive?

1045 Mr. Niznik. Yes, sir. That's what I am talking about.
1046 Either a tax that is for production, taxes that is for sales can
1047 weigh very heavily and on the national level one of the most
1048 important factors on RINs price is the biodiesel blenders' tax
1049 credit, which can come back retroactively or can come back
1050 actively in any given year, depending on the actions of this body.

1051 Mr. McNerney. Okay. Thanks. Reclaiming my time.

1052 Some of the solutions I hear are transparency, rational
1053 consistency, referring to Ms. Dunphy's list of items, and clear
1054 predictable simple rules.

1055 Are there other factors that would be helpful?

1056 Ms. Dunphy. If you can do clear concise long-term rules
1057 that would make everyone in the market very happy.

1058 Mr. McNerney. So how has the volatility of the past three
1059 years compared to prior years for that?

1060 Mr. Niznik. Are you saying price volatility, sir?

1061 Mr. McNerney. Right. RINs price volatility.

1062 Mr. Niznik. Actually, RINs price volatility was relatively
1063 calm, I would say, during 2016 and 2015. But at the end of 2016,
1064 with the administrative change, there's been a large amount of

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1065 policy-driven price -- policy uncertainty-driven price behavior.

1066 Mr. McNerney. But you mentioned that the EPA's guidance
1067 helped stabilize the market.

1068 Mr. Niznik. In 2015. Yes, sir.

1069 Mr. McNerney. Oh, so that's sort of --

1070 Mr. Niznik. That's the last time things got kind of rational
1071 for a while. Yes, sir.

1072 Mr. McNerney. Okay. Thank you. I didn't understand that.

1073 So how much have the small refinery waivers contributed to
1074 the volatility?

1075 Ms. Dunphy.

1076 Ms. Dunphy. So small refinery waivers, as was already been
1077 said, are given retrospectively. So they are granted after the
1078 compliance year is over with.

1079 So to some extent the news of the waivers did impact the
1080 market, which -- because they weren't aware of the waivers prior
1081 to those most recent announcements. But the waivers themselves
1082 are retrospective. So individual waivers don't have an impact
1083 on the market when they're granted.

1084 Mr. McNerney. Okay. Thank you.

1085 Dr. Lade, you testified that the consumer prices go one to
1086 one -- consumer price impacts -- but are all refineries impacted
1087 similarly or do some refineries impacted more drastically by RINs'
1088 market than others?

1089 Mr. Lade. The empirical evidence to date is that all

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1090 refiners are -- in the economics literature all refiners are
1091 affected similarly and, you know, I've looked at -- again, more
1092 data and more research is necessary, particularly looking at
1093 markets and there are members of the academic community looking
1094 at that.

1095 But by and large, there's been a consistent consensus that
1096 on average these wholesale prices are adjusting to compensate
1097 for refiner costs.

1098 Mr. McNerney. Aren't the large refineries able to produce
1099 their own RINs? Aren't they affected less, or even make a profit
1100 off RINs?

1101 Mr. Lade. Correct. However, you're either going to
1102 produce your own RINs in house of that is the most cost-effective
1103 way to comply with this or you -- if it's not cost-effective for
1104 you to comply then you will purchase RINs from those who can
1105 produce RINs even cheaper than this.

1106 And so this is kind of the beauty behind the market-based
1107 mechanism here that it allows parties to decide whether it's more
1108 cost-effective to get into the biofuel business or to just
1109 purchase RINs from people who are better at producing biofuel.

1110 And so either way, that cost is borne. It's just whether
1111 it's borne through biofuel production or through RIN purchases.

1112 Mr. McNerney. Yes, but I mean the problem in my mind is
1113 that the large producers are producing RINs and selling them so
1114 they're getting a double benefit whereas the small refiners are

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1115 having to buy RINs. So they're paying for it.

1116 Mr. Lade. That's a great point. Similar as to the side
1117 where when you're having to pay for these RINs and you then are
1118 compensated for that through higher wholesale gasoline prices.

1119

1120 Whether or not these oil refiners who are producing RINs
1121 upstream through biofuel production, whether they actually get
1122 to keep that depends on what happens to downstream consumer prices
1123 and work of my own has shown that ethanol prices are actually
1124 being -- this incentive is being passed through to consumers.

1125

1126 Therefore, it wouldn't actually be impacting those refiners.
1127 The consumers are benefiting from the RINs on the ethanol side.

1128 Mr. McNerney. Okay. I don't quite follow that, but I will
1129 yield back my time.

1130 [Laughter.]

1131 Mr. Shimkus. I love this hearing. So the gentleman yields
1132 back his time.

1133 The chair now recognizes the gentleman from West Virginia
1134 for five minutes.

1135 Mr. McKinley. Thank you, Mr. Chairman. Just a point of
1136 personal privilege. I would like to recognize in the audience
1137 -- he was my mentor when I joined the Energy and Commerce Committee
1138 -- Ed Whitfield back there. Thank you. Thanks for -- and you
1139 have showed you have not deviated one bit from your interest in

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1140 energy. So thank you for coming.

1141 Mr. Lavinsky, you kind of took the wind out of my sales.

1142 I wanted to talk about that Fourth Circuit -- the ruling on
1143 Friday, because it overturned the previous denial from the EPA
1144 for Ergon, which is just a boutique refinery in West Virginia,
1145 and they were -- they've been burdened with this. Think about
1146 for all of us to understand this, here we have a boutique refinery,
1147 23,000 barrels a day, and they're faced with the same issues that,
1148 like, Marathon is. Marathon refinery. It's a hundred times
1149 larger.

1150 That doesn't seem right. We should be able to differentiate
1151 between these and provide these hardship grants, waivers, for
1152 some of these small -- think, a hundred times larger, because
1153 we know that for Ergon in West Virginia it's the third biggest
1154 expense they have behind raw materials and labor, and what they
1155 -- the biofuels industry has argued that granting these small
1156 refineries like the one at Ergon this hardship exemption was going
1157 to result in demand destruction.

1158 So I want to go to Ms. Dunphy and say in a kind of a yes
1159 or no, if you could, please, do you believe that granting these
1160 small refinery hardship exemptions result in less renewable fuel
1161 being included?

1162 Ms. Dunphy. So as I mentioned earlier, the small refinery
1163 waivers are granted retrospectively. So the compliance year has
1164 already passed.

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1165 But every refiner assumes that they're going to be an
1166 obligated party during that year and they will continue to blend
1167 renewable fuels and buy RINs as needed because they don't know
1168 that they're going to get the exemption at the 12th hour in the
1169 next -- when they go to report to the EPA by March the 31st of
1170 the following year.

1171 So I suggest that you all definitely talk to the small
1172 refineries in the U.S. and ask them if they have changed their
1173 blending policies because they think they're going to be exempted
1174 for the year and I think you will find that they have not changed
1175 their blending policy.

1176 They continue to blend. They continue to purchase RINs.
1177 What they do is focus on current year RINs rather than the 20
1178 percent prior year.

1179 So if they get the exemption they still will be able to use
1180 the current year RINs in the next year. So that puts more RINs
1181 into the market. We understand that. But does it destruct the
1182 demand of the current year?

1183 I would say that if you look at the RIN data through June
1184 we are at the same production level that we were in 2017 and we
1185 are halfway towards meeting the 2018 compliance RVOs. So whether
1186 that will hold true for the entire year I don't know.

1187 Mr. McKinley. The EIA had come out -- I thought they just
1188 -- I saw some information yesterday on the EIA that said that
1189 actually the blending over the first part of this year -- there

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1190 was six months, seven months -- we are actually up over last year
1191 -- that actually we are increasing.

