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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.

13

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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,
20 Harper, Olson, Flores, Hudson, Walberg, Carter, Duncan,
21 Walden (ex officio), Tonko, Ruiz, Peters, McNerney, Cardenas,
22 Pallone (ex officio), and Loeb sack.

23 Staff present: Samantha Bopp, Staff Assistant; Kelly

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

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

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

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

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

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

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

63 Today's hearing continues this subcommittee's ongoing

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64 efforts to examine the future of our nation's transportation
65 fuels. One of the most significant programs that influences
66 transportation fuel in America is the Renewable Fuel
67 Standard, today's topic of discussion.

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

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

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

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

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

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

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

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

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110 environmental markets.

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

117 While understanding that the topic of this morning's
118 hearing can bring about strong viewpoints, my hope and intent
119 is that this hearing will result in a constructive and
120 productive dialogue that will further this subcommittee's
121 effort to improve the nation's transportation fuel policies.

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

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

127

128 *****INSERT 1*****

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

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

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

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

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

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

149 According to press reports, these have been among the
150 issues considered by members working on RFS reform, and while
151 the RIN market certainly has had price spikes, I do not think

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152 we should ignore the political figure's ability to impact
153 market stability.

154 With each White House meeting or EPA announcement, the
155 RIN market can be put into flux. Over the years, the RFS has
156 experienced administrative issues in both Republican and
157 Democratic administrations such as missed RVO deadlines that
158 have impacted its ability to provide for that market
159 certainty.

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

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

166 We still do not fully know whether these exemptions were
167 justified, whether those obligations were reallocated to
168 larger refiners, or how these waivers may have impacted RIN
169 prices in the biofuels market.

170 Secret exemptions are not good for the sake of a healthy
171 market and the lack of transparency is extremely troubling,
172 although it is reflective of standard operating procedures
173 within the RIN marketplace.

174 While RIN transactions are reported to EPA's moderated

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175 transaction system, there are legitimate concerns that the
176 market lacks meaningful transparency.

177 Very little information on RIN transactions is made
178 public and the market is not subject to scrutiny by
179 regulators similar to other commodity markets.

180 This has led to numerous reported issues of RIN fraud in
181 the past and leaves the door open for potential market
182 manipulation. Publicly available data may not be sufficient
183 to even know if market manipulation is indeed occurring.
184 That is a problem.

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

190 Thank you again for being here. I look forward to the
191 discussion.

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

193 Mr. Shimkus. Gentleman yields back his time.

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

196 The Chairman. Thank you, Mr. Chairman. Thanks for
197 holding yet another hearing on this overall topic. We

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198 appreciate it.

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

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

206 So that's why we are having this hearing. It's not to
207 pit one side against the other or rip off Band-Aids or
208 anything else. It is to learn, to better inform our work so
209 that we can address the issues before this committee.

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

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

219 This hearing will help the Environment Subcommittee
220 better fill out it's set of books on transportation renewable

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221 fuels more generally.

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

230 That said, this hearing is not meant to drive a
231 preordained policy or to settle scores. It is intended to
232 help members understand the program so they can
233 make informed decisions when the time comes for us to
234 legislate.

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

241 So I look forward to hearing your testimony today. And
242 so we will proceed. I want to thank the chairman and other
243 members of this committee who have been working overtime on

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244 the broad set of issues related to renewable fuels and how
245 this committee can move forward.

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

249 So thank you very much, and with that, Mr. Chairman, I
250 yield back.

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

252

253 *****INSERT 2*****

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

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

258 Mr. Pallone. Thank you, Mr. Chairman.

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

263 And the market allows parties blending more than their
264 required gallons of biofuel to sell their excess RINs to
265 parties that blend less than their require gallons.

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

270 It should also primarily serve the interests of RFS
271 participants, not the interests of speculators. Well, that's
272 how things are supposed to work. But today, they are not
273 working and I believe much of the recent volatility in the RIN
274 market can be attributed to the way the Trump administration
275 has operated the RFS program.

276 Press reports of the on again off again RFS negotiations

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277 conducted by the White House over the past year or so have
278 driven RIN prices up and down, depending upon the headline of
279 the day.

280 No new RINs were created or removed from the market in
281 these meetings and no changes to the program were made if the
282 price fluctuated enough to create losses or gains for
283 everyone involved in the program over the costs of the last
284 year -- over the course of the last year.

285 Now, former EPA Administrator Pruitt also nearly doubled
286 the number of small refinery waivers that were granted last
287 year, which lowered the price of RINs. It appears that some
288 of these waivers were granted to refineries not experiencing
289 financial hardship which is required under the law.

290 If that's the case, then former Administrator Pruitt
291 intentionally misused this waiver authority to manipulate the
292 RIN market and undermine the RFS, and the lack of
293 transparency and accountability in the waiver program raises
294 serious questions about how this program is being managed.

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

298 And I guess we will find out more about it today. I
299 don't know if anybody else wants the time. Otherwise, I will

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300 yield back, Mr. Chairman.

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

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

306 We appreciate you all being here today. I've kind of
307 done the initial formal introduction in my opening statement.
308 So I'll just turn to you. Your full statements are submitted
309 for the record. You'll have five minutes.

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

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

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316 STATEMENTS OF BRENT YACOBUCCI, ENERGY AND MINERALS MANAGER,
317 CONGRESSIONAL RESEARCH SERVICE; SANDRA DUNPHY, DIRECTOR,
318 ENERGY COMPLIANCE SERVICES, WEAVER AND TIDWELL, LLP; PAUL
319 NIZNIK, SENIOR CONSULTANT, ARGUS MEDIA INCORPORATED; DR.
320 GABRIEL E. LADE, ASSISTANT PROFESSOR OF ECONOMICS, IOWA STATE
321 UNIVERSITY; COREY LAVINSKY, DIRECTOR OF GLOBAL BIOFUELS, S&P
322 GLOBAL PLATTS ANALYTICS

323

324 STATEMENT OF BRENT YACOBUCCI

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

327 My name is Brent Yacobucci. I am the energy and mineral
328 section research manager for the Congressional Research
329 Service. Congressional guidelines on objectivity and
330 nonpartisanship require that I confine my testimony to
331 technical, professional, and non-advocate aspects of matters
332 under consideration and that I limit myself to areas within
333 my knowledge and expertise.

334 Although I can discuss policy options and potential
335 ramifications, the service does not take a position on
336 pending or proposed legislation.

337 I've been with CRS for 19 years, providing analysis on
338 alternative fuels, automotive design, and transportation-

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339 related provisions of the Clean Air Act.

340 I have a Bachelor's degree in mechanical engineering
341 from the Georgia Institute of Technology and a Master's
342 degree in public policy from the George Washington
343 University.

344 I am a member of the Society of Mechanical Engineers,
345 the Society of Automotive Engineers, and the Society of
346 Petroleum Engineers, although today I am representing only
347 CRS.

348 The federal Renewable Fuel Standard was established by
349 the Energy Policy Act of 2005 and expanded in 2007 by the
350 Energy Independence and Security Act.

351 The RFS requires the use of renewable biofuels in
352 transportation. For 2018, the mandate is, roughly, 19.3
353 billion gallons.

354 Within the larger mandate, there are sub-mandates for
355 advanced biofuels including biomass-based diesel and
356 cellulosic biofuels.

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

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

366 Each qualifying gallon has its own unique RIN. The
367 characters signify various attributes to the batch of fuel,
368 including the decode, which identifies the category of fuel
369 and which part of the RFS that fuel satisfies -- D3 for
370 cellulosic biofuel, D4 for bio-based diesel, D5 for advanced
371 biofuels, and D6 for unspecified biofuel -- typically, corn-
372 based ethanol.

373 From the beginning of the RFS program there will be
374 concerns with RIN generation and the RIN market, in part to
375 address concerns over errors, inaccuracies, and potential
376 fraud, when EPA finalizes rules for the RFS in 2007,
377 sometimes referred to as the RFS 2, EPA also established a
378 new EPA-moderated transaction system, or EMTS.

379 EPA maintains that obligated parties must exercise due
380 diligence, and under their buyer beware system, those
381 purchasing RINs must certify the validity of those RINs on
382 their own.

383 They are generally responsible for any invalid RINs they
384 pass on to others or submit to EPA for compliance. At

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385 times, RIN prices have been volatile. Most RINs are
386 initially bought and sold through private contracts. But in
387 the spot market for RINs in 2013 spot prices for conventional
388 ethanol RINs -- the D6 RINs -- rose dramatically before
389 dropping even more rapidly.

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

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

398 Concerns have been raised about the volatility of RIN
399 prices on the secondary market and the potential effects on
400 the costs faced by gasoline blenders and oil refiners,
401 particularly those refiners without the infrastructure to
402 blend, as well as the effects on consumer fuel prices.

403 The complex interactions among the prices for various
404 commodities makes such analysis difficult. Stakeholders who
405 propose various options to address some of these concerns
406 including limiting the participation of non-obligated parties
407 in the markets and in the EMTS, establishing a price cap for

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408 RINs, requiring more public real-time reporting for RIN
409 training data, and granting the Commodity Futures Trading
410 Commission authority to regulate the RIN market similarly to
411 other agricultural commodities.

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

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

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

419

420 *****INSERT 3*****

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421 Mr. Shimkus. Thank you very much.

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

423 Thanks for being here.

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424 STATEMENT OF SANDERS DUNPHY

425

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

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

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

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

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

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447 Because of this diverse base of customers, Weaver takes
448 a neutral position on the RFS regulations. My comments to
449 you today are intended to provide useful information as you
450 explore potential revisions and updates to the RFS
451 regulations, not to advocate for any particular position or
452 provision.

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

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

460 Under the RFS program, that financial incentive comes
461 primarily from RINs. If new technologies and fuels can meet
462 the stringent feedstock production process and finished fuel
463 requirements of the RFS, then RINs are the reward.

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

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

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470 Some of the things currently not allowed, fuels that
471 require two separate facilities to be produced -- for
472 example, one facility converts wood, straw, grasses, or
473 municipal solid waste, feed stock into some type of liquid,
474 and another facility, such as a petroleum refinery, turns
475 that liquid into a finished fuel, then fuel cannot generate
476 RINs.

477 Bio gas used to produce electricity that is then used to
478 power motor vehicles, here the pathway exists in the
479 regulations but has not yet been implemented.

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

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

489 Tree thinning and forest floor logging residues are also
490 very difficult to use, even if sustainable harvested. Bio
491 gas from digesters located at farms or wastewater treatment
492 facilities that take in a variety of wastes, some cellulosic

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493 and some non, are only allowed to make noncellulosic RINs if
494 they could process any amount of noncellulosic material.
495 Being able to make only noncellulosic RINs often kills a
496 project.

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

501 This dependency holds true for both standalone renewable
502 fuel production facilities and for petroleum refineries
503 wanting to co-process renewable feed stocks in their
504 facilities.

505 The RFS regulations, by their very nature, dictate
506 winners and losers in the renewable fuel market. Whatever
507 changes you may propose to the RFS regulations, I encourage
508 you to seek clear, predictable, practical standards and take
509 advantage of RINs as a powerful market incentive toward
510 change.

511 Again, thank you for the opportunity to testify today
512 and for your work in reviewing how RINs can help incentivize
513 production of the best fuels for the environment and the
514 American consumer.

515 Weaver stands ready to assist your committee in any way

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516 possible as you consider different options for accomplishing

517 these goals.

518 Thank you.

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

520

521 *****INSERT 4*****

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522 Mr. Shimkus. Thank you very much.

