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6 PROTECTING THE RFS: THE TRUMP

7 ADMINISTRATION'S ABUSE OF SECRET WAIVERS

8 TUESDAY, OCTOBER 29, 2019

9 House of Representatives

10 Subcommittee on Environment and Climate Change

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 10:30 a.m., in
17 Room 2123 Rayburn House Office Building, Hon. Paul Tonko [chairman
18 of the subcommittee] presiding.

19 Members present: Representatives Tonko, Barragan, Blunt
20 Rochester, Soto, DeGette, Schakowsky, Matsui, McNerney, Ruiz,
21 Pallone (ex officio), Shimkus, McMorris Rodgers, McKinley,
22 Johnson, Flores, Mullin, Carter, Duncan, and Walden (ex officio).

23 Also Present: Representatives Welch and Loeb sack.

24 Staff present: Adam Fischer, Policy Analyst; Jean Fruci,

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25 Energy and Environment Policy Advisor; Waverly Gordon, Deputy
26 Chief Counsel; Rick Kessler, Senior Advisor and Staff Director,
27 Energy and Environment; Brendan Larkin, Policy Coordinator; Nikki
28 Roy, Policy Coordinator; Mike Bloomquist, Minority Staff
29 Director; Jerry Couri, Minority Deputy Chief Counsel, Environment
30 & Climate Change; Mary Martin, Minority Chief Counsel, Energy
31 & Environment & Climate Change; Brannon Rains, Minority Staff
32 Assistant; and Peter Spencer, Minority Senior Professional Staff
33 Member, Environment & Climate Change.

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34 Mr. Tonko. The Subcommittee on Environment and Climate
35 Change will now come to order. I recognize myself for five
36 minutes for the purposes of an opening statement.

37 This morning the subcommittee will examine H.R. 3006, the
38 Renewable Fuel Standard Integrity Act of 2019, a bipartisan bill
39 sponsored by Congressman Collin Peterson of Minnesota.

40 Last Congress, Mr. Shimkus led a series of hearings and
41 roundtables taking a deep dive into EPA's Renewable Fuel Standard
42 program. While the subcommittee covered many aspects of the RFS,
43 the growing use of small refinery exemptions was an area we did
44 not fully explore.

45 Today is an opportunity to provide oversight regarding the
46 recent rise of these waivers and the administration's overall
47 implementation of the program.

48 Based on our previous hearings, nearly everyone seems to
49 agree that there have been challenges in the past with
50 implementation, including setting an appropriate and timely
51 annual Renewable Volume Obligation, or an RVO.

52 I also believe most would agree that small refinery
53 exemptions are a legitimate part of the program. Refineries
54 processing less than 75,000 barrels per day that believe they
55 are experiencing disproportionate hardship due to the program
56 can petition for these waivers.

57 During the Obama administration, EPA followed the Department

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58 of Energy's advice on which waivers to grant. This resulted in
59 numerous years with fewer than 10 exemptions granted annually.

60 Often, half of the petitions or more were rejected.

61 It is also indisputable that we have seen a change in how
62 petitions are being evaluated and granted. That change coincides
63 with the beginning of the Trump administration.

64 For 2016, some 19 waivers were granted. Just one was denied.

65 For 2017, 35 waivers were granted and one denied, and for 2018,
66 there were 31 granted and six denied.

67 As more information has come out about these exemptions,
68 it has become clear that EPA's actions are no longer aligned with
69 DOE's recommendations.

70 H.R. 3006 seeks to bring needed transparency into the
71 process. The bill would set an annual deadline of June 1st for
72 small refineries to petition for exemptions for that following
73 year.

74 Setting this deadline will mean granting waivers before the
75 RVO is set, which would end the current retroactive process that
76 has generated uncertainty in the RIN market.

77 In order for the RIN market to function and properly
78 incentivize investment, particularly in advanced biofuel
79 production, it is critical that all market participants are
80 receiving the same information and signals.

81 The bill would also require public disclosure of any

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82 information included in exemption petitions.

83 While I understand there are legitimate issues around
84 confidential business information in these applications, surely
85 there is some information that we can all agree would be
86 appropriate to release.