1192 So despite having all of these small refinery exemptions,
1193 is this -- is this a confirmation that small refinery exemptions
1194 do not -- do not destroy the demand for renewable fuel?

1195 Ms. Dunphy. You know, we should remember that refiners
1196 would probably blend ethanol regardless of whether there was an
1197 RFS or not because ethanol represents a very good source of octane.

1198 It helps them meet their gasoline, sulfur, and benzene
1199 requirements.

1200 So they have an incentive to blend ethanol and they're going
1201 to do that. So I would say that the data through six months for
1202 the EMTS data that's published that anyone can see -- it's public
1203 information -- shows that the -- we are on track with last year.

1204

1205 Whether that will continue through the rest of the year,
1206 I can't predict.

1207 Mr. McKinley. Thank you.

1208 Mr. Yacobucci.

1209 Mr. Yacobucci. Just one open question is whether or not
1210 a prior year's waiver creates a supply, potentially -- you know,
1211 and increased supply of carry forward RINs that a refiner can
1212 use, because a refiner can use either this year or last year's
1213 RIN to meet this year's obligation and that's the question going
1214 forward is if there's more of last year's RINs available what

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1215 does that do to the market.

1216 I think that's still an open question.

1217 Mr. McKinley. Let's stay with you just for a minute.

1218 With the original intent of this RFS and RIN program, have
1219 we achieved that objective that we set out on that or have we
1220 -- have we created a confusing and costly commodity system? What
1221 would be your opinion?

1222 Mr. Yacobucci. In terms of congressional intent, I wouldn't
1223 speculate. I will say that there are no congressional findings
1224 or specific stated goals in the statute.

1225 And so various players have attributed various goals to the
1226 program, whether that is increasing agricultural production,
1227 raising farm incomes, reducing imports of fuel. Certainly,
1228 increased biofuel use has displaced petroleum use. There have
1229 been economic benefits to agricultural states from the program.

1230

1231 If you consider those to be the goals of the RFS, then yes,
1232 they have been successful. Is the -- is the program complicated?

1233 Certainly.

1234 Mr. Shimkus. The gentleman's time is expired.

1235 Mr. McKinley. My time has expired. I yield back.

1236 Mr. Shimkus. The gentleman yields back his time.

1237 The chair now recognizes the gentleman from Mississippi,
1238 Mr. Harper, for five minutes.

1239 Mr. Harper. Thank you, Mr. Chairman, and thank you each

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1240 for being here. It is a topic every time I read it I think I
1241 come away and study it -- I come away more confused than when
1242 I started that study. So thank you very much.

1243 Mr. Yacobucci, if I could ask you and, certainly, you know,
1244 I certainly agree with what Mr. McKinley has said. But I wanted
1245 you to just try to educate me as best you can.

1246 Give me a brief explanation of the terms RIN long and RIN
1247 short so I can understand that.

1248 Mr. Yacobucci. I would defer to Mr. Niznik on that. It's
1249 his term.

1250 Mr. Harper. Okay. Mr. Niznik.

1251 Mr. Niznik. I apologize for confusing the committee. I come
1252 from the trading world, which has got its own language.

1253 Mr. Harper. Yes.

1254 Mr. Niznik. When we say long, we mean over supplied.

1255 Mr. Harper. Okay.

1256 Mr. Niznik. And when we say short, we mean under supplied.

1257 So to apply that to Ms. Dunphy's statement from before, if
1258 previous year obligations got waived under a small refinery
1259 exception and those RINs were suddenly dumped back into the
1260 market, it could cause a case of long or over supply of RINs that
1261 weren't expected to be in the market.

1262 Mr. Harper. Okay. So explain why some companies are RIN
1263 long and some are RIN short a little further so that -- if they
1264 have an over supply --

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1265 Mr. Niznik. Yes. They would be long -- you would say
1266 they're over supplied for what they might need for their
1267 obligation for this year.

1268 Mr. Harper. Okay.

1269 Mr. Niznik. So they may say oh -- or if they perceive they
1270 will be long -- and this is more important is the perception --
1271 if they perceive they're going to be over supplied then they're
1272 not willing to pay a certain price. They're more -- they're going
1273 to depress the market price because they're less interested in
1274 a purchase.

1275 Mr. Harper. You know, and certainly when you're looking
1276 at some of the smaller refineries, for instance, and all of these
1277 waivers are done retrospectively, as Ms. Dunphy pointed out --
1278 the way that it's set up -- what would happen if all of a sudden
1279 they were done prospectively?

1280 You have been getting them each year and you just planned
1281 ahead. You knew -- hey, you have done that -- probably going
1282 to be like that next year -- we are going to go ahead and tell
1283 you now on the front end. How would that impact it, Ms. Dunphy?

1284 Ms. Dunphy. According to the regulations today, the EPA
1285 would take that into consideration. In the fraction I mentioned
1286 earlier where the renewable fuels are the numerator and gasoline
1287 and diesel demand is the denominator.

1288 Today, those small refineries are in there because the EPA
1289 doesn't know that they're not going to be exempted.

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1290 Mr. Harper. Okay.

1291 Ms. Dunphy. If they get exempted, they come out of the
1292 denominator. That makes the overall fraction greater for all
1293 of the other obligated parties who don't qualify under that small
1294 refinery.

1295 So, obviously, Mr. Niznik, jumping back to that, companies
1296 that are RIN long obviously have a competitive advantage over
1297 the those that are RIN short?

1298 Mr. Niznik. Yes. So that's a business strategy that they
1299 may employ to be -- to take advantage of the rules as they're
1300 written, just like someone might take advantage of the tax code
1301 or any other code. Yes.

1302 Mr. Harper. Sure. All right. Well, let's talk for a
1303 minute regarding RIN fraud, and I know that's an issue. What
1304 instances are unreported and what other types of fraud are
1305 possible in the future and what are the implications of this fraud?
1306 Who would like to answer that?

1307 Ms. Dunphy.

1308 Ms. Dunphy. I will go ahead and answer that.

1309 So the RIN fraud cases have decreased in number over the
1310 years and many of the RIN fraud cases involve a period of time
1311 when the RFS was relatively new to the market, so 2010, 2011,
1312 2012.

1313 I would say the current instances of potential RIN invalidity
1314 relate to exports of renewable fuel for which RINs are not retired

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1315 because remember that renewable fuel can be blended into
1316 petroleum, gasoline, or diesel and that blend can be exported
1317 from the United States and calculating how much renewable fuel
1318 is in that blend is difficult.

1319 But yet, it's required under the regulations that a certain
1320 amount of renewable fuel RINs be retired.

1321 I would say RIN fraud of the future it's all about feedstock
1322 and use of the fuel.

1323 Mr. Harper. Okay. Explain that a little further.

1324 Ms. Dunphy. Okay. So RIN fraud, basically, doesn't happen
1325 on the use side. It happens at the generated side. So if I use
1326 a feedstock that does not qualify, I shouldn't be making RINs.

1327 If I take the feedstock that qualifies and I use a process
1328 and I produce a fuel but I put it into an ocean-going vessel,
1329 for example, I am supposed to retire those RINs or I shouldn't
1330 have made them in the first place.

1331 So I see the RIN fraud potential of the future being feedstock
1332 or use, but it's much less today than it was in the past.

1333 Mr. Shimkus. Gregg --

1334 Mr. Harper. Thank you.

1335 Mr. Shimkus. -- Mr. Lavinsky wanted to respond to that
1336 question.

1337 Mr. Harper. Yes.

1338 Mr. Lavinsky. Thank you very much.

1339 Now, one other thing -- when you asked for what occurrences

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1340 occurred in the past, is that a few years back -- a handful of
1341 individuals and companies would generate and sell RINs for
1342 biodiesel that they did not produce --

1343 Mr. Harper. Okay.

1344 Mr. Lavinsky. -- and that's how they got the RINs in their
1345 hands and sold them off and put them into the market.