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

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

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527 STATEMENT OF PAUL NIZNIK

528

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

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

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

537 Billions of dollars of commodity prices are based on
538 Argus published indices which are produced in over 20 offices
539 spread across global market hubs.

540 Argus provides its services to entities within the
541 petroleum, biofuel, and power markets, among others. In my
542 role as a consultant, I provide strategic planning services,
543 investment due diligence and market research specifically in
544 biofuels and RINs markets.

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

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550 Historically, changes seen in any of these areas can
551 have quantifiable effects on RIN prices. In my experience
552 with clients, at every level of participation in the market,
553 understanding the logic of RINs price behavior creates
554 opportunities for investment and opens chances to optimize
555 business efficiency.

556 Uncertainty around potential changes to the RFS or the
557 policies disrupts the logic of the market and creates RINs
558 price movements and volatility not normally seen under
559 similar market conditions.

560 Likewise, policy clarification and long-term guidance
561 have decreased RINs price volatility and returned the markets
562 to logical behavior in the past, such as the issuance of
563 guidance by EPA on the intention for annual RFS rulemaking in
564 2015 after a multiple year lapse.

565 RFS price volatility, driven by policy news, as well as
566 policy uncertainty, are the two largest complaints about the
567 RFS that I hear from my clients, both RIN buyers such as
568 petroleum refiners, and RINs generators such as biofuels
569 producers.

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

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

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573

574 *****INSERT 5*****

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

577 I will now turn to Dr. Lade. You're recognized for five
578 minutes.

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579 STATEMENT OF GABRIEL LADE

580

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

584 I am an assistant professor of economics at Iowa State
585 University, a visiting assistant professor in the Dyson
586 School of Applied Economics and Management at Cornell
587 University, and a faculty affiliate at the Center for
588 Agricultural and Rural Development, a public policy and
589 economic research institute at Iowa State University.

590 To these roles, I bring my expertise in environmental
591 economics and policy analysis. In recent years, I have
592 particularly focussed on state and federal policies that
593 increase the production and use of renewable transportation
594 fuels including the renewable fuel standard.

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

601 RIN markets serve a vital role in enforcing the

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602 renewable fuel standard. Key questions have arisen around
603 the operation and integrity of RIN markets, particularly
604 since 2013, due to observed volatility.

605 These include have RIN markets operated as intended by
606 the enacting legislation, what changes can improve the RIN
607 market and limit volatility, and what impact would
608 administrative or legislative changes to the RFS have on RIN
609 markets and biofuel demand in the United States.

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

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

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

620 RIN prices adjust to ensure that congressional biofuel
621 blending mandates are met each year and are a key market
622 signal about the value of investing in biofuel production and
623 distribution infrastructure.

624 Second, several features of RIN markets suggest that

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625 they are efficient. Prices adjust quickly to changing
626 compliance cost expectations and market fundamentals, and
627 most RIN price volatility since 2013 can readily be
628 attributed to ever changing biofuel blending targets and
629 uncertainty around future mandates.

630 However, publicly available data is insufficient to
631 fully determine whether the market is efficient or free of
632 manipulation. Greater transparency would allow researchers
633 and regulators to study these issues, and further
634 transparency would make attempt to manipulate the market more
635 difficult and costly.

636 Third, we all know that fuel retailers and refiners are
637 not driven out of business every time states raise their fuel
638 taxes. Instead, consumer prices at the pump increase
639 typically by the full amount of the tax.

640 Fuel providers pay the tax bill but consumers ultimately
641 bear the tax cost. The same situation arises in RIN markets.
642 The empirical economics literature continues to show that
643 wholesale fuel prices on average rise one for one with
644 refiners' RIN costs.

645 This means that so long as refiners offset their RFS
646 compliance obligations as they accrue them, on average,
647 they're fully compensated for their RIN costs through higher

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648 wholesale gasoline and diesel prices.

649 Finally, recent actions by the Environmental Protection
650 Agency likely undermined RIN markets. RIN markets are
651 designed to provide a signal about the value of biofuel
652 production and distribution in the United States. That
653 signal becomes unreliable when EPA decisions are
654 unpredictable and lack transparency.

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

656 [The prepared statement of Mr. Lade follows:]

657

658 *****INSERT 6*****

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659 Mr. Shimkus. Thank you very much.

660 Now I will turn to Mr. Lavinsky. You're recognized for
661 five minutes. Thanks for being here.

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662 STATEMENT OF COREY LAVINSKY

663

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

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

668 My name is Corey Lavinsky and I am with S&P Global
669 Platts handling global biofuels analytics. S&P Global Platts
670 is a leading provider of energy and commodity market data.
671 We provide news, market commentary, fundamental data and
672 analysis, thousands of daily price assessments, and
673 analytical tools to help customers spot and seize
674 opportunities with confidence.

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

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

681 RINs are the currency of the renewable fuel standard --
682 the RFS. Refiners and importers that are subject to the RFS
683 prove compliance with their renewable volume obligations by
684 retiring RINs at the end of each compliance year.

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685 Obligated parties can obtain RINs by physical blending
686 or by purchasing them on the open market. RINs are typically
687 traded on a bilateral basis and off exchange. Independent
688 pricing organizations like S&P Global Platts have shined a
689 light on the opaque markets by publishing RIN price
690 assessments.

691 Some RINs are more versatile than others and can be used
692 to satisfy multiple mandates. For instance, a D4 RIN with
693 the production of biodiesel can be used to satisfy three of
694 the four mandates. The most common RIN, a D6 RIN, generated
695 from corn ethanol, can only be used toward the total
696 renewable fuel mandate.

697 Adding to flexibility, all RINs have a two calendar year
698 lifespan. Unused RINs can be carried over to the next year
699 with some limitations.

700 The government publishes extensive aggregated monthly
701 data on RIN generation and renewable fuel production. It's
702 also responsible for making decisions on small refinery
703 hardship exemptions.

704 Exemptions lower the number of RINs needed to satisfy
705 the annual mandates. Currently, small refinery hardship
706 exemption decisions are not make public. This makes
707 analyzing RIN supply and demand challenging.

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

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

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

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

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

727 When compared to other policy-driven environmental
728 commodity markets, a key distinguishing characteristic of the
729 RINs market is that it is a floor and trade system rather
730 than a cap and trade system.

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731 This ensures that a minimum volume of biofuels is
732 blended into the transportation pool. Cap and trade sets a
733 cap for behavior that the government seeks to limit and
734 penalizes companies that exceed the cap.

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

739 RINs of the same year and category are priced the same
740 anywhere in the country. RINs do not have the same
741 complications across state lines that renewable energy
742 certificates often have.

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

747 Renewable energy generation creates certificates which
748 are regional tracking systems. Individual states decide
749 targets and which types of certificates can be used for
750 compliance.

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

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

755

756 *****INSERT 7*****

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

761 I understand RINs are used by obligated parties to
762 demonstrate compliance with the renewable volume obligations
763 set by the EPA and that those volumes are based upon energy
764 information and administrative numbers and projections.

765 Ms. Dunphy, are those Energy Information Administration
766 projections and, by extension, the RVOs based solely on past
767 biofuel production levels or do they reflect realistic growth
768 in biofuel production capacity?

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

770 The annual RVOs are set by EPA using the EIA forecast
771 for gasoline and diesel demand for the coming year, and if
772 you think of the way the allocations work amongst the
773 refineries, the EPA's job is to come up with a percentage
774 that each refinery can use to calculate their obligation and
775 there's a percentage for each of the four compliance
776 categories that they multiply how much gasoline and diesel
777 they may buy.

778 To come up with that, they forecast what renewable fuel
779 is going to be available for introduction into the U.S.

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780 market. That becomes the numerator of the fraction. The
781 denominator is gasoline and diesel. You come up with a
782 percentage for all four categories.

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

786 Mr. Shimkus. Thank you.

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

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

793 Mr. Lavinsky. Thank you for your question.

794 Historically, large movements in RIN prices can be tied
795 to spikes in ethanol prices due to higher feedstock costs.
796 Higher mandates also contribute.

797 In 2013 when RIN prices reached their peak, corn prices
798 were over \$7 per bushel and they're currently only around
799 \$3.25 now, and while ethanol prices were about \$1.18 per
800 gallon more than they are now.

801 There are usually small policy bumps in prices each year
802 as new mandates are proposed in the spring and finalized

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803 around November. But they're not comparable in size to the
804 spike five years ago.

805 Currently, the low RIN prices now are the result of a
806 record domestic ethanol production and consumption and this
807 abnormally high RIN bank.

808 Mr. Shimkus. Thank you. Some stakeholders had
809 expressed frustration with the transparency of the RIN market
810 -- I think we've heard that today from some of you all --
811 including what information is available to the public, when
812 it's available, and what information is deemed confidential
813 business information and who is trading in the market, among
814 other concerns.

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

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

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

825 It is difficult from that current database to figure out

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826 which RIN participants are individual trading companies
827 versus subsidiaries of a large company and so being able to
828 suss out who is performing, trading, and participating in the
829 MTS as an independent third party versus a subsidiary of a
830 biofuel company or an oil company with refining. Those sorts
831 of information is very difficult to suss out currently.

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

833 Ms. Dunphy. Yes. The other --

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

836 Ms. Dunphy. Yes. Other panellists are probably more
837 expert on this --

838 Mr. Shimkus. Okay.

839 Ms. Dunphy. -- but there are private contracts where
840 the RINs transact on the intraday basis. So it's not public
841 information.

842 Mr. Shimkus. Okay. Mr. Niznik.

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

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

848 Mr. Shimkus. Okay.

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

853 Mr. Shimkus. Dr. Lade.

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

858 Mr. Shimkus. Mr. Lavinsky.

859 Mr. Lavinsky. I mean, with my five seconds -- and some
860 companies occasionally report that they received a waiver in
861 the public filings. So sometimes we get additional
862 information through the public filings that wouldn't
863 otherwise be available.

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

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

867 Mr. Tonko. Thank you, Mr. Chair, and Mr. Yacobucci,
868 thank you for your work with CRS.

869 Some questions -- EPA signed a memorandum of
870 understanding with the Commodity Futures Trading Commission
871 in 2016. As I understand it, only EPA has the authority over

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872 the RIN market. Is that true?

873 Mr. Yacobucci. Currently that is the case that EPA has
874 the only regulatory authority. Congress has not granted CFTC
875 specific authority to regulate that market.

876 Mr. Tonko. Thank you. So rules that government other
877 markets -- regulations prohibiting speculative practices like
878 spoofing where a buyer initiates an order for a commodity
879 they do not intend to complete for the purposes of
880 influencing the price of that commodity -- do not apply to
881 the RIN market. Is that correct?

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

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

887 Mr. Yacobucci. Certainly that has been one of the
888 criticisms is because there is such limited data publicly
889 available that it's hard to tell, again, who's participating
890 and what actions they might be taking.

891 Mr. Tonko. Thank you. And if Congress were to subject
892 this market to a regulator, would the CFTC be the most
893 appropriate regulator?

894 Mr. Yacobucci. I would defer to Congress on their

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895 decisions on that.

896 Mr. Tonko. Thank you. Proper functioning of markets
897 requires transparency and market participants need to have
898 reliable information about prices and supplies.

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

902 How can buyers and sellers be sure they are trading at a
903 fair price?

904 Mr. Yacobucci. I would defer to some of the other
905 witnesses on that question.

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

908 Mr. Niznik. Well, the price-reporting agencies do have
909 the ability to do price discovery and most of the
910 transactions that occur, both from buyer and seller, are
911 usually benchmarked to RINs prices published by either my
912 company or, if I am being generous, Mr. Lavinsky's company
913 also, and those are private price discovery agencies, though,
914 requiring subscriptions.