1346 Mr. Harper. Thank you. Now I yield back.

1347 Mr. Shimkus. The gentleman yields back his time.

1348 The chair now recognizes the gentleman from Texas, Mr. Olson,
1349 for five minutes.

1350 Mr. Olson. I thank the chair, and welcome to our five
1351 witnesses. A special howdy to the one Texan on the panel, Sandra
1352 Dunphy. She lives in Kingwood, Texas, where Ted Poe is her
1353 congressman, and my colleagues worry about me bragging about the
1354 Houston Astros, World Series champions. Rest assured --

1355 Mr. Shimkus. Who? Who?

1356 Mr. Olson. -- I can't brag about them. Ms. Dunphy can
1357 brag for me and she will, she will, she will.

1358 Ms. Dunphy. Happy to.

1359 Mr. Olson. An Astros repeat aside, over the years we've
1360 heard stories about fraud in the RIN markets. One story I read
1361 was titled, quote, "The Fake Factory that Pumped Out Real Money,"
1362 end quote, about a company that made out of thin air 60 million
1363 gallons of biodiesel. Wow.

1364 Ms. Dunphy, you said that RINs fraud is much less than today,

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1365 to Mr. Harper's question. Can you talk about the steps that have
1366 been taken to prevent RINs fraud and whether you think more is
1367 needed like you talked about with Mr. Harper, please?

1368 Ms. Dunphy. Yes.

1369 Mr. Olson. Also you're on deck too, Mr. Yacobucci.

1370 Ms. Dunphy. Yes, sir. Happy to.

1371 So the making RINs out of thin air, there's two things that
1372 really transformed the marketplace since the time that all of
1373 this happened.

1374 The first was the EPA initiated a quality assurance plan
1375 program, which is optimal for producers to participate and they
1376 hire a company like mine to come in and audit what they're doing
1377 to make sure they're complying with the rules and we're -- we
1378 are -- we probably have the most stringent quality assurance plan
1379 out there in the marketplace today.

1380 The second thing that happened was because the obligated
1381 parties had to replace RINs and pay penalties, they do today and
1382 started doing even then a much better job at due diligence. So
1383 they will research all of the producers of the RINs who they are
1384 going to use for compliance.

1385 Mr. Olson. Thank you.

1386 Comments, Mr. Yacobucci?

1387 Mr. Yacobucci. One thing I would just note is there's
1388 necessarily a time lag to -- when the fraud occurs to when we
1389 necessarily even know about it.

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1390 EPA is doing its, you know, various inspections, looking
1391 at their data. State inspectors may be going out to these
1392 different facilities. And then EPA needs to make a decision with
1393 the Justice Department whether or not this is simply a civil
1394 violation of the Clean Air Act because Title 2 of the Clean Air
1395 Act where the RFS exists only employs civil violations or where
1396 there is criminal action, in which case there's a whole additional
1397 amount of time where the Justice Department needs to do their
1398 own investigation.

1399 And so as I said, there's necessarily this time lag and so
1400 in some of the cases that we are hearing about most recently still
1401 go back to that earlier time because they involve wire fraud,
1402 tax fraud, and other sorts of things that are outside of EPA's
1403 purview and rest with the Justice Department.

1404 Mr. Olson. Thank you. The next question is for you, Mr.
1405 Lavinsky. This is no news, but there have been some serious
1406 volatility in RINs prices in recent years.

1407 What sticks out in my mind January of 2013 to March of that
1408 same year RINs prices were about 1 to 2 cents in January, spiked
1409 up to almost over \$1 two months later in March. A local refiner
1410 back home, on paper, lost \$600 million in value just because of
1411 the RINs issue.

1412 But now the price is low and that's great. But can you talk
1413 about the swings and what drives these RINs swings and how we
1414 could prevent them or moderate them?

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1415 Mr. Lavinsky. I mean, I could talk about historically.
1416 Like I said earlier, historically the big spike that occurred
1417 in 2013 was associated with super high ethanol prices and
1418 feedstock costs. Corn was, you know, \$7 per bushel, more than
1419 twice as much as it is now.

1420 So having the really high ethanol and having an increase
1421 in the mandate that year -- I believe there was a 9 percent increase
1422 in the mandate from 2012 to 2013.

1423 So there was a combination of an increase in the mandate
1424 coupled with sky-high ethanol prices and feedstock costs and
1425 that's what drove, you know, that huge spike in RINs, which is
1426 incomparable.

1427 It has not repeated itself. There has been volatility over
1428 the last three years but nothing like it was in 2013.

1429 Mr. Olson. Another question -- do you think market
1430 transparency can add the clarity to what happens in a few years
1431 when EPA takes over the settling the mandates? Do you think that
1432 market transparency helps EPA out or hurts them? How can we
1433 prepare for EPA taking over in a couple of years?

1434 Mr. Lavinsky. Just speaking generally without speaking
1435 about the EPA, speaking generally, transparency helps everybody
1436 out because it's easy to determine how many RINs are out there,
1437 what the true supply and demand are, and if everybody knows what
1438 the RIN bank is and how many RINs are on the market then it's
1439 easier to pick a price that's fair for everybody.

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1440 Mr. Olson. Thank you.

1441 And one final question, Ms. Dunphy -- will the Astros repeat
1442 World Series champions?

1443 Ms. Dunphy. Absolutely.

1444 Mr. Shimkus. The gentleman's time has expired.

1445 [Laughter.]

1446 The chair now recognizes the other gentleman from Texas,
1447 who's been deep diving on this issue with me all this Congress,
1448 so Mr. Flores for five minutes.

1449 Mr. Flores. Mr. Chairman, thanks for holding this hearing.

1450 As has been said before, this is the fifth in a series of hearings
1451 that we've had as we look at our nation's transportation fuel
1452 system.

1453 I think that America needs to be a world leader when it comes
1454 to producing efficient vehicles and also having the fuel system
1455 that will properly power those as we move forward, and I appreciate
1456 this subcommittee's work as we look forward to examine the market
1457 and regulatory environments that impact our nation's fuels as
1458 we move further into the 21st century.

1459 I was -- some of the reflections that I've had that I've
1460 learned so far that were interesting, coming out of this hearing,
1461 Ms. Dunphy's comment that even though we've had the small refinery
1462 exemptions with the -- the EIA numbers show that ethanol demand
1463 has still been higher than -- or at least equal to last year --
1464 than even with that small refinery exemption. So that's been

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1465 interesting.

1466 Ms. Dunphy, as we all know, many of the statutory provisions
1467 and requirements of the RFS programmers sunsetted after 2022.

1468 In your view, what does the RIN ecosystem look like after 2022?

1469 Ms. Dunphy. I think that's a really good question.

1470 Certainly, Congress gave EPA more latitude at that point in time
1471 for how they structure the program, going forward.

1472 But they do need to take into the consideration the things
1473 you ask them to look at -- the RFS impact on the economy, on
1474 infrastructure, on air quality, water quality, employment, et
1475 cetera, et cetera, and to be honest with you, I think that the
1476 EPA, in setting standards year after year after year, it's quite
1477 burdensome to the staff and it takes a lot of their resources
1478 to do that -- that they otherwise are not helping their
1479 constituents to try to register and do things correctly under
1480 the program.

1481 So make -- somehow make it a more simple program and easier
1482 to administer.

1483 Mr. Flores. Would you agree that the ecosystem becomes much
1484 less transparent and much cloudier? I mean, there's no certainty
1485 whatsoever after 2022 for pretty much every player in this market,
1486 whether you're a farmer growing the corn or whether you're a
1487 refiner, even an automaker, because you don't know what kind of
1488 fuels you're going to have. Would you agree that --

1489 Ms. Dunphy. I would tend to agree that there's a lot of

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1490 concern as to what will happen to the program after that point
1491 in time.

1492 Mr. Flores. All right. So everybody is -- since
1493 uncertainty is bad for the market, to the extent that Congress
1494 can help create that certainty we are better off, I would think.

1495 Does anybody disagree with that?

1496 Okay. Second question -- Mr. Lavinsky, you know, government
1497 -- as you pointed out, government policy -- and Mr. Niznik said
1498 the same thing is that government policy impacts RIN prices.

1499 Can you distinguish -- give me examples of how government
1500 policy has impacted RINs prices versus how government policies
1501 impacted any other energy commodity? You can pick the one that
1502 you're most comfortable with.

1503 Mr. Lavinsky. Okay. Well, I mean, policy, I guess, with
1504 biofuels, with, certainly, the mandates. I mean, the mandates
1505 of government policy and they -- you know, according to the RFS
1506 they're supposed to go up every year and as they go up it requires
1507 companies to do more blending.

1508 Mr. Flores. Okay.

1509 Mr. Lavinsky. And, you know, that has an impact on RIN
1510 prices. With regard to the other types of programs, you know,
1511 I am part of a larger group that includes a team on emissions.

1512 I probably would refer that question to them and provide you
1513 with a full answer.

1514 Mr. Flores. Okay. Yes, if you can answer that

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1515 supplementally that would be great.

1516 Mr. Yacobucci, what impact, if any, has the RIN market and
1517 RIN prices had on advanced biofuel production?

1518 Mr. Yacobucci. The -- I think it's probably worth turning
1519 that question around a little bit and I think it's more important
1520 to say that the RIN market has -- for cellulosic fuels has
1521 responded to EPA's repeated reductions in that part of the
1522 mandate.

1523 So you have these different subcategories -- the cellulosic
1524 biofuel category, which was originally scheduled in the statute
1525 to be the lion's share -- 16 billion gallons out of the 36 billion
1526 gallons that would be required in 2022. But each successive year
1527 EPA has made very drastic reductions in --

1528 Mr. Flores. And that's because we don't have a way to
1529 produce it. Yes, I mean --

1530 Mr. Yacobucci. Because --

1531 Mr. Flores. -- the technology is not there. But have RIN
1532 prices helped to encourage advanced biofuel production?

1533 Mr. Yacobucci. I would refer to my colleagues, if they may
1534 comment.

1535 Mr. Flores. Okay.

1536 Mr. Niznik. Yes.

1537 Mr. Flores. Mr. Niznik, they have? Okay. All right.

1538 It looks like I am down to three seconds so I am going to
1539 yield back the balance of my time. Thank you.

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1540 Mr. Shimkus. The chair thanks the gentleman.

1541 The chair now recognizes the gentleman from Michigan, Mr.
1542 Walberg, for five minutes.

1543 Mr. Walberg. Thank you, Mr. Chairman, and thanks to the
1544 panel for being here.

1545 And Ms. Dunphy, I refuse to ask you the question that
1546 Representative Olson left for me to ask you about Verlander and
1547 Cy Young.

1548 [Laughter.]

1549 It just goes on and on, the discussion today. As a
1550 theologian, thinking through the Creation story I don't remember
1551 that in any of the seven days that the RIN was created. I will
1552 have to go back to the fall of Man -- the story there -- and see
1553 if that was the forbidden fruit. We'll see what happens.

1554 But Ms. Dunphy --

1555 Ms. Dunphy. The RIN was right after the mosquito.

1556 [Laughter.]

1557 Mr. Walberg. Right after the mosquito. Okay. I will
1558 check that out, too.

1559 According to EPA, since December of 2010 it has issued 37
1560 notices of violations regarding RIN fraud. A couple of years
1561 ago, EPA issued regulations creating a quality assurance program
1562 aimed at cleaning up some of the RIN fraud problems.

1563 Do you believe that the quality assurance program has done
1564 a good job of eliminating the problems?

1565 Ms. Dunphy. I think it's done a very good job. But it is
1566 a voluntary program. A producer has to be willing to participate
1567 in the program as an auditor.

1568 We are available to producers but they contact us to say
1569 hey, I want to participate in the program. It's not an across
1570 the board program.

1571 As much as Weaver would love that, because we'd get more
1572 work, but it's on a case by case basis, basically, and I think
1573 the QAP has helped reduce RIN fraud, yes.

1574 Mr. Walberg. Well, are there then other areas of RIN fraud
1575 that need to be addressed that are missing now? What might you
1576 propose to address this?

1577 Ms. Dunphy. You know, I think that probably the easiest
1578 is the export of renewable fuels for which RINs are not retired
1579 and I know that EPA is working hard with Homeland Security to
1580 look closer at exports to determine if they contain renewable
1581 fuel.

1582 Mr. Walberg. Okay. The RIN market is different than any
1583 other commodity trading markets. Some have suggested that
1584 installing a governing structure to oversee it would help increase
1585 transparency and decrease fraud.

1586 How much buyer beware still exists in the RINs marketplace?

1587 Ms. Dunphy. I think there's still quite a bit, especially
1588 for the advanced biofuels. As those transactions are being
1589 negotiated, it's the only transactions where the seller must tell

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1590 the buyer who the renewable fuel producers are of the RINs, whereas
1591 on D6 or corn ethanol RINs it's pretty much everyone will accept
1592 them.

1593 So the companies have blocked lists in EMTS. This is
1594 probably something we haven't talked about. But refiners doing
1595 their due diligence have the option to block certain producers
1596 and so therefore RINs from those producers can't come into their
1597 EMTS account and they use their -- this feature of EMTS after
1598 doing due diligence on the marketplace on the producers.

1599 Mr. Walberg. Added to that, would a governing body be
1600 helpful and why?

1601 Ms. Dunphy. I do believe it probably would be helpful.
1602 But it would be an enormous task to set up a RIN training platform
1603 that was administered by either EPA or another body because there
1604 are different vintages of RINs. There's the different producers
1605 of RINs and there's different RIN codes themselves. So it would
1606 be somewhat complex, but it's possible, I guess, and it would
1607 be helpful.

1608 Mr. Walberg. Mr. Niznik, I saw you respond to that. Would
1609 you like to add something here?

1610 Mr. Niznik. I would like to add, for the record, since this
1611 is a public record and it should be true, that I am a member of
1612 the state of Texas also and please pass on a note to Mr. Olson
1613 to that effect, that he had more representation here than he
1614 thought before.

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1615 I would agree that there have been multiple attempts, I must
1616 say, to put RINs on trading boards, both the Chicago Mercantile
1617 Exchange and its previous incarnations and then the International
1618 Commodity Exchange -- ICE.

1619 Both Argus and, I believe, Platts have participated in trying
1620 to be paper benchmarks -- to try to be a benchmarkable RIN that
1621 you could trade as a future and I would say, without speaking
1622 for Mr. Lavinsky's company, that it hasn't been particularly
1623 successful in the private sector to attempt to do something that
1624 would assure some sort of broader transparency on a board-traded
1625 level -- commodity level.

1626 Mr. Walberg. Okay.

1627 Ms. Dunphy, I see I have eight seconds left. So I would
1628 probably better not open it up. But I thank you.

1629 I yield back.

1630 Mr. Shimkus. The gentleman yields back his time.

1631 The chair now recognizes the gentleman from Georgia, Mr.
1632 Carter, for five minutes.

1633 Mr. Carter. Well, thank you, Mr. Chairman, and thank all
1634 of you for being here today. I appreciate it, although I will
1635 have to admit it is as clear as mud. I mean, it's pretty tough
1636 sitting her trying to figure out is this really necessary.