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

916 Mr. Lavinsky. I mean, I am part of the analytics team,
917 not the pricing team, but I can discuss it with them and

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918 provide you with an answer for the record after the hearing.

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

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

922 Mr. Tonko. Thank you.

923 RINs are created and sold within a compliance year with
924 some limited ability to carry over some RINs into the next
925 compliance year.

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

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

930 Mr. Tonko. Thank you.

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

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

937 RINs attach to biodiesel or advanced biofuels trade at
938 different prices than RINs or conventional ethanol. What is
939 the effect of RIN prices on the development and production of
940 advanced biofuels?

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941 Mr. Niznik. I will answer that. I work on due
942 diligence for people who are investing in -- particularly in
943 advanced biofuel projects.

944 The -- for advanced biofuel projects that might use an
945 advanced RIN or a D4 RIN or a cellulosic RIN -- those are the
946 top three category RINs -- the advanced biofuel RINs -- the
947 variability in that area and, more importantly, on certainty
948 of the policy moving forward are critical because none of
949 those projects can go forward without the RFS RINs price
950 incentive making those fuels possible to be blended in the
951 marketplace economically.

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

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

959 When the D6 RIN is short, you replace them with a D4 RIN
960 so that if it's a short D6 marketplace, the D6 RIN is now
961 suddenly at the D4 price. But when the D6 volume -- the D6
962 marketplace is long and oversupplied, then it can drift
963 downward to another level and so volatility can be higher in

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964 that space.

965 It almost has a binary value. Essentially, under
966 current market conditions if you had more than enough D6
967 RINs, the D6 RINs would be essentially around 3 cents or zero
968 because it's very, very economical to blend ethanol to
969 gasoline.

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

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

973 Mr. Shimkus. Clear as mud, right? Clear as mud. You
974 got that.

975 [Laughter.]

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

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

979 The Chairman. Yes. Thank you for this enlightening
980 discussion.

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

983 You know, as an Oregonian, we've had a lot of talk about
984 biomass and what we can do with these -- the wastes from the
985 forests and all -- and I know, Ms. Dunphy, in your testimony
986 you talked about the inconsistencies and barriers that

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987 prevent some renewable fuels from qualifying for RINs.

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

991 Ms. Dunphy. Yes, and I think history has proven that.
992 We only have one company today in the U.S. after all these
993 years of the program using woody biomass as a feedstock to
994 produce a renewable fuel that makes RINs.

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

998 Ms. Dunphy. I think we need clarification in the
999 current regulatory language to enable EPA to determine which
1000 of the woody biomass feedstocks falls under the existing
1001 categories.

1002 So the pathways exist today but they need clarification.

1003 The Chairman. Okay.

1004 Mr. Yacobucci. And I would just add that there is a
1005 much more complex definition of what qualifies as qualified
1006 biomass under the 2007 law than was in the original 2005 law
1007 and that has added to that complexity. So there are
1008 regulatory definition issues but there's also the statutory
1009 definition as well.

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1010 The Chairman. I remember those debates on this
1011 committee when some of the advocates for this tried to argue
1012 that woody biomass of a federal forest was somehow not
1013 renewable energy but if it was on the other side of the line
1014 -- the same trees falling different sides -- then it would be
1015 and it's, like, it had no scientific basis. It was all
1016 political and results in this complicated mess.

1017 Mr. Lavinsky and Yacobucci, what are the key challenges
1018 you see facing this RINs market now and, I mean, what do we
1019 need to do here, if anything, from your perspectives?

1020 What are -- you may not want to -- some may not want to
1021 suggest policy so I will ask it in the other way. What are
1022 the challenges facing the RINs market?

1023 Mr. Lavinsky. I would say one challenge is managing the
1024 opposing opinions as to whether RIN obligations need to be
1025 reallocated from the granting of small refinery waivers.

1026 Small refinery waivers are mostly issued after the year
1027 has ended and obligated parties have already submitted their
1028 RINs and compliance.

1029 So, to date, waivers have been issued retroactively.
1030 Retired RINs have been reinstated. But RIN obligations have
1031 not been reallocated.

1032 Mr. Yacobucci. And I would just add to that, I mean,

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1033 it's not just the small refinery exemptions. It is the time
1034 line for rulemakings.

1035 It is the level that EPA sets because under the statute
1036 the EPA has the authority to lower the targets from what they
1037 were -- the targets set in law. All of these different
1038 pieces, whether it's the specific waivers against the overall
1039 caps, individual waivers for companies, whether you're
1040 talking about refiners, you're talking about biofuel
1041 producers, all the participants in the market have raised
1042 issues in one form or other about uncertainty and that's what
1043 drives a lot of this, and Mr. Niznik has talked about how
1044 that's affected the markets and there's just all these
1045 questions about what is the current demand for fuel, given
1046 the different levels as they change.

1047 The Chairman. So for any of you, what's your assessment
1048 with how well the EPA has overseen the RINs market and
1049 implementation and where is there room for improvement there?

1050 Ms. Dunphy. So I think the EPA does a pretty good job
1051 at administering the regulations as they were written. But
1052 the RIN market oversight is missing. There's really not any
1053 oversight of the trading activity of RINs by the --

1054 The Chairman. Anywhere? Is there anywhere?

1055 Ms. Dunphy. Not to my knowledge.

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1056 The Chairman. Should there be?

1057 Ms. Dunphy. That's your call.

1058 The Chairman. Oh, I see how this works. Yes.

1059 Anybody else want to weigh in on that topic, about the
1060 EPA's oversight and what we should or shouldn't do?

1061 Mr. Niznik. There's some hardworking folks down there
1062 and they are administering --

1063 The Chairman. Oh, yes.

1064 Mr. Niznik. -- and they're administering very well.
1065 If you look at the public record on the rulemakings you can
1066 see a lot of input from multiple departments, some of which
1067 I've worked with under consulting before and there's a broad
1068 base of information being put into the decision making from
1069 both the USDA and EIA at every step.

1070 So the ability to make a good decision as best as
1071 humanly possible is there, in my opinion, based on the
1072 regulations and the review process necessary to do so.
1073 Whether or not the ultimate human decision at the end is
1074 qualifiably good is up to this body, Mr. Chairman.

1075 The Chairman. Well said. Thank you. All right.
1076 That's my time. Thank you, Mr. Chair.

1077 Mr. Shimkus. The chairman yields back his time.

1078 The chair now recognizes the gentleman from California,

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1079 Mr. McNerney for five minutes.

1080 You don't want to go?

1081 Mr. McNerney. I do. I just thought that the ranking
1082 member of the full committee was here. Thank you.

1083 Well, I hear from the testimony this morning that
1084 there's a -- that the RINs volatility is due to three
1085 factors. One is commodity prices, one is uncertainty in the
1086 market, and the other is fraud. Is there anything I am
1087 missing in that list?

1088 Mr. Niznik. I would also -- there are other fuel
1089 quality regulations and state and local incentives for
1090 biofuels usage or petroleum usage that can weigh in onto the
1091 RINs price.

1092 Mr. McNerney. So it might be good then to have federal
1093 standards that override state rules?

1094 Mr. Niznik. If you want another civil war.

1095 [Laughter.]

1096 Mr. Shimkus. Would the gentleman yield?

1097 Mr. McNerney. Sure.

1098 Mr. Shimkus. But isn't that like when a state might
1099 provide an incentive through a local percentage or tax
1100 incentive or something that -- I mean, it's not just a fuel
1101 incentive. It could be just in a policy incentive?

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1102 Mr. Niznik. Yes, sir. That's what I am talking about.
1103 Either a tax that is for production, taxes that is for sales
1104 can weigh very heavily and on the national level one of the
1105 most important factors on RINs price is the biodiesel
1106 blenders' tax credit, which can come back retroactively or
1107 can come back actively in any given year, depending on the
1108 actions of this body.

1109 Mr. McNerney. Okay. Thanks. Reclaiming my time.

1110 Some of the solutions I hear are transparency, rational
1111 consistency, referring to Ms. Dunphy's list of items, and
1112 clear predictable simple rules.

1113 Are there other factors that would be helpful?

1114 Ms. Dunphy. If you can do clear concise long-term rules
1115 that would make everyone in the market very happy.

1116 Mr. McNerney. So how has the volatility of the past
1117 three years compared to prior years for that?

1118 Mr. Niznik. Are you saying price volatility, sir?

1119 Mr. McNerney. Right. RINs price volatility.

1120 Mr. Niznik. Actually, RINs price volatility was
1121 relatively calm, I would say, during 2016 and 2015. But at
1122 the end of 2016, with the administrative change, there's been
1123 a large amount of policy-driven price -- policy uncertainty-
1124 driven price behavior.

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1125 Mr. McNerney. But you mentioned that the EPA's guidance
1126 helped stabilize the market.

1127 Mr. Niznik. In 2015. Yes, sir.

1128 Mr. McNerney. Oh, so that's sort of --

1129 Mr. Niznik. That's the last time things got kind of
1130 rational for a while. Yes, sir.

1131 Mr. McNerney. Okay. Thank you. I didn't understand
1132 that.

1133 So how much have the small refinery waivers contributed
1134 to the volatility?

1135 Ms. Dunphy.

1136 Ms. Dunphy. So small refinery waivers, as was already
1137 been said, are given retrospectively. So they are granted
1138 after the compliance year is over with.

1139 So to some extent the news of the waivers did impact the
1140 market, which -- because they weren't aware of the waivers
1141 prior to those most recent announcements. But the waivers
1142 themselves are retrospective. So individual waivers don't have
1143 an impact on the market when they're granted.

1144 Mr. McNerney. Okay. Thank you.

1145 Dr. Lade, you testified that the consumer prices go one
1146 to one -- consumer price impacts -- but are all refineries
1147 impacted similarly or do some refineries impacted more

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1148 drastically by RINs' market than others?

1149 Mr. Lade. The empirical evidence to date is that all
1150 refiners are -- in the economics literature all refiners are
1151 affected similarly and, you know, I've looked at -- again,
1152 more data and more research is necessary, particularly
1153 looking at markets and there are members of the academic
1154 community looking at that.

1155 But by and large, there's been a consistent consensus
1156 that on average these wholesale prices are adjusting to
1157 compensate for refiner costs.

1158 Mr. McNerney. Aren't the large refineries able to
1159 produce their own RINs? Aren't they affected less, or even
1160 make a profit off RINs?

1161 Mr. Lade. Correct. However, you're either going to
1162 produce your own RINs in house of that is the most cost-
1163 effective way to comply with this or you -- if it's not cost-
1164 effective for you to comply then you will purchase RINs from
1165 those who can produce RINs even cheaper than this.

1166 And so this is kind of the beauty behind the market-
1167 based mechanism here that it allows parties to decide whether
1168 it's more cost-effective to get into the biofuel business or
1169 to just purchase RINs from people who are better at producing
1170 biofuel.

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1171 And so either way, that cost is borne. It's just
1172 whether it's borne through biofuel production or through RIN
1173 purchases.

1174 Mr. McNerney. Yes, but I mean the problem in my mind is
1175 that the large producers are producing RINs and selling them
1176 so they're getting a double benefit whereas the small
1177 refiners are having to buy RINs. So they're paying for it.

1178 Mr. Lade. That's a great point. Similar as to the side
1179 where when you're having to pay for these RINs and you then
1180 are compensated for that through higher wholesale gasoline
1181 prices.