1637 I mean -- I mean, seriously. Ms. Dunphy, you look like you
1638 want to answer that.

1639 [Laughter.]

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1640 Ms. Dunphy. Trying to figure out how to answer that
1641 questions fairly diplomatically, and keep my job -- yes.

1642 Mr. Niznik. We make a lot of money because of this complex
1643 --

1644 Mr. Carter. Yes, I know. I mean, it's just --

1645 Mr. Niznik. Thank you. By the way --

1646 Mr. Carter. -- if we created something just to --

1647 Ms. Dunphy. Yes.

1648 Mr. Carter. -- just to create something.

1649 Ms. Dunphy. The more complex the regulations the more work
1650 we have.

1651 Mr. Niznik. Yeah, my kids are -- my kids are going to go
1652 to college because of you all. Thank you.

1653 Mr. Carter. I just -- you know, I think at the end of the
1654 day Thoreau is -- I think Thoreau is just turning over in his
1655 grave right now, just -- yes. Simplify, simplify, simplify, and
1656 I am just trying to figure out.

1657 But in all seriousness, I will ask questions about it. I
1658 am just interested, Mr. Yacobucci, you mentioned in your testimony
1659 that there's been concerns with RIN generation since the program's
1660 inception and that, you know, that there's duplicate counting
1661 and fraudulent RINs on the market.

1662 How do you -- how can it be manipulated? I mean, it just
1663 appears to me -- I don't really understand how you can manipulate
1664 it.

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1665 Mr. Yacobucci. To the first question, I will say yes, there
1666 have been concerns going forward. EPA's stated goal of when they
1667 came out with the RFS 2 and the EMTS was to address some of those
1668 questions.

1669 Whether or not the current system has succeeded, you know,
1670 it's still an open question. One of the things is -- to your
1671 original question, is it necessary, if you want a market-based
1672 system you do need a market. There are simpler systems you could
1673 come up with. But they may not provide the flexibility that a
1674 market does. So that's a trade-off.

1675 In terms of your question about how fraud can occur, I think
1676 Ms. Dunphy has gone through a list of some of those topics. I
1677 wouldn't speculate on ways going forward folks could do it.

1678 But, certainly, the ways that EPA has listed are production
1679 that has not actually happened where basically a company has just
1680 on paper said they have produced fuel that they haven't produced,
1681 companies that have produced fuel that doesn't actually qualify
1682 because of the feedstock requirements but they've attested that
1683 it has, and companies that have exported fuel that's otherwise
1684 not eligible because in any case where a fuel isn't eligible those
1685 RINs need to be retired and if they're not retired then, you know,
1686 those RINs are invalid.

1687 Mr. Carter. Okay. Well, you mention in your testimony also
1688 that there are two markets. There's a primary market and there's
1689 also a secondary market, and that secondary market, as I

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1690 understand it, that's where the owners buy and sell the excess
1691 RINs.

1692 Mr. Yacobucci. Correct.

1693 Mr. Carter. What -- can the secondary market impact the
1694 primary market?

1695 Mr. Yacobucci. I would believe so but I will refer to my
1696 market folks.

1697 Mr. Niznik. We don't tend to look at it as primary and
1698 secondary markets. The RINs are all traded sort of evenly. They
1699 don't have any distinguishing characteristics that would, you
1700 know, attach them to other markets.

1701 So from a price reporting agency standpoint, it's -- they're
1702 the same market.

1703 Mr. Carter. Can they have an impact on the price of fuel?

1704 Mr. Niznik. They do, yes. So, in fact, we report an
1705 aggregate cost of RINs as it would be affecting any gallons sold
1706 in the United States. We call it the RVO per gallon cost.
1707 Currently, that's around 4 cents per gallon of petroleum and fuel
1708 sold.

1709 Mr. Carter. Hmm. Okay. Yes, sir.

1710 Mr. Lade. However, if I could speak to that --

1711 Mr. Carter. Please.

1712 Mr. Lade. -- it's also -- so that is the cost on the
1713 gasoline blended into fuel. However, almost all fuel in the
1714 United States contains 10 percent ethanol and RIN is actually

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1715 reducing the cost of that ethanol.

1716 So as RIN prices rise, that tax or the RVO cost on the gasoline
1717 is nearly exactly offset by the reduction in the costs on the
1718 ethanol side. And so consumer prices for almost all fuel that's
1719 consumed in the United States, which is 10 percent ethanol, 90
1720 percent gasoline, remains large -- by and large, unaffected.

1721 Mr. Carter. Okay. Good. Well, thank you. I appreciate
1722 that.

1723 Ms. Dunphy, I want to ask you because I represent the entire
1724 coast of Georgia. So ocean-going vessels are of interest to me
1725 and you -- I know you had a discussion with another member about
1726 ocean-going vessels and about the renewable fuel that's used in
1727 those.

1728 And I just wanted to ask you, can you explain to me why it's
1729 necessary to retire RINs when it's -- when it comes to fuel for
1730 an ocean-going vessel?

1731 Ms. Dunphy. It's a bit of a mystery to all of us, to be
1732 honest with you. But, you know, transportation fuel is gasoline
1733 or diesel. It's motor vehicle, locomotive, marine fuel in the
1734 U.S.

1735 If you put it in an ocean-going vessel, that's usually going
1736 to be a higher sulfur fuel like a bunker fuel, and that was not
1737 a transportation fuel. So, therefore, even though you put in
1738 a renewable fuel and it's displacing a high-sulfur product, the
1739 RINs were to be retired. That was part of the regulations.

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1740 Mr. Yacobucci. Which are -- which were driven by the
1741 statutory definitions in the --

1742 Ms. Dunphy. Right. It's in the law. It's in the law.

1743 Mr. Carter. Do we need to change the statutory definition?

1744 Ms. Dunphy. It's in the law.

1745 Mr. Yacobucci. Basically, you have three categories of fuel
1746 that qualify. Highway transportation fuel, heating oil, and jet
1747 fuel are basically the three fuel components or three fuel
1748 categories that qualify to generate RINs. All other fuel
1749 categories are exempted by the statute.

1750 Mr. Carter. Brilliant.

1751 Mr. Chairman, I yield.

1752 [Laughter.]

1753 Mr. Shimkus. Just yield, not surrender, right?

1754 The chair now recognizes the very committed, patient, and
1755 long-suffering Mr. Loeb sack. If he was on a good subcommittee,
1756 he could have spoken an hour ago. But he's waiving on, has great
1757 interest in this. You're recognized for five minutes.

1758 Mr. Loeb sack. Well, thank you, Mr. Chair, and thank you
1759 for letting me waive on, and quite honestly, as a former professor,
1760 I would have loved the testimony.

1761 I've been trying to read as much as I can but, unfortunately,
1762 as a political science professor, not an economics professor.

1763 But I am an alum of Iowa State -- an alumnus of Iowa State
1764 so I am actually going to pick on you today. How do you pronounce

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1765 your last name again?

1766 Mr. Lade. Lade.

1767 Mr. Loeb sack. Lade. Okay. Thank you so much.

1768 This is an incredibly complex subject. There's no doubt
1769 about it. As I said, I was a political science professor, not
1770 an economics professor. So this stuff is not easy for me, I have
1771 to say.

1772 But I do want to say at the outset that recent comments by
1773 EPA Administrator Wheeler the last couple days have been pretty
1774 disheartening and were not reassuring to those of us from biofuels
1775 country, if you will.

1776 Some of the things that he said continue the policy of
1777 Administrator Pruitt, whether it has to do with waivers or on
1778 the E15 issue or whatever the case may be.

1779 I just want to say that for the record at the outset that
1780 I am not very encouraged by the new administrator when it comes
1781 to biofuels production.

1782 But, you know, I think I will talk to Mr. Carter later.
1783 He had a good point -- you know, do we really need all this, in
1784 some ways.

1785 Actually, I could be wrong but I think the quickest and
1786 easiest way to address RIN prices would be if the obligated parties
1787 simply would blend more biofuels and I think that the RIN system
1788 was created in the first place because there are going to be folks
1789 who didn't want to blend biofuels.

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1790 Is that -- is that correct, basically? Create a market for
1791 RINs? I mean, if we just simply blended more biofuels we wouldn't
1792 have to worry about RINs. Is that correct, Professor Lade?

1793 Mr. Lade. The entire purpose of the market is -- or of the
1794 policy is to get the market to do something that it would not
1795 do without the policy. And so yes, whenever RIN prices are high
1796 that signals that the market would not do -- would not do or would
1797 not blend as much biofuels as it would without the policy.

1798 Mr. Loeb sack. Right. Thank you.

1799 You know, also we could remove current EPA restrictions on
1800 the Reid vapor pressure. I think we could do that and get more
1801 biofuels into the system.

1802 And I did look at your testimony, Professor Lade. I was
1803 a little bit confused with the final part of it there when you
1804 talked about what effect E15 might have on all of this. Can you
1805 sort of elaborate that a little bit?

1806 Mr. Lade. Absolutely.

1807 So it's really difficult to say what an E15 and RVP waiver
1808 would do to RIN prices because we are not quite sure of what it
1809 would do to overall biofuel demand.

1810 If consumers begin to switch over to E15 quite a bit, then
1811 it would absolutely put downward pressure on RIN prices. However,
1812 we -- this is a new fuel. Consumers are uncertain about whether
1813 they can even put it in a lot of their vehicles.

1814 And so there are a lot of reasons to believe that there would

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1815 maybe be some limited -- even with year round offering at some
1816 fuel stations there would be limited consumer demand on that side,
1817 which means not that much extra biofuels or ethanol is going into
1818 the system, which would not resolve this RIN price problem.

1819 Mr. Loeb sack. Right.

1820 Mr. Lade. And so while it's certainly, potentially, over
1821 the long run and if E15 infrastructure were to roll out and
1822 consumers, as they learned that this was a viable fuel -- that
1823 it's something that they could put into all of their cars if it's
1824 priced competitively, that could certainly have that intent.

1825 In the short run, I have my doubts. But, again, you know,
1826 this is in uncertain territory because this is a new fuel that
1827 we really don't know much about.

1828 Mr. Loeb sack. Well, I am going to ask you to project on
1829 -- a little bit more with respect to E15 because when you were
1830 talking about RIN prices and their effects on gas prices, you
1831 were talking about E10.

1832 Can you speculate at least some with respect to E15?

1833 Mr. Lade. Correct. So when RIN prices rise, like I said,
1834 the higher cost on gasoline is nearly fully offset by the lower
1835 cost on ethanol as RIN prices are increasing.

1836 As you increase the percentage of ethanol in that gasoline,
1837 that lower cost on ethanol actually starts to drive the retail
1838 prices down. This is exactly how the market-based mechanism is
1839 going to put more biofuel blending into the system.

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1840 And so you will see, as RIN prices rise, greater and greater
1841 discounts on E15 relative to E10 and that's exactly how you get
1842 consumers to move their hand over about 15 inches and fill it
1843 with E15 instead.

1844 Mr. Loeb sack. Right. Right.

1845 Mr. Lade. And so RINs are vital to stimulating that demand
1846 and so that's where it's kind of difficult to predict that. It
1847 depends how responsive consumers are and how quick they are to
1848 switch over.

1849 Mr. Loeb sack. Got it.

1850 And then one last question -- as we all know, in response
1851 to refiner complaints about RINs, EPA has secretly issued 48 small
1852 refinery waivers, and I know there's some question about this.

1853 I am glad I came when that was being addressed by Ms. Dunphy.

1854 And some of the refiners are neither small nor experiencing
1855 economic hardship. These secret waivers, you know, one can argue
1856 about what the effects of them but some would argue up at 2 billion
1857 gallons of demand destruction and cutting the consumption by over
1858 2 billion gallons.

1859 What do you think the impact of all this might have on RIN
1860 prices then?

1861 Mr. Lade. I think we've seen the impact that it's decreased
1862 RIN prices as it necessarily -- if these allocations are not
1863 reallocated it necessarily means that less biofuels are needed
1864 to meet the requirements from EPA.

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1865 Mr. Loeb sack. Well, I want to thank all of you and thank
1866 you, again, Mr. Chair, for letting me waive on.

1867 Mr. Shimkus. Well, next time get on a better committee and
1868 you can question earlier.

1869 Mr. Loeb sack. I will do the best I can. It'll help me for
1870 November.

1871 Mr. Shimkus. So we've been asked to do a second round of
1872 questions. Is -- I hope you don't mind that. I think the folks
1873 who are here, obviously, are interested in addressing that.

1874 So with your permission, the folks here would go a second
1875 round. We don't think it'll take that long. So I want to thank
1876 Mr. Tonko for agreeing to that.

1877 So I will recognize myself for five minutes for a second
1878 round. I want to make sure we clarify this small refinery
1879 exemption, because what I am hearing is that they're blending
1880 already at 10 percent. This exemption comes at the end.

1881 So my question is -- maybe Ms. Dunphy -- what's the remedy?
1882 Is there a remedy for these small refiners? If they've been
1883 blending most of the year, they get the exemption, what do they
1884 do? Throw a party? I mean, what do they -- what do they get
1885 for that?

1886 Ms. Dunphy. Well, if they've already retired RINs then
1887 they'll seek EPA's permission to get those RINs back again, and
1888 as we've talked about, that does come back into the market.

1889 It has replenished the RIN bank, okay. So remember, as Mr.

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1890 Yacobucci pointed out, the oil companies can use 20 percent prior
1891 year RINs to satisfy their current year compliance.

1892 The RIN bank had declined. It got down to as low as 9
1893 percent. So that means there's more pressure on current year
1894 to have the RINs and get them in your hand.

1895 As the RIN bank has been replenished, because these small
1896 refinery exemptions have been granted, the number of prior year
1897 RINs comes back into the market and replenishes the RIN bank
1898 overall, reducing the concerns that we won't be able to meet this
1899 year's compliance.

1900 Mr. Shimkus. All right. Thanks.

1901 The spike that was talked about -- we talked about high
1902 prices, high volumes. But I think another factor was there was
1903 -- in the EPA there was increased regulation in that year also
1904 and, you know, increased regulation increases higher prices.
1905 So there was -- there was there was three variables that I just
1906 wanted to make sure we put on the table.

1907 The-there's proposals floating out there on a RIN cap. What
1908 would that do to this market? Anyone want to address that?

1909 Mr. Niznik. It would cause Senator Chuck Grassley to
1910 explode.

1911 [Laughter.]

1912 Mr. Loeb sack. And Congressman Loeb sack as well.

1913 [Laughter.]

1914 Mr. Niznik. But also it would just end the market

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1915 functionality that Professor Lade talked about and it would,
1916 certainly, impair the ability of RINs to do some of the functioning
1917 that they've been talking about doing in terms of stimulating
1918 production and having the marketplace respond to the volumetric
1919 requirements that the EPA would put out each year.

1920 If it just was kept at 5 percent, it wouldn't matter if --
1921 it wouldn't matter whether EPA asked for more or less.