1182 Whether or not these oil refiners who are producing RINs
1183 upstream through biofuel production, whether they actually
1184 get to keep that depends on what happens to downstream
1185 consumer prices and work of my own has shown that ethanol
1186 prices are actually being -- this incentive is being passed
1187 through to consumers.

1188 Therefore, it wouldn't actually be impacting those
1189 refiners. The consumers are benefiting from the RINs on the
1190 ethanol side.

1191 Mr. McNerney. Okay. I don't quite follow that, but I
1192 will yield back my time.

1193 [Laughter.]

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1194 Mr. Shimkus. I love this hearing. So the gentleman
1195 yields back his time.

1196 The chair now recognizes the gentleman from West
1197 Virginia for five minutes.

1198 Mr. McKinley. Thank you, Mr. Chairman. Just a point of
1199 personal privilege. I would like to recognize in the
1200 audience -- he was my mentor when I joined the Energy and
1201 Commerce Committee -- Ed Whitfield back there. Thank you.
1202 Thanks for -- and you have showed you have not deviated one
1203 bit from your interest in energy. So thank you for coming.

1204 Mr. Lavinsky, you kind of took the wind out of my sales.
1205 I wanted to talk about that Fourth Circuit -- the ruling on
1206 Friday, because it overturned the previous denial from the
1207 EPA for Ergon, which is just a boutique refinery in West
1208 Virginia, and they were -- they've been burdened with this.
1209 Think about for all of us to understand this, here we have a
1210 boutique refinery, 23,000 barrels a day, and they're faced
1211 with the same issues that, like, Marathon is. Marathon
1212 refinery. It's a hundred times larger.

1213 That doesn't seem right. We should be able to
1214 differentiate between these and provide these hardship
1215 grants, waivers, for some of these small -- think, a hundred
1216 times larger, because we know that for Ergon in West Virginia

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1217 it's the third biggest expense they have behind raw materials
1218 and labor, and what they -- the biofuels industry has argued
1219 that granting these small refineries like the one at Ergon
1220 this hardship exemption was going to result in demand
1221 destruction.

1222 So I want to go to Ms. Dunphy and say in a kind of a yes
1223 or no, if you could, please, do you believe that granting
1224 these small refinery hardship exemptions result in less
1225 renewable fuel being included?

1226 Ms. Dunphy. So as I mentioned earlier, the small
1227 refinery waivers are granted retrospectively. So the
1228 compliance year has already passed.

1229 But every refiner assumes that they're going to be an
1230 obligated party during that year and they will continue to
1231 blend renewable fuels and buy RINs as needed because they
1232 don't know that they're going to get the exemption at the
1233 12th hour in the next -- when they go to report to the EPA by
1234 March the 31st of the following year.

1235 So I suggest that you all definitely talk to the small
1236 refineries in the U.S. and ask them if they have changed
1237 their blending policies because they think they're going to
1238 be exempted for the year and I think you will find that they
1239 have not changed their blending policy.

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1240 They continue to blend. They continue to purchase RINs.
1241 What they do is focus on current year RINs rather than the 20
1242 percent prior year.

1243 So if they get the exemption they still will be able to
1244 use the current year RINs in the next year. So that puts
1245 more RINs into the market. We understand that. But does it
1246 deconstruct the demand of the current year?

1247 I would say that if you look at the RIN data through
1248 June we are at the same production level that we were in 2017
1249 and we are halfway towards meeting the 2018 compliance RVOs.
1250 So whether that will hold true for the entire year I don't
1251 know.

1252 Mr. McKinley. The EIA had come out -- I thought they
1253 just -- I saw some information yesterday on the EIA that said
1254 that actually the blending over the first part of this year -
1255 - there was six months, seven months -- we are actually up
1256 over last year -- that actually we are increasing.

1257 So despite having all of these small refinery
1258 exemptions, is this -- is this a confirmation that small
1259 refinery exemptions do not -- do not destroy the demand for
1260 renewable fuel?

1261 Ms. Dunphy. You know, we should remember that refiners
1262 would probably blend ethanol regardless of whether there was

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1263 an RFS or not because ethanol represents a very good source
1264 of octane. It helps them meet their gasoline, sulfur, and
1265 benzene requirements.

1266 So they have an incentive to blend ethanol and they're
1267 going to do that. So I would say that the data through six
1268 months for the EMTS data that's published that anyone can see
1269 -- it's public information -- shows that the -- we are on
1270 track with last year.

1271 Whether that will continue through the rest of the year,
1272 I can't predict.

1273 Mr. McKinley. Thank you.

1274 Mr. Yacobucci.

1275 Mr. Yacobucci. Just one open question is whether or not
1276 a prior year's waiver creates a supply, potentially -- you
1277 know, and increased supply of carry forward RINs that a
1278 refiner can use, because a refiner can use either this year
1279 or last year's RIN to meet this year's obligation and that's
1280 the question going forward is if there's more of last year's
1281 RINs available what does that do to the market.

1282 I think that's still an open question.

1283 Mr. McKinley. Let's stay with you just for a minute.

1284 With the original intent of this RFS and RIN program,
1285 have we achieved that objective that we set out on that or

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1286 have we -- have we created a confusing and costly commodity
1287 system? What would be your opinion?

1288 Mr. Yacobucci. In terms of congressional intent, I
1289 wouldn't speculate. I will say that there are no
1290 congressional findings or specific stated goals in the
1291 statute.

1292 And so various players have attributed various goals to
1293 the program, whether that is increasing agricultural
1294 production, raising farm incomes, reducing imports of fuel.
1295 Certainly, increased biofuel use has displaced petroleum use.
1296 There have been economic benefits to agricultural states from
1297 the program.

1298 If you consider those to be the goals of the RFS, then
1299 yes, they have been successful. Is the -- is the program
1300 complicated? Certainly.

1301 Mr. Shimkus. The gentleman's time is expired.

1302 Mr. McKinley. My time has expired. I yield back.

1303 Mr. Shimkus. The gentleman yields back his time.

1304 The chair now recognizes the gentleman from Mississippi,
1305 Mr. Harper, for five minutes.

1306 Mr. Harper. Thank you, Mr. Chairman, and thank you each
1307 for being here. It is a topic every time I read it I think I
1308 come away and study it -- I come away more confused than when

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1309 I started that study. So thank you very much.

1310 Mr. Yacobucci, if I could ask you and, certainly, you
1311 know, I certainly agree with what Mr. McKinley has said. But
1312 I wanted you to just try to educate me as best you can.

1313 Give me a brief explanation of the terms RIN long and
1314 RIN short so I can understand that.

1315 Mr. Yacobucci. I would defer to Mr. Niznik on that.
1316 It's his term.

1317 Mr. Harper. Okay. Mr. Niznik.

1318 Mr. Niznik. I apologize for confusing the committee. I
1319 come from the trading world, which has got its own language.

1320 Mr. Harper. Yes.

1321 Mr. Niznik. When we say long, we mean over supplied.

1322 Mr. Harper. Okay.

1323 Mr. Niznik. And when we say short, we mean under
1324 supplied. So to apply that to Ms. Dunphy's statement from
1325 before, if previous year obligations got waived under a
1326 small refinery exception and those RINs were suddenly dumped
1327 back into the market, it could cause a case of long or over
1328 supply of RINs that weren't expected to be in the market.

1329 Mr. Harper. Okay. So explain why some companies are
1330 RIN long and some are RIN short a little further so that --
1331 if they have an over supply --

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1332 Mr. Niznik. Yes. They would be long -- you would say
1333 they're over supplied for what they might need for their
1334 obligation for this year.

1335 Mr. Harper. Okay.

1336 Mr. Niznik. So they may say oh -- or if they perceive
1337 they will be long -- and this is more important is the
1338 perception -- if they perceive they're going to be over
1339 supplied then they're not willing to pay a certain price.
1340 They're more -- they're going to depress the market price
1341 because they're less interested in a purchase.

1342 Mr. Harper. You know, and certainly when you're looking
1343 at some of the smaller refineries, for instance, and all of
1344 these waivers are done retrospectively, as Ms. Dunphy pointed
1345 out -- the way that it's set up -- what would happen if all
1346 of a sudden they were done prospectively?

1347 You have been getting them each year and you just
1348 planned ahead. You knew -- hey, you have done that --
1349 probably going to be like that next year -- we are going to
1350 go ahead and tell you now on the front end. How would that
1351 impact it, Ms. Dunphy?

1352 Ms. Dunphy. According to the regulations today, the EPA
1353 would take that into consideration. In the fraction I
1354 mentioned earlier where the renewable fuels are the numerator

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1355 and gasoline and diesel demand is the denominator.

1356 Today, those small refineries are in there because the
1357 EPA doesn't know that they're not going to be exempted.

1358 Mr. Harper. Okay.

1359 Ms. Dunphy. If they get exempted, they come out of the
1360 denominator. That makes the overall fraction greater for all
1361 of the other obligated parties who don't qualify under that
1362 small refinery.

1363 So, obviously, Mr. Niznik, jumping back to that,
1364 companies that are RIN long obviously have a competitive
1365 advantage over the those that are RIN short?

1366 Mr. Niznik. Yes. So that's a business strategy that
1367 they may employ to be -- to take advantage of the rules as
1368 they're written, just like someone might take advantage of
1369 the tax code or any other code. Yes.

1370 Mr. Harper. Sure. All right. Well, let's talk for a
1371 minute regarding RIN fraud, and I know that's an issue. What
1372 instances are unreported and what other types of fraud are
1373 possible in the future and what are the implications of this
1374 fraud? Who would like to answer that?

1375 Ms. Dunphy.

1376 Ms. Dunphy. I will go ahead and answer that.

1377 So the RIN fraud cases have decreased in number over the

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1378 years and many of the RIN fraud cases involve a period of
1379 time when the RFS was relatively new to the market, so 2010,
1380 2011, 2012.

1381 I would say the current instances of potential RIN
1382 invalidity relate to exports of renewable fuel for which RINs
1383 are not retired because remember that renewable fuel can be
1384 blended into petroleum, gasoline, or diesel and that blend
1385 can be exported from the United States and calculating how
1386 much renewable fuel is in that blend is difficult.

1387 But yet, it's required under the regulations that a
1388 certain amount of renewable fuel RINs be retired.

1389 I would say RIN fraud of the future it's all about
1390 feedstock and use of the fuel.

1391 Mr. Harper. Okay. Explain that a little further.

1392 Ms. Dunphy. Okay. So RIN fraud, basically, doesn't
1393 happen on the use side. It happens at the generated side.
1394 So if I use a feedstock that does not qualify, I shouldn't be
1395 making RINs.

1396 If I take the feedstock that qualifies and I use a
1397 process and I produce a fuel but I put it into an ocean-going
1398 vessel, for example, I am supposed to retire those RINs or I
1399 shouldn't have made them in the first place.

1400 So I see the RIN fraud potential of the future being

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1401 feedstock or use, but it's much less today than it was in the
1402 past.

1403 Mr. Shimkus. Gregg --

1404 Mr. Harper. Thank you.

1405 Mr. Shimkus. -- Mr. Lavinsky wanted to respond to that
1406 question.

1407 Mr. Harper. Yes.

1408 Mr. Lavinsky. Thank you very much.

1409 Now, one other thing -- when you asked for what
1410 occurrences occurred in the past, is that a few years back --
1411 a handful of individuals and companies would generate and
1412 sell RINs for biodiesel that they did not produce --

1413 Mr. Harper. Okay.

1414 Mr. Lavinsky. -- and that's how they got the RINs in
1415 their hands and sold them off and put them into the market.