1922 Mr. Shimkus. Right. Dr. Lade.

1923 Mr. Lade. So I would --

1924 Mr. Shimkus. Quickly.

1925 Mr. Lade. Quickly, I would push back a little bit on that.

1926 It depends critically what the RIN price cap is because that
1927 then determines how much of a discount you can give to biofuels
1928 and how much of an incentive you can give to biofuel consumption.

1929

1930 So if a RIN price cap is 10 cents, then absolutely no one's
1931 going to use E85 or E15 mostly likely, given market prices.

1932 Mr. Shimkus. Right.

1933 Mr. Lade. However, if a RIN price cap is set 60 cents to
1934 a dollar, all else being held equal in this regulation, that could
1935 serve a very stabilizing role because what we've seen is that
1936 EPA has responded to high RIN prices by adjusting mandates and
1937 that's led to a lot of this volatility.

1938 If, instead, EPA said no, we will cap RIN prices at this
1939 level and you can come to us to buy paper credits after RINs on

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1940 the private market have reached above this level, they no longer
1941 need to use that option to adjust RIN prices through mandates,
1942 which has led to a lot of volatility. So --

1943 Mr. Shimkus. Thank you. Let me go -- let me go, because
1944 I've got two minutes or a minute and a half. I've got three
1945 questions.

1946 Mr. Yacobucci, engines -- you talk about engines and that's
1947 a part of your world. What is the most efficient engine as far
1948 as octane? Do you know?

1949 Mr. Yacobucci. So, I mean, there's a lot of discussion about
1950 this right now. To get to your question, if one were to increase
1951 the compression of engines, you could squeeze out more efficiency
1952 from that engine.

1953 Mr. Shimkus. What would be Iran?

1954 Mr. Yacobucci. You know, there's a lot of discussion for
1955 that but, certainly, a higher octane number fuel would allow for
1956 greater efficiency if you tuned the engine to do so. I mean,
1957 if you just put higher octane fuel in --

1958 Mr. Shimkus. Right. No. No. We are talking about -- I
1959 mean, part of our debate -- and Mr. Flores with me -- as you get
1960 your best engine engineers, you get your best petrochemical
1961 engineers, and you create the most efficient engine for a
1962 next-generation vehicle, because I think that's kind of what we
1963 are --

1964 Mr. Yacobucci. But there's a trade-off between the energy

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1965 content. For example, ethanol has a lower energy content. So
1966 even if you're burning it more efficiently you may be getting
1967 fewer miles per gallon versus the cost to the engine.

1968 Mr. Shimkus. I am not -- you're the smart guy -- but that's
1969 not what we were being told with the engineers and the engineering
1970 of a high-compression high-octane engine.

1971 Let me ask also -- I wanted to address, in my seven seconds
1972 remaining -- there is also a proposal out there that talks about
1973 a D8 RIN, which would be above the blend wall.

1974 Anyone hear that and what's your thoughts on that? Mr.
1975 Niznik.

1976 Mr. Niznik. Yes, I investigated that for a company that
1977 asked me to research the concept, and it would change the current
1978 shape of the RFS but it would overcome one of the internal hurdles
1979 of the RFS -- blocking expanded ethanol usage.

1980 So if you -- right now, I confused the group before talking
1981 about how the RIN from ethanol right now is essentially capped
1982 at the price of the next category up RIN because of the
1983 replaceability.

1984 If you took it out from underneath that umbrella and that
1985 cap and gave it its own category the RINs price mechanism has
1986 proven very efficient in other categories, forcing those fuels
1987 into the marketplace.

1988 So if you wanted to provide an opportunity specifically for
1989 one type of fuel and you made a new RIN category just for that

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1990 type of fuel and put a mandate on it, I am convinced that, based
1991 on market history, you could get the amount blended you wished.

1992 Mr. Shimkus. And my time is way expired. I appreciate my
1993 colleagues. The chair recognizes the gentleman from Texas, Mr.
1994 Flores, for five minutes.

1995 Mr. Flores. I am assuming the ranking member doesn't --

1996 Mr. Shimkus. I am sorry.

1997 Mr. Tonko. Dr. Lade, yes.

1998 Dr. Lade, in your written testimony you state that volatility
1999 isn't always caused by speculators and that volatility in a market
2000 can attract speculators, presumably, because all the fluctuations
2001 present -- or present opportunities for profit.

2002 You also indicate that EPA's management of the program
2003 including delays in setting RVOs are sources of volatility in
2004 the RIN market.

2005 Is that accurate? Is that --

2006 Mr. Lade. Correct.

2007 Mr. Tonko. Okay. What about the changing headlines
2008 following the efforts of the White House, several senators, and
2009 some RFS stakeholder discussions about reforming the RFS?

2010 Would those headlines have any effect on RIN prices?

2011 Mr. Lade. Likely, if they believe that that could lead to
2012 credible changes in the mandates coming out of EPA. And so what
2013 really the market is trying to do is figure out how much extra
2014 biofuel they need to push in, particularly beyond the E10 blend

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2015 wall because that's where all the real costs come into this.

2016 It's much more expensive to push ethanol and biodiesel and
2017 be on this E10 blend wall and that's where the market is trying
2018 to guess is how much they need extra beyond that. So to the extent
2019 that some news organization reports that the mandate may be
2020 increasing or decreasing that would certainly have that impact
2021 as you're trying to guess what's going to come out.

2022 Mr. Tonko. Okay. Thank you.

2023 In your testimony, you discuss several studies that looked
2024 at the potential effect of RIN prices on bulk wholesale and retail
2025 prices for fuel.

2026 Refiners claim they cannot pass high RIN prices on to their
2027 consumers. But these studies suggest that they can.

2028 Mr. Lade. Correct.

2029 Mr. Tonko. The discussions in your written testimony seem
2030 to -- seems to conclude they often can but it isn't a certainty.

2031 Would you please explain the potential reasons why a refiner
2032 might not be able to pass on high RIN costs?

2033 Mr. Lade. So the studies that speak to this look
2034 particularly at bulk wholesale fuel prices. So those that are
2035 on large traded commodities markets and a lot of those serve as
2036 benchmark prices throughout the entire wholesale system.

2037 However, there could certainly be differences in, say, at
2038 blending stations and wholesalers when you're blending in
2039 Illinois, Iowa, New York, et cetera.

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2040 And so there are certainly studies beginning to look at RIN
2041 pass through to those to see if the same thing that you see on
2042 these larger tradeable market are really translating down to the
2043 markets that refiners may be selling into and so far it's still
2044 inconclusive on that.

2045 However, the -- so far, the academic literature has continue
2046 to find these prices being reflected in wholesale prices.

2047 Mr. Tonko. Okay. Thank you.

2048 With that, I yield back. Thank you, Mr. Chair.

2049 Mr. Shimkus. The gentleman yields back his time. The chair
2050 now recognizes the gentleman from Texas, Mr. Flores, five minutes.

2051 Mr. Flores. Thank you, Mr. Chairman. Thank you for the
2052 second round of questions.

2053 One of the other takeaways that I didn't mention in my first
2054 round of questions was that I think each of you agree that ethanol
2055 has a place to play in the fuel markets of the future, primarily
2056 because of the octane and some of the environmental
2057 characteristics that it has, and that's the reason that Mr.
2058 Shimkus, Mr. Welch, and I are working on legislation that doesn't
2059 adversely impact the ethanol markets.

2060 One of the things that I've heard from different constituent
2061 groups is that there are some disruptions in the biodiesel market
2062 because of the way the D4 ran as embedded in the nesting structure.

2063 This is somewhat subjective on your part but I would like
2064 to know what feedback you all have in terms of the market impact

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2065 on D6 prices if we were to de-nest D4s and have D4s trade totally
2066 -- be useable only for the biodiesel market.

2067 If you feel comfortable commenting on that I would like to
2068 know what your thoughts are.

2069 Mr. Niznik. I am an old biodieseler myself so I can --

2070 Mr. Flores. I am glad you're from Texas, too.

2071 [Laughter.]

2072 Mr. Niznik. Thank you, sir. So the D4 RIN really isn't
2073 a victim to any other RIN. It's the 500-pound gorilla RIN right
2074 now.

2075 Mr. Flores. Right. Right.

2076 Mr. Niznik. So it's behavior right now is unfettered and
2077 the historical record shows that it does a really great job.
2078 In fact, if there's one RIN that's working in the RFS, it's the
2079 D4 RIN.

2080 Mr. Flores. Right.

2081 Mr. Niznik. So when it goes up just a little bit, the market
2082 signals blend more and producers produce more and it works great.

2083 But when you have the nested structure, if you have a
2084 particular interest in other fuels working and they're underneath
2085 there, then no, it's not as good.

2086 So I would suspect that if you designed a system of separate
2087 unnested RINs that --

2088 Mr. Flores. Just D4, though.

2089 Mr. Niznik. Yes.

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2090 Mr. Flores. I am just talking about D4.

2091 Mr. Niznik. You're just talking about D4s. I don't think
2092 it would change at all for the D4s. I think they would continue.

2093 Under the current circumstances, they move very freely with
2094 the exception of worrying about the recurring dollar a gallon
2095 biodiesel tax credit, which is outside of the RFS system but,
2096 again, a policy thing.

2097 Mr. Flores. How would the D6 RIN change if we de-nested
2098 the D4?

2099 Mr. Niznik. Well, then perhaps it could rise to the occasion
2100 that it needs to incentivize infrastructure, usage in fuels.

2101 We don't really know how high a D6 RIN needs to be to, for
2102 instance, inspire more E15 use or even E85 use because under the
2103 time of the program it's always been butting heads against the
2104 D4 price, right. So we've never seen a free shot at it.

2105 I've done research, for instance, on E85 usage, which has
2106 a lot of ethanol in it. But every time I did it, again, I couldn't
2107 say hey, what would happen to this. I didn't have any market
2108 data on where the customers needed to be incentivized.

2109 Mr. Flores. Mr. Lavinsky, do you have any thoughts on this
2110 issue?

2111 Mr. Lavinsky. Not that has --

2112 Mr. Flores. Okay.

2113 Mr. Lavinsky. He's covered it well.

2114 Mr. Yacobucci. I would just add that, and Mr. Niznik can

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2115 correct me if I am wrong, but that the biodiesel RIN drives --
2116 because it's the majority of the advanced biofuel RINs, the D5
2117 RINs, that it drives that market.

2118 If you took it outside of the advanced biofuel pool then
2119 there would certainly be some effects there because that is the
2120 primary supply for the advanced biofuel as well.

2121 So it depends on whether you mean de-nesting it from the
2122 overall mandate, the D6 mandate, or whether you mean taking it
2123 out of the advanced biofuel pool.

2124 Mr. Flores. Okay. That's a good point. Okay. That's
2125 something we as policy makers need to keep in mind.

2126 Ms. Dunphy, any thoughts on that?

2127 Ms. Dunphy. Well, today, because of the nesting, when
2128 there's a shortage of D6 RINs versus the mandate, that has
2129 fulfilled with higher -- other types of RINs -- advanced biofuel
2130 RINs.

2131 So if you look at it from that perspective, that total
2132 renewable fuel category is dominated by corn ethanol.

2133 Mr. Flores. Mm-hmm.

2134 Ms. Dunphy. But if there's not enough D6 RINs to fulfil
2135 it then that category gets filled with advanced biofuel RINs,
2136 which are greater greenhouse gas-reducing fuels --

2137 Mr. Flores. Mm-hmm.

2138 Ms. Dunphy. -- which is kind of the overall objective of
2139 the law is to have greater greenhouse gas-reducing fuels.

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2140 So you would lose that added volume that the biodiesel --
2141 the D4 RINs fulfil in that D6 space. So there's some demand loss
2142 there if they don't have that space to grow into.

2143 Mr. Flores. Dr. Lade.

2144 Mr. Lade. Yes. I would just like to reiterate that was
2145 my main point was that you would have demand loss on the biodiesel
2146 side because you wouldn't be producing more of it to compensate
2147 for the lack of D6 RINs.

2148 So that you're over meeting these mandates for the D4 in
2149 order to fill in what you can't push through with E85 or E15 right
2150 now. Taking that out would remove that option and make the market
2151 meet -- pass the blend law with E85 or E15 instead.

2152 Mr. Flores. Just -- and, again, hypothetically, what would
2153 happen to diesel prices if you de-nested the D4 and set it aside
2154 by itself?

2155 Mr. Niznik. The RFS is borne -- the price of the RFS
2156 compliance of RINs is borne equally in the marketplace by either
2157 gasoline or diesel.

2158 So the -- even if they do, for instance, pay more to blend
2159 one particular biofuel and one type of petroleum versus another
2160 -- let's say ethanol biodiesel -- they tend to, on the petroleum
2161 cost side, aggregate all the costs and pass it through evenly.
2162 That's the -- that's what the historic price data shows.

2163 Mr. Flores. Okay. Thank you. My time is expired.

2164 I yield back.

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2165 Mr. Shimkus. The gentleman yields back his time.

2166 The chair thanks the gentleman. Before we conclude, my
2167 wife's family farm is in South Dakota.

2168 So I was up there for 4th of July -- a family reunion --
2169 and then took a drive to North Dakota and then back through South
2170 Dakota and probably one of the weirdest guys that would take a
2171 picture of every retail location that I filled up with gas.

2172 And what's instructive there is that they have -- yes, I
2173 know, it's said --

2174 [Laughter.]

2175 And I have them. I can show them to you. They're right
2176 on here. But, you know, and we always got to remember retailers,
2177 too. I mean, this is the whole debate and there are pumps in
2178 the -- in the Dakotas that have E0 because of motorcycle riders
2179 and boaters and stuff.

2180 So but the delta price difference for the same level is,
2181 like, 30 cents cheaper because of the ethanol -- the depression
2182 of prices because it's a cheaper mix.

2183 But there's just so many things that we got to think about.
2184 I will show you those pictures, if anybody wants to see them.

2185 Mr. Niznik. I do the same thing. I have the same hobby.

2186 Mr. Shimkus. You are sick.

2187 Ms. Dunphy. And I did the same thing last weekend on the
2188 way to San Antonio and took a picture of the Buc-ee's pumps.

2189 Mr. Shimkus. There you go. Thank you.

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2190 [Laughter.]

2191 Seeing there are no further members wishing to ask questions
2192 or make stupid statements for the panel, I would like to thank
2193 all of our witnesses again for being here today.

2194 Before we conclude, I would like to remind members interested
2195 in the RIN fraud issue that I would point you to letter two, the
2196 Subcommittee on Oversight Investigations hearing transcript on
2197 RIN fraud. 2012? Thank you.

2198 And a -- and I also would like to ask for unanimous consent
2199 to submit the following documents for the record: the letter
2200 from Renewable Fuels Association and then the Subcommittee on
2201 Oversight and Investigation hearings on the -- the transcript
2202 on RIN fraud.

2203 [The information follows:]

2204 *****COMMITTEE INSERT 8*****

2205 Mr. Shimkus. And pursuant to committee rules, I remind
2206 members that they have 10 business days to submit additional
2207 questions for the record. I ask that witnesses submit their
2208 responses within 10 business days upon receipt of the questions.

2209 Without objection, this subcommittee is adjourned.

2210 Thank you very much.

2211 [Whereupon, at 11:13 a.m., the subcommittee was adjourned.]