1416 Mr. Harper. Thank you. Now I yield back.

1417 Mr. Shimkus. The gentleman yields back his time.

1418 The chair now recognizes the gentleman from Texas, Mr.
1419 Olson, for five minutes.

1420 Mr. Olson. I thank the chair, and welcome to our five
1421 witnesses. A special howdy to the one Texan on the panel,
1422 Sandra Dunphy. She lives in Kingwood, Texas, where Ted Poe
1423 is her congressman, and my colleagues worry about me bragging

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1424 about the Houston Astros, World Series champions. Rest

1425 assured --

1426 Mr. Shimkus. Who? Who?

1427 Mr. Olson. -- I can't brag about them. Ms. Dunphy can
1428 brag for me and she will, she will, she will.

1429 Ms. Dunphy. Happy to.

1430 Mr. Olson. An Astros repeat aside, over the years we've
1431 heard stories about fraud in the RIN markets. One story I
1432 read was titled, quote, "The Fake Factory that Pumped Out
1433 Real Money," end quote, about a company that made out of thin
1434 air 60 million gallons of biodiesel. Wow.

1435 Ms. Dunphy, you said that RINs fraud is much less than
1436 today, to Mr. Harper's question. Can you talk about the
1437 steps that have been taken to prevent RINs fraud and whether
1438 you think more is needed like you talked about with Mr.
1439 Harper, please?

1440 Ms. Dunphy. Yes.

1441 Mr. Olson. Also you're on deck too, Mr. Yacobucci.

1442 Ms. Dunphy. Yes, sir. Happy to.

1443 So the making RINs out of thin air, there's two things
1444 that really transformed the marketplace since the time that
1445 all of this happened.

1446 The first was the EPA initiated a quality assurance plan

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1447 program, which is optimal for producers to participate and
1448 they hire a company like mine to come in and audit what
1449 they're doing to make sure they're complying with the rules
1450 and we're -- we are -- we probably have the most stringent
1451 quality assurance plan out there in the marketplace today.

1452 The second thing that happened was because the obligated
1453 parties had to replace RINs and pay penalties, they do today
1454 and started doing even then a much better job at due
1455 diligence. So they will research all of the producers of the
1456 RINs who they are going to use for compliance.

1457 Mr. Olson. Thank you.

1458 Comments, Mr. Yacobucci?

1459 Mr. Yacobucci. One thing I would just note is there's
1460 necessarily a time lag to -- when the fraud occurs to when we
1461 necessarily even know about it.

1462 EPA is doing its, you know, various inspections, looking
1463 at their data. State inspectors may be going out to these
1464 different facilities. And then EPA needs to make a decision
1465 with the Justice Department whether or not this is simply a
1466 civil violation of the Clean Air Act because Title 2 of the
1467 Clean Air Act where the RFS exists only employs civil
1468 violations or where there is criminal action, in which case
1469 there's a whole additional amount of time where the Justice

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1470 Department needs to do their own investigation.

1471 And so as I said, there's necessarily this time lag and
1472 so in some of the cases that we are hearing about most
1473 recently still go back to that earlier time because they
1474 involve wire fraud, tax fraud, and other sorts of things that
1475 are outside of EPA's purview and rest with the Justice
1476 Department.

1477 Mr. Olson. Thank you. The next question is for you,
1478 Mr. Lavinsky. This is no news, but there have been some
1479 serious volatility in RINs prices in recent years.

1480 What sticks out in my mind January of 2013 to March of
1481 that same year RINs prices were about 1 to 2 cents in
1482 January, spiked up to almost over \$1 two months later in
1483 March. A local refiner back home, on paper, lost \$600
1484 million in value just because of the RINs issue.

1485 But now the price is low and that's great. But can you
1486 talk about the swings and what drives these RINs swings and
1487 how we could prevent them or moderate them?

1488 Mr. Lavinsky. I mean, I could talk about historically.
1489 Like I said earlier, historically the big spike that occurred
1490 in 2013 was associated with super high ethanol prices and
1491 feedstock costs. Corn was, you know, \$7 per bushel, more
1492 than twice as much as it is now.

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1493 So having the really high ethanol and having an increase
1494 in the mandate that year -- I believe there was a 9 percent
1495 increase in the mandate from 2012 to 2013.

1496 So there was a combination of an increase in the mandate
1497 coupled with sky-high ethanol prices and feedstock costs and
1498 that's what drove, you know, that huge spike in RINs, which
1499 is incomparable.

1500 It has not repeated itself. There has been volatility
1501 over the last three years but nothing like it was in 2013.

1502 Mr. Olson. Another question -- do you think market
1503 transparency can add the clarity to what happens in a few
1504 years when EPA takes over the settling the mandates? Do you
1505 think that market transparency helps EPA out or hurts them?
1506 How can we prepare for EPA taking over in a couple of years?

1507 Mr. Lavinsky. Just speaking generally without speaking
1508 about the EPA, speaking generally, transparency helps
1509 everybody out because it's easy to determine how many RINs
1510 are out there, what the true supply and demand are, and if
1511 everybody knows what the RIN bank is and how many RINs are on
1512 the market then it's easier to pick a price that's fair for
1513 everybody.

1514 Mr. Olson. Thank you.

1515 And one final question, Ms. Dunphy -- will the Astros

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1516 repeat World Series champions?

1517 Ms. Dunphy. Absolutely.

1518 Mr. Shimkus. The gentleman's time has expired.

1519 [Laughter.]

1520 The chair now recognizes the other gentleman from Texas,
1521 who's been deep diving on this issue with me all this
1522 Congress, so Mr. Flores for five minutes.

1523 Mr. Flores. Mr. Chairman, thanks for holding this
1524 hearing. As has been said before, this is the fifth in a
1525 series of hearings that we've had as we look at our nation's
1526 transportation fuel system.

1527 I think that America needs to be a world leader when it
1528 comes to producing efficient vehicles and also having the
1529 fuel system that will properly power those as we move
1530 forward, and I appreciate this subcommittee's work as we look
1531 forward to examine the market and regulatory environments
1532 that impact our nation's fuels as we move further into the
1533 21st century.

1534 I was -- some of the reflections that I've had that I've
1535 learned so far that were interesting, coming out of this
1536 hearing, Ms. Dunphy's comment that even though we've had the
1537 small refinery exemptions with the -- the EIA numbers show
1538 that ethanol demand has still been higher than -- or at least

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1539 equal to last year -- than even with that small refinery
1540 exemption. So that's been interesting.

1541 Ms. Dunphy, as we all know, many of the statutory
1542 provisions and requirements of the RFS programmers sunsetted
1543 after 2022. In your view, what does the RIN ecosystem look
1544 like after 2022?

1545 Ms. Dunphy. I think that's a really good question.
1546 Certainly, Congress gave EPA more latitude at that point in
1547 time for how they structure the program, going forward.

1548 But they do need to take into the consideration the
1549 things you ask them to look at -- the RFS impact on the
1550 economy, on infrastructure, on air quality, water quality,
1551 employment, et cetera, et cetera, and to be honest with you,
1552 I think that the EPA, in setting standards year after year
1553 after year, it's quite burdensome to the staff and it takes a
1554 lot of their resources to do that -- that they otherwise are
1555 not helping their constituents to try to register and do
1556 things correctly under the program.

1557 So make -- somehow make it a more simple program and
1558 easier to administer.

1559 Mr. Flores. Would you agree that the ecosystem becomes
1560 much less transparent and much cloudier? I mean, there's no
1561 certainty whatsoever after 2022 for pretty much every player

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1562 in this market, whether you're a farmer growing the corn or
1563 whether you're a refiner, even an automaker, because you
1564 don't know what kind of fuels you're going to have. Would
1565 you agree that --

1566 Ms. Dunphy. I would tend to agree that there's a lot of
1567 concern as to what will happen to the program after that
1568 point in time.

1569 Mr. Flores. All right. So everybody is -- since
1570 uncertainty is bad for the market, to the extent that
1571 Congress can help create that certainty we are better off, I
1572 would think.

1573 Does anybody disagree with that?

1574 Okay. Second question -- Mr. Lavinsky, you know,
1575 government -- as you pointed out, government policy -- and
1576 Mr. Niznik said the same thing is that government policy
1577 impacts RIN prices.

1578 Can you distinguish -- give me examples of how
1579 government policy has impacted RINs prices versus how
1580 government policies impacted any other energy commodity? You
1581 can pick the one that you're most comfortable with.

1582 Mr. Lavinsky. Okay. Well, I mean, policy, I guess,
1583 with biofuels, with, certainly, the mandates. I mean, the
1584 mandates of government policy and they -- you know, according

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1585 to the RFS they're supposed to go up every year and as they
1586 go up it requires companies to do more blending.

1587 Mr. Flores. Okay.

1588 Mr. Lavinsky. And, you know, that has an impact on RIN
1589 prices. With regard to the other types of programs, you
1590 know, I am part of a larger group that includes a team on
1591 emissions. I probably would refer that question to them and
1592 provide you with a full answer.

1593 Mr. Flores. Okay. Yes, if you can answer that
1594 supplementally that would be great.

1595 Mr. Yacobucci, what impact, if any, has the RIN market
1596 and RIN prices had on advanced biofuel production?

1597 Mr. Yacobucci. The -- I think it's probably worth
1598 turning that question around a little bit and I think it's
1599 more important to say that the RIN market has -- for
1600 cellulosic fuels has responded to EPA's repeated reductions
1601 in that part of the mandate.

1602 So you have these different subcategories -- the
1603 cellulosic biofuel category, which was originally scheduled
1604 in the statute to be the lion's share -- 16 billion gallons
1605 out of the 36 billion gallons that would be required in 2022.
1606 But each successive year EPA has made very drastic reductions
1607 in --

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1608 Mr. Flores. And that's because we don't have a way to
1609 produce it. Yes, I mean --

1610 Mr. Yacobucci. Because --

1611 Mr. Flores. -- the technology is not there. But have
1612 RIN prices helped to encourage advanced biofuel production?

1613 Mr. Yacobucci. I would refer to my colleagues, if they
1614 may comment.

1615 Mr. Flores. Okay.

1616 Mr. Niznik. Yes.

1617 Mr. Flores. Mr. Niznik, they have? Okay. All right.

1618 It looks like I am down to three seconds so I am going
1619 to yield back the balance of my time. Thank you.

1620 Mr. Shimkus. The chair thanks the gentleman.

1621 The chair now recognizes the gentleman from Michigan,
1622 Mr. Walberg, for five minutes.

1623 Mr. Walberg. Thank you, Mr. Chairman, and thanks to the
1624 panel for being here.

1625 And Ms. Dunphy, I refuse to ask you the question that
1626 Representative Olson left for me to ask you about Verlander
1627 and Cy Young.

1628 [Laughter.]

1629 It just goes on and on, the discussion today. As a
1630 theologian, thinking through the Creation story I don't

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1631 remember that in any of the seven days that the RIN was
1632 created. I will have to go back to the fall of Man -- the
1633 story there -- and see if that was the forbidden fruit.
1634 We'll see what happens.

1635 But Ms. Dunphy --

1636 Ms. Dunphy. The RIN was right after the mosquito.

1637 [Laughter.]

1638 Mr. Walberg. Right after the mosquito. Okay. I will
1639 check that out, too.

1640 According to EPA, since December of 2010 it has issued
1641 37 notices of violations regarding RIN fraud. A couple of
1642 years ago, EPA issued regulations creating a quality
1643 assurance program aimed at cleaning up some of the RIN fraud
1644 problems.

1645 Do you believe that the quality assurance program has
1646 done a good job of eliminating the problems?

1647 Ms. Dunphy. I think it's done a very good job. But it
1648 is a voluntary program. A producer has to be willing to
1649 participate in the program as an auditor.

1650 We are available to producers but they contact us to say
1651 hey, I want to participate in the program. It's not an
1652 across the board program.

1653 As much as Weaver would love that, because we'd get more

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1654 work, but it's on a case by case basis, basically, and I
1655 think the QAP has helped reduce RIN fraud, yes.

1656 Mr. Walberg. Well, are there then other areas of RIN
1657 fraud that need to be addressed that are missing now? What
1658 might you propose to address this?

1659 Ms. Dunphy. You know, I think that probably the easiest
1660 is the export of renewable fuels for which RINs are not
1661 retired and I know that EPA is working hard with Homeland
1662 Security to look closer at exports to determine if they
1663 contain renewable fuel.

1664 Mr. Walberg. Okay. The RIN market is different than
1665 any other commodity trading markets. Some have suggested
1666 that installing a governing structure to oversee it would
1667 help increase transparency and decrease fraud.

1668 How much buyer beware still exists in the RINs
1669 marketplace?

1670 Ms. Dunphy. I think there's still quite a bit,
1671 especially for the advanced biofuels. As those transactions
1672 are being negotiated, it's the only transactions where the
1673 seller must tell the buyer who the renewable fuel producers
1674 are of the RINs, whereas on D6 or corn ethanol RINs it's
1675 pretty much everyone will accept them.

1676 So the companies have blocked lists in EMTS. This is

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1677 probably something we haven't talked about. But refiners
1678 doing their due diligence have the option to block certain
1679 producers and so therefore RINs from those producers can't
1680 come into their EMTS account and they use their -- this
1681 feature of EMTS after doing due diligence on the marketplace
1682 on the producers.

1683 Mr. Walberg. Added to that, would a governing body be
1684 helpful and why?

1685 Ms. Dunphy. I do believe it probably would be helpful.
1686 But it would be an enormous task to set up a RIN training
1687 platform that was administered by either EPA or another body
1688 because there are different vintages of RINs. There's the
1689 different producers of RINs and there's different RIN codes
1690 themselves. So it would be somewhat complex, but it's
1691 possible, I guess, and it would be helpful.

1692 Mr. Walberg. Mr. Niznik, I saw you respond to that.
1693 Would you like to add something here?

1694 Mr. Niznik. I would like to add, for the record, since
1695 this is a public record and it should be true, that I am a
1696 member of the state of Texas also and please pass on a note
1697 to Mr. Olson to that effect, that he had more representation
1698 here than he thought before.

1699 I would agree that there have been multiple attempts, I

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1700 must say, to put RINs on trading boards, both the Chicago
1701 Mercantile Exchange and its previous incarnations and then
1702 the International Commodity Exchange -- ICE.

1703 Both Argus and, I believe, Platts have participated in
1704 trying to be paper benchmarks -- to try to be a benchmarkable
1705 RIN that you could trade as a future and I would say, without
1706 speaking for Mr. Lavinsky's company, that it hasn't been
1707 particularly successful in the private sector to attempt to
1708 do something that would assure some sort of broader
1709 transparency on a board-traded level -- commodity level.

1710 Mr. Walberg. Okay.

1711 Ms. Dunphy, I see I have eight seconds left. So I would
1712 probably better not open it up. But I thank you.

1713 I yield back.

1714 Mr. Shimkus. The gentleman yields back his time.

1715 The chair now recognizes the gentleman from Georgia, Mr.
1716 Carter, for five minutes.

1717 Mr. Carter. Well, thank you, Mr. Chairman, and thank
1718 all of you for being here today. I appreciate it, although I
1719 will have to admit it is as clear as mud. I mean, it's
1720 pretty tough sitting her trying to figure out is this really
1721 necessary.

1722 I mean -- I mean, seriously. Ms. Dunphy, you look like

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1723 you want to answer that.

1724 [Laughter.]

1725 Ms. Dunphy. Trying to figure out how to answer that
1726 questions fairly diplomatically, and keep my job -- yes.

1727 Mr. Niznik. We make a lot of money because of this
1728 complex --

1729 Mr. Carter. Yes, I know. I mean, it's just --

1730 Mr. Niznik. Thank you. By the way --

1731 Mr. Carter. -- if we created something just to --

1732 Ms. Dunphy. Yes.

1733 Mr. Carter. -- just to create something.

1734 Ms. Dunphy. The more complex the regulations the more
1735 work we have.

1736 Mr. Niznik. Yeah, my kids are -- my kids are going to
1737 go to college because of you all. Thank you.

1738 Mr. Carter. I just -- you know, I think at the end of
1739 the day Thoreau is -- I think Thoreau is just turning over in
1740 his grave right now, just -- yes. Simplify, simplify,
1741 simplify, and I am just trying to figure out.

1742 But in all seriousness, I will ask questions about it.
1743 I am just interested, Mr. Yacobucci, you mentioned in your
1744 testimony that there's been concerns with RIN generation
1745 since the program's inception and that, you know, that

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1746 there's duplicate counting and fraudulent RINs on the market.

1747 How do you -- how can it be manipulated? I mean, it
1748 just appears to me -- I don't really understand how you can
1749 manipulate it.

1750 Mr. Yacobucci. To the first question, I will say yes,
1751 there have been concerns going forward. EPA's stated goal of
1752 when they came out with the RFS 2 and the EMTS was to address
1753 some of those questions.

1754 Whether or not the current system has succeeded, you
1755 know, it's still an open question. One of the things is --
1756 to your original question, is it necessary, if you want a
1757 market-based system you do need a market. There are simpler
1758 systems you could come up with. But they may not provide the
1759 flexibility that a market does. So that's a trade-off.

1760 In terms of your question about how fraud can occur, I
1761 think Ms. Dunphy has gone through a list of some of those
1762 topics. I wouldn't speculate on ways going forward folks
1763 could do it.

1764 But, certainly, the ways that EPA has listed are
1765 production that has not actually happened where basically a
1766 company has just on paper said they have produced fuel that
1767 they haven't produced, companies that have produced fuel that
1768 doesn't actually qualify because of the feedstock

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1769 requirements but they've attested that it has, and companies
1770 that have exported fuel that's otherwise not eligible because
1771 in any case where a fuel isn't eligible those RINs need to be
1772 retired and if they're not retired then, you know, those RINs
1773 are invalid.

1774 Mr. Carter. Okay. Well, you mention in your testimony
1775 also that there are two markets. There's a primary market
1776 and there's also a secondary market, and that secondary
1777 market, as I understand it, that's where the owners buy and
1778 sell the excess RINs.

1779 Mr. Yacobucci. Correct.

1780 Mr. Carter. What -- can the secondary market impact the
1781 primary market?

1782 Mr. Yacobucci. I would believe so but I will refer to
1783 my market folks.

1784 Mr. Niznik. We don't tend to look at it as primary and
1785 secondary markets. The RINs are all traded sort of evenly.
1786 They don't have any distinguishing characteristics that
1787 would, you know, attach them to other markets.

1788 So from a price reporting agency standpoint, it's --
1789 they're the same market.

1790 Mr. Carter. Can they have an impact on the price of
1791 fuel?

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1792 Mr. Niznik. They do, yes. So, in fact, we report an
1793 aggregate cost of RINs as it would be affecting any gallons
1794 sold in the United States. We call it the RVO per gallon
1795 cost. Currently, that's around 4 cents per gallon of
1796 petroleum and fuel sold.

1797 Mr. Carter. Hmm. Okay. Yes, sir.

1798 Mr. Lade. However, if I could speak to that --

1799 Mr. Carter. Please.

1800 Mr. Lade. -- it's also -- so that is the cost on the
1801 gasoline blended into fuel. However, almost all fuel in the
1802 United States contains 10 percent ethanol and RIN is actually
1803 reducing the cost of that ethanol.

1804 So as RIN prices rise, that tax or the RVO cost on the
1805 gasoline is nearly exactly offset by the reduction in the
1806 costs on the ethanol side. And so consumer prices for almost
1807 all fuel that's consumed in the United States, which is 10
1808 percent ethanol, 90 percent gasoline, remains large -- by and
1809 large, unaffected.

1810 Mr. Carter. Okay. Good. Well, thank you. I
1811 appreciate that.

1812 Ms. Dunphy, I want to ask you because I represent the
1813 entire coast of Georgia. So ocean-going vessels are of
1814 interest to me and you -- I know you had a discussion with

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1815 another member about ocean-going vessels and about the
1816 renewable fuel that's used in those.

1817 And I just wanted to ask you, can you explain to me why
1818 it's necessary to retire RINs when it's -- when it comes to
1819 fuel for an ocean-going vessel?

1820 Ms. Dunphy. It's a bit of a mystery to all of us, to be
1821 honest with you. But, you know, transportation fuel is
1822 gasoline or diesel. It's motor vehicle, locomotive, marine
1823 fuel in the U.S.

1824 If you put it in an ocean-going vessel, that's usually
1825 going to be a higher sulfur fuel like a bunker fuel, and that
1826 was not a transportation fuel. So, therefore, even though
1827 you put in a renewable fuel and it's displacing a high-sulfur
1828 product, the RINs were to be retired. That was part of the
1829 regulations.

1830 Mr. Yacobucci. Which are -- which were driven by the
1831 statutory definitions in the --

1832 Ms. Dunphy. Right. It's in the law. It's in the law.

1833 Mr. Carter. Do we need to change the statutory
1834 definition?

1835 Ms. Dunphy. It's in the law.

1836 Mr. Yacobucci. Basically, you have three categories of
1837 fuel that qualify. Highway transportation fuel, heating oil,

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1838 and jet fuel are basically the three fuel components or three
1839 fuel categories that qualify to generate RINs. All other
1840 fuel categories are exempted by the statute.

1841 Mr. Carter. Brilliant.

1842 Mr. Chairman, I yield.

1843 [Laughter.]

1844 Mr. Shimkus. Just yield, not surrender, right?

1845 The chair now recognizes the very committed, patient,
1846 and long-suffering Mr. Loeb sack. If he was on a good
1847 subcommittee, he could have spoken an hour ago. But he's
1848 waiving on, has great interest in this. You're recognized
1849 for five minutes.

1850 Mr. Loeb sack. Well, thank you, Mr. Chair, and thank you
1851 for letting me waive on, and quite honestly, as a former
1852 professor, I would have loved the testimony.

1853 I've been trying to read as much as I can but,
1854 unfortunately, as a political science professor, not an
1855 economics professor.

1856 But I am an alum of Iowa State -- an alumnus of Iowa
1857 State so I am actually going to pick on you today. How do
1858 you pronounce your last name again?

1859 Mr. Lade. Lade.

1860 Mr. Loeb sack. Lade. Okay. Thank you so much.

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1861 This is an incredibly complex subject. There's no doubt
1862 about it. As I said, I was a political science professor,
1863 not an economics professor. So this stuff is not easy for
1864 me, I have to say.

1865 But I do want to say at the outset that recent comments
1866 by EPA Administrator Wheeler the last couple days have been
1867 pretty disheartening and were not reassuring to those of us
1868 from biofuels country, if you will.

1869 Some of the things that he said continue the policy of
1870 Administrator Pruitt, whether it has to do with waivers or on
1871 the E15 issue or whatever the case may be.

1872 I just want to say that for the record at the outset
1873 that I am not very encouraged by the new administrator when
1874 it comes to biofuels production.

1875 But, you know, I think I will talk to Mr. Carter later.
1876 He had a good point -- you know, do we really need all this,
1877 in some ways.

1878 Actually, I could be wrong but I think the quickest and
1879 easiest way to address RIN prices would be if the obligated
1880 parties simply would blend more biofuels and I think that the
1881 RIN system was created in the first place because there are
1882 going to be folks who didn't want to blend biofuels.

1883 Is that -- is that correct, basically? Create a market

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1884 for RINs? I mean, if we just simply blended more biofuels we
1885 wouldn't have to worry about RINs. Is that correct,
1886 Professor Lade?

1887 Mr. Lade. The entire purpose of the market is -- or of
1888 the policy is to get the market to do something that it would
1889 not do without the policy. And so yes, whenever RIN prices
1890 are high that signals that the market would not do -- would
1891 not do or would not blend as much biofuels as it would
1892 without the policy.

1893 Mr. Loeb sack. Right. Thank you.

1894 You know, also we could remove current EPA restrictions
1895 on the Reid vapor pressure. I think we could do that and get
1896 more biofuels into the system.

1897 And I did look at your testimony, Professor Lade. I was
1898 a little bit confused with the final part of it there when
1899 you talked about what effect E15 might have on all of this.
1900 Can you sort of elaborate that a little bit?

1901 Mr. Lade. Absolutely.

1902 So it's really difficult to say what an E15 and RVP
1903 waiver would do to RIN prices because we are not quite sure
1904 of what it would do to overall biofuel demand.

1905 If consumers begin to switch over to E15 quite a bit,
1906 then it would absolutely put downward pressure on RIN prices.

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1907 However, we -- this is a new fuel. Consumers are uncertain
1908 about whether they can even put it in a lot of their
1909 vehicles.

1910 And so there are a lot of reasons to believe that there
1911 would maybe be some limited -- even with year round offering
1912 at some fuel stations there would be limited consumer demand
1913 on that side, which means not that much extra biofuels or
1914 ethanol is going into the system, which would not resolve
1915 this RIN price problem.

1916 Mr. Loeb sack. Right.

1917 Mr. Lade. And so while it's certainly, potentially,
1918 over the long run and if E15 infrastructure were to roll out
1919 and consumers, as they learned that this was a viable fuel --
1920 that it's something that they could put into all of their
1921 cars if it's priced competitively, that could certainly have
1922 that intent.

1923 In the short run, I have my doubts. But, again, you
1924 know, this is in uncertain territory because this is a new
1925 fuel that we really don't know much about.

1926 Mr. Loeb sack. Well, I am going to ask you to project on
1927 -- a little bit more with respect to E15 because when you
1928 were talking about RIN prices and their effects on gas
1929 prices, you were talking about E10.

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1930 Can you speculate at least some with respect to E15?

1931 Mr. Lade. Correct. So when RIN prices rise, like I
1932 said, the higher cost on gasoline is nearly fully offset by
1933 the lower cost on ethanol as RIN prices are increasing.

1934 As you increase the percentage of ethanol in that
1935 gasoline, that lower cost on ethanol actually starts to drive
1936 the retail prices down. This is exactly how the market-based
1937 mechanism is going to put more biofuel blending into the
1938 system.

1939 And so you will see, as RIN prices rise, greater and
1940 greater discounts on E15 relative to E10 and that's exactly
1941 how you get consumers to move their hand over about 15 inches
1942 and fill it with E15 instead.

1943 Mr. Loeb sack. Right. Right.

1944 Mr. Lade. And so RINs are vital to stimulating that
1945 demand and so that's where it's kind of difficult to predict
1946 that. It depends how responsive consumers are and how quick
1947 they are to switch over.

1948 Mr. Loeb sack. Got it.

1949 And then one last question -- as we all know, in
1950 response to refiner complaints about RINs, EPA has secretly
1951 issued 48 small refinery waivers, and I know there's some
1952 question about this. I am glad I came when that was being

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1953 addressed by Ms. Dunphy.

1954 And some of the refiners are neither small nor
1955 experiencing economic hardship. These secret waivers, you
1956 know, one can argue about what the effects of them but some
1957 would argue up at 2 billion gallons of demand destruction and
1958 cutting the consumption by over 2 billion gallons.

1959 What do you think the impact of all this might have on
1960 RIN prices then?

1961 Mr. Lade. I think we've seen the impact that it's
1962 decreased RIN prices as it necessarily -- if these
1963 allocations are not reallocated it necessarily means that
1964 less biofuels are needed to meet the requirements from EPA.

1965 Mr. Loeb sack. Well, I want to thank all of you and
1966 thank you, again, Mr. Chair, for letting me waive on.

1967 Mr. Shimkus. Well, next time get on a better committee
1968 and you can question earlier.

1969 Mr. Loeb sack. I will do the best I can. It'll help me
1970 for November.

1971 Mr. Shimkus. So we've been asked to do a second round
1972 of questions. Is -- I hope you don't mind that. I think the
1973 folks who are here, obviously, are interested in addressing
1974 that.

1975 So with your permission, the folks here would go a

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1976 second round. We don't think it'll take that long. So I
1977 want to thank Mr. Tonko for agreeing to that.

1978 So I will recognize myself for five minutes for a second
1979 round. I want to make sure we clarify this small refinery
1980 exemption, because what I am hearing is that they're blending
1981 already at 10 percent. This exemption comes at the end.

1982 So my question is -- maybe Ms. Dunphy -- what's the
1983 remedy? Is there a remedy for these small refiners? If
1984 they've been blending most of the year, they get the
1985 exemption, what do they do? Throw a party? I mean, what do
1986 they -- what do they get for that?

1987 Ms. Dunphy. Well, if they've already retired RINs then
1988 they'll seek EPA's permission to get those RINs back again,
1989 and as we've talked about, that does come back into the
1990 market.

1991 It has replenished the RIN bank, okay. So remember, as
1992 Mr. Yacobucci pointed out, the oil companies can use 20
1993 percent prior year RINs to satisfy their current year
1994 compliance.

1995 The RIN bank had declined. It got down to as low as 9
1996 percent. So that means there's more pressure on current year
1997 to have the RINs and get them in your hand.

1998 As the RIN bank has been replenished, because these

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1999 small refinery exemptions have been granted, the number of
2000 prior year RINs comes back into the market and replenishes
2001 the RIN bank overall, reducing the concerns that we won't be
2002 able to meet this year's compliance.

2003 Mr. Shimkus. All right. Thanks.

2004 The spike that was talked about -- we talked about high
2005 prices, high volumes. But I think another factor was there
2006 was -- in the EPA there was increased regulation in that year
2007 also and, you know, increased regulation increases higher
2008 prices. So there was -- there was there was three variables
2009 that I just wanted to make sure we put on the table.

2010 The-there's proposals floating out there on a RIN cap.
2011 What would that do to this market? Anyone want to address
2012 that?

2013 Mr. Niznik. It would cause Senator Chuck Grassley to
2014 explode.

2015 [Laughter.]

2016 Mr. Loeb sack. And Congressman Loeb sack as well.

2017 [Laughter.]

2018 Mr. Niznik. But also it would just end the market
2019 functionality that Professor Lade talked about and it would,
2020 certainly, impair the ability of RINs to do some of the
2021 functioning that they've been talking about doing in terms of

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2022 stimulating production and having the marketplace respond to
2023 the volumetric requirements that the EPA would put out each
2024 year.

2025 If it just was kept at 5 percent, it wouldn't matter if
2026 -- it wouldn't matter whether EPA asked for more or less.

2027 Mr. Shimkus. Right. Dr. Lade.

2028 Mr. Lade. So I would --

2029 Mr. Shimkus. Quickly.

2030 Mr. Lade. Quickly, I would push back a little bit on
2031 that. It depends critically what the RIN price cap is
2032 because that then determines how much of a discount you can
2033 give to biofuels and how much of an incentive you can give to
2034 biofuel consumption.

2035 So if a RIN price cap is 10 cents, then absolutely no
2036 one's going to use E85 or E15 mostly likely, given market
2037 prices.

2038 Mr. Shimkus. Right.

2039 Mr. Lade. However, if a RIN price cap is set 60 cents
2040 to a dollar, all else being held equal in this regulation,
2041 that could serve a very stabilizing role because what we've
2042 seen is that EPA has responded to high RIN prices by
2043 adjusting mandates and that's led to a lot of this
2044 volatility.

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2045 If, instead, EPA said no, we will cap RIN prices at this
2046 level and you can come to us to buy paper credits after RINs
2047 on the private market have reached above this level, they no
2048 longer need to use that option to adjust RIN prices through
2049 mandates, which has led to a lot of volatility. So --

2050 Mr. Shimkus. Thank you. Let me go -- let me go,
2051 because I've got two minutes or a minute and a half. I've
2052 got three questions.

2053 Mr. Yacobucci, engines -- you talk about engines and
2054 that's a part of your world. What is the most efficient
2055 engine as far as octane? Do you know?

2056 Mr. Yacobucci. So, I mean, there's a lot of discussion
2057 about this right now. To get to your question, if one were
2058 to increase the compression of engines, you could squeeze out
2059 more efficiency from that engine.

2060 Mr. Shimkus. What would be Iran?

2061 Mr. Yacobucci. You know, there's a lot of discussion
2062 for that but, certainly, a higher octane number fuel would
2063 allow for greater efficiency if you tuned the engine to do
2064 so. I mean, if you just put higher octane fuel in --

2065 Mr. Shimkus. Right. No. No. We are talking about --
2066 I mean, part of our debate -- and Mr. Flores with me -- as
2067 you get your best engine engineers, you get your best

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2068 petrochemical engineers, and you create the most efficient
2069 engine for a next-generation vehicle, because I think that's
2070 kind of what we are --

2071 Mr. Yacobucci. But there's a trade-off between the
2072 energy content. For example, ethanol has a lower energy
2073 content. So even if you're burning it more efficiently you
2074 may be getting fewer miles per gallon versus the cost to the
2075 engine.

2076 Mr. Shimkus. I am not -- you're the smart guy -- but
2077 that's not what we were being told with the engineers and the
2078 engineering of a high-compression high-octane engine.

2079 Let me ask also -- I wanted to address, in my seven
2080 seconds remaining -- there is also a proposal out there that
2081 talks about a D8 RIN, which would be above the blend wall.

2082 Anyone hear that and what's your thoughts on that? Mr.
2083 Niznik.

2084 Mr. Niznik. Yes, I investigated that for a company that
2085 asked me to research the concept, and it would change the
2086 current shape of the RFS but it would overcome one of the
2087 internal hurdles of the RFS -- blocking expanded ethanol
2088 usage.

2089 So if you -- right now, I confused the group before
2090 talking about how the RIN from ethanol right now is

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2091 essentially capped at the price of the next category up RIN
2092 because of the replaceability.

2093 If you took it out from underneath that umbrella and
2094 that cap and gave it its own category the RINs price
2095 mechanism has proven very efficient in other categories,
2096 forcing those fuels into the marketplace.

2097 So if you wanted to provide an opportunity specifically
2098 for one type of fuel and you made a new RIN category just for
2099 that type of fuel and put a mandate on it, I am convinced
2100 that, based on market history, you could get the amount
2101 blended you wished.

2102 Mr. Shimkus. And my time is way expired. I appreciate
2103 my colleagues. The chair recognizes the gentleman from
2104 Texas, Mr. Flores, for five minutes.

2105 Mr. Flores. I am assuming the ranking member doesn't --

2106 Mr. Shimkus. I am sorry.

2107 Mr. Tonko. Dr. Lade, yes.

2108 Dr. Lade, in your written testimony you state that
2109 volatility isn't always caused by speculators and that
2110 volatility in a market can attract speculators, presumably,
2111 because all the fluctuations present -- or present
2112 opportunities for profit.

2113 You also indicate that EPA's management of the program

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2114 including delays in setting RVOs are sources of volatility in
2115 the RIN market.

2116 Is that accurate? Is that --

2117 Mr. Lade. Correct.

2118 Mr. Tonko. Okay. What about the changing headlines
2119 following the efforts of the White House, several senators,
2120 and some RFS stakeholder discussions about reforming the RFS?

2121 Would those headlines have any effect on RIN prices?

2122 Mr. Lade. Likely, if they believe that that could lead
2123 to credible changes in the mandates coming out of EPA. And
2124 so what really the market is trying to do is figure out how
2125 much extra biofuel they need to push in, particularly beyond
2126 the E10 blend wall because that's where all the real costs
2127 come into this.

2128 It's much more expensive to push ethanol and biodiesel
2129 and be on this E10 blend wall and that's where the market is
2130 trying to guess is how much they need extra beyond that. So
2131 to the extent that some news organization reports that the
2132 mandate may be increasing or decreasing that would certainly
2133 have that impact as you're trying to guess what's going to
2134 come out.

2135 Mr. Tonko. Okay. Thank you.

2136 In your testimony, you discuss several studies that

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2137 looked at the potential effect of RIN prices on bulk
2138 wholesale and retail prices for fuel.

2139 Refiners claim they cannot pass high RIN prices on to
2140 their consumers. But these studies suggest that they can.

2141 Mr. Lade. Correct.

2142 Mr. Tonko. The discussions in your written testimony
2143 seem to -- seems to conclude they often can but it isn't a
2144 certainty. Would you please explain the potential reasons
2145 why a refiner might not be able to pass on high RIN costs?

2146 Mr. Lade. So the studies that speak to this look
2147 particularly at bulk wholesale fuel prices. So those that
2148 are on large traded commodities markets and a lot of those
2149 serve as benchmark prices throughout the entire wholesale
2150 system.

2151 However, there could certainly be differences in, say,
2152 at blending stations and wholesalers when you're blending in
2153 Illinois, Iowa, New York, et cetera.

2154 And so there are certainly studies beginning to look at
2155 RIN pass through to those to see if the same thing that you
2156 see on these larger tradeable market are really translating
2157 down to the markets that refiners may be selling into and so
2158 far it's still inconclusive on that.

2159 However, the -- so far, the academic literature has

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2160 continue to find these prices being reflected in wholesale
2161 prices.

2162 Mr. Tonko. Okay. Thank you.

2163 With that, I yield back. Thank you, Mr. Chair.

2164 Mr. Shimkus. The gentleman yields back his time. The
2165 chair now recognizes the gentleman from Texas, Mr. Flores,
2166 five minutes.

2167 Mr. Flores. Thank you, Mr. Chairman. Thank you for the
2168 second round of questions.

2169 One of the other takeaways that I didn't mention in my
2170 first round of questions was that I think each of you agree
2171 that ethanol has a place to play in the fuel markets of the
2172 future, primarily because of the octane and some of the
2173 environmental characteristics that it has, and that's the
2174 reason that Mr. Shimkus, Mr. Welch, and I are working on
2175 legislation that doesn't adversely impact the ethanol
2176 markets.

2177 One of the things that I've heard from different
2178 constituent groups is that there are some disruptions in the
2179 biodiesel market because of the way the D4 ran as embedded in
2180 the nesting structure.

2181 This is somewhat subjective on your part but I would
2182 like to know what feedback you all have in terms of the

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2183 market impact on D6 prices if we were to de-nest D4s and have
2184 D4s trade totally -- be useable only for the biodiesel
2185 market.

2186 If you feel comfortable commenting on that I would like
2187 to know what your thoughts are.

2188 Mr. Niznik. I am an old biodieseler myself so I can --

2189 Mr. Flores. I am glad you're from Texas, too.

2190 [Laughter.]

2191 Mr. Niznik. Thank you, sir. So the D4 RIN really isn't
2192 a victim to any other RIN. It's the 500-pound gorilla RIN
2193 right now.

2194 Mr. Flores. Right. Right.

2195 Mr. Niznik. So it's behavior right now is unfettered
2196 and the historical record shows that it does a really great
2197 job. In fact, if there's one RIN that's working in the RFS,
2198 it's the D4 RIN.

2199 Mr. Flores. Right.

2200 Mr. Niznik. So when it goes up just a little bit, the
2201 market signals blend more and producers produce more and it
2202 works great.

2203 But when you have the nested structure, if you have a
2204 particular interest in other fuels working and they're
2205 underneath there, then no, it's not as good.

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2206 So I would suspect that if you designed a system of

2207 separate unnested RINs that --

2208 Mr. Flores. Just D4, though.

2209 Mr. Niznik. Yes.

2210 Mr. Flores. I am just talking about D4.

2211 Mr. Niznik. You're just talking about D4s. I don't
2212 think it would change at all for the D4s. I think they would
2213 continue.

2214 Under the current circumstances, they move very freely
2215 with the exception of worrying about the recurring dollar a
2216 gallon biodiesel tax credit, which is outside of the RFS
2217 system but, again, a policy thing.

2218 Mr. Flores. How would the D6 RIN change if we de-nested
2219 the D4?

2220 Mr. Niznik. Well, then perhaps it could rise to the
2221 occasion that it needs to incentivize infrastructure, usage
2222 in fuels.

2223 We don't really know how high a D6 RIN needs to be to,
2224 for instance, inspire more E15 use or even E85 use because
2225 under the time of the program it's always been butting heads
2226 against the D4 price, right. So we've never seen a free shot
2227 at it.

2228 I've done research, for instance, on E85 usage, which

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2229 has a lot of ethanol in it. But every time I did it, again,
2230 I couldn't say hey, what would happen to this. I didn't have
2231 any market data on where the customers needed to be
2232 incentivized.

2233 Mr. Flores. Mr. Lavinsky, do you have any thoughts on
2234 this issue?

2235 Mr. Lavinsky. Not that has --

2236 Mr. Flores. Okay.

2237 Mr. Lavinsky. He's covered it well.

2238 Mr. Yacobucci. I would just add that, and Mr. Niznik
2239 can correct me if I am wrong, but that the biodiesel RIN
2240 drives -- because it's the majority of the advanced biofuel
2241 RINs, the D5 RINs, that it drives that market.

2242 If you took it outside of the advanced biofuel pool then
2243 there would certainly be some effects there because that is
2244 the primary supply for the advanced biofuel as well.

2245 So it depends on whether you mean de-nesting it from the
2246 overall mandate, the D6 mandate, or whether you mean taking
2247 it out of the advanced biofuel pool.

2248 Mr. Flores. Okay. That's a good point. Okay. That's
2249 something we as policy makers need to keep in mind.

2250 Ms. Dunphy, any thoughts on that?

2251 Ms. Dunphy. Well, today, because of the nesting, when

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2252 there's a shortage of D6 RINs versus the mandate, that his
2253 fulfilled with higher -- other types of RINs -- advanced
2254 biofuel RINs.

2255 So if you look at it from that perspective, that total
2256 renewable fuel category is dominated by corn ethanol.

2257 Mr. Flores. Mm-hmm.

2258 Ms. Dunphy. But if there's not enough D6 RINs to fulfil
2259 it then that category gets filled with advanced biofuel RINs,
2260 which are greater greenhouse gas-reducing fuels --

2261 Mr. Flores. Mm-hmm.

2262 Ms. Dunphy. -- which is kind of the overall objective
2263 of the law is to have greater greenhouse gas-reducing fuels.

2264 So you would lose that added volume that the biodiesel -
2265 - the D4 RINs fulfil in that D6 space. So there's some
2266 demand loss there if they don't have that space to grow into.

2267 Mr. Flores. Dr. Lade.

2268 Mr. Lade. Yes. I would just like to reiterate that was
2269 my main point was that you would have demand loss on the
2270 biodiesel side because you wouldn't be producing more of it
2271 to compensate for the lack of D6 RINs.

2272 So that you're over meeting these mandates for the D4 in
2273 order to fill in what you can't push through with E85 or E15
2274 right now. Taking that out would remove that option and make

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2275 the market meet -- pass the blend law with E85 or E15

2276 instead.

2277 Mr. Flores. Just -- and, again, hypothetically, what
2278 would happen to diesel prices if you de-nested the D4 and set
2279 it aside by itself?

2280 Mr. Niznik. The RFS is borne -- the price of the RFS
2281 compliance of RINs is borne equally in the marketplace by
2282 either gasoline or diesel.

2283 So the -- even if they do, for instance, pay more to
2284 blend one particular biofuel and one type of petroleum versus
2285 another -- let's say ethanol biodiesel -- they tend to, on
2286 the petroleum cost side, aggregate all the costs and pass it
2287 through evenly. That's the -- that's what the historic price
2288 data shows.

2289 Mr. Flores. Okay. Thank you. My time is expired.

2290 I yield back.

2291 Mr. Shimkus. The gentleman yields back his time.

2292 The chair thanks the gentleman. Before we conclude, my
2293 wife's family farm is in South Dakota.

2294 So I was up there for 4th of July -- a family reunion --
2295 and then took a drive to North Dakota and then back through
2296 South Dakota and probably one of the weirdest guys that would
2297 take a picture of every retail location that I filled up with

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2298 gas.

2299 And what's instructive there is that they have -- yes, I
2300 know, it's said --

2301 [Laughter.]

2302 And I have them. I can show them to you. They're right
2303 on here. But, you know, and we always got to remember
2304 retailers, too. I mean, this is the whole debate and there
2305 are pumps in the -- in the Dakotas that have E0 because of
2306 motorcycle riders and boaters and stuff.

2307 So but the delta price difference for the same level is,
2308 like, 30 cents cheaper because of the ethanol -- the
2309 depression of prices because it's a cheaper mix.

2310 But there's just so many things that we got to think
2311 about. I will show you those pictures, if anybody wants to
2312 see them.

2313 Mr. Niznik. I do the same thing. I have the same
2314 hobby.

2315 Mr. Shimkus. You are sick.

2316 Ms. Dunphy. And I did the same thing last weekend on
2317 the way to San Antonio and took a picture of the Buc-ee's
2318 pumps.

2319 Mr. Shimkus. There you go. Thank you.

2320 [Laughter.]

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2321 Seeing there are no further members wishing to ask
2322 questions or make stupid statements for the panel, I would
2323 like to thank all of our witnesses again for being here
2324 today.

2325 Before we conclude, I would like to remind members
2326 interested in the RIN fraud issue that I would point you to
2327 letter two, the Subcommittee on Oversight Investigations
2328 hearing transcript on RIN fraud. 2012? Thank you.

2329 And a -- and I also would like to ask for unanimous
2330 consent to submit the following documents for the record:
2331 the letter from Renewable Fuels Association and then the
2332 Subcommittee on Oversight and Investigation hearings on the -
2333 - the transcript on RIN fraud.

2334 [The information follows:]

2335 *****COMMITTEE INSERT 8*****

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2336 Mr. Shimkus. And pursuant to committee rules, I remind
2337 members that they have 10 business days to submit additional
2338 questions for the record. I ask that witnesses submit their
2339 responses within 10 business days upon receipt of the
2340 questions.

2341 Without objection, this subcommittee is adjourned.

2342 Thank you very much.

2343 [Whereupon, at 11:13 a.m., the subcommittee was
2344 adjourned.]