87 This includes details as innocuous as petitioners' names
88 and locations of facilities receiving those exemptions. There
89 is no good reason this very basic info should be treated as a
90 trade secret.

91 Currently, we do not know which, or even how many, facilities
92 are receiving exemptions until long after they do. For a program
93 that relies on trading to enable compliance, it is unbelievable
94 that the program's regulator would give some participants
95 market-driving information that can be traded on while everyone
96 else is left in the dark.

97 I do not think that it is a good or fair way for the RIN
98 market to operate and it certainly leads to greater volatility
99 in RIN prices.

100 The original goals of the RFS are still needed today, from
101 supporting economic development in rural communities to
102 developing domestic biofuel production, especially for advanced
103 and cellulosic biofuels.

104 The recent use of small refinery exemptions is failing to
105 advance these goals. The administration is undermining market

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106 signals and certainty, which ultimately hurts rural communities.

107 Adding greater certainty and transparency to the RIN market,
108 and the RFS more broadly, is a necessary and valuable improvement.

109 I look forward to hearing the perspectives of our witnesses
110 on whether H.R. 3006 can help achieve those objectives.

111 And so I do thank our witnesses for joining us today. I
112 do want to also speak to the fact that we may be joined by many
113 other members of the House on different committees.

114 I want to recognize the presence of those as they join us,
115 the colleagues from our committee who will be joining us for our
116 hearing this morning. We are happy to have them here and welcome
117 them to the committee.

118 This is an important hearing and it's always good to see
119 members so motivated on an issue of importance to their
120 constituents and to our nation.

121 I do want to remind our guests if they do choose to come
122 and our committee members that while the rules of the House allow
123 for our colleagues to join us, those rules also prohibit them
124 from speaking or otherwise actively participating in our hearing.

125 I also want to remind our committee members that it is also
126 not in order to yield time to any of our colleagues who are not
127 also members of this committee and, again, we will welcome them
128 if they join us today. We appreciate the participation.

129 With that, I will now recognize Mr. Shimkus, our ranking

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130 member of the Subcommittee on Environment and Climate Change,
131 for five minutes for his opening statement, and welcome, Mr.
132 Ranking Member.

133 Mr. Shimkus. Thank you, Mr. Chairman. Good morning.

134 I want to welcome you back, all of you all back, to the
135 Renewable Fuel Standard debate and extend a hearty welcome to
136 all the new members of the subcommittee that haven't had the
137 pleasure of trying to sort through the complexities of this issue
138 prior to today.

139 Quite frankly, I am surprised we are having any hearing at
140 all whose title speaks to protecting the Renewable Fuel Standard
141 when last fall it was suggested that the federal government should
142 be advancing policies to reduce demand and reliance on liquid
143 fuels -- the thrust of the RFS -- because the transportation sector
144 is now the greatest source of greenhouse gas emissions in the
145 United States and climate policy must address it.

146 So I want to set the stage. Last year, my friends said we
147 ought to get out of the liquid fuel debate, period, because of
148 climate.

149 Now we are here talking about protecting it. It's dystopia
150 that I am experiencing right now. Moreover, while I think it
151 is fair to have an oversight hearing about the RFS, I would caution
152 folks, like our hearing title suggests, making comments about
153 the uniqueness of the situation.

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154 I want to associate myself with Mr. Tonko's comments from
155 last fall, that for several years we have heard about issues with
156 implementing the Renewable Fuel Standard program under
157 administrations from both parties.

158 For this reason, simply saving the RFS is not only a misnomer,
159 it does a disservice to the many stakeholders impacted by this
160 program.

161 I would like to take this opportunity to renew my plea for
162 this committee and the affected stakeholders to take a very
163 serious look at the high octane proposal that Congressman Flores
164 and I have recently reintroduced.

165 Even though we are both not seeking reelection, we think
166 status quo with this program is not sustainable. Given the Energy
167 Department's Energy Information Administration projections of
168 declining liquid transportation and fuel demand, it's difficult
169 to envision a post-2022 scenario in which biofuel volumes would
170 not actually be lower than they are today.

171 In addition, while it is true that the Renewable Fuel
172 Standard does not disappear in 2023, the rules for allocation
173 change quite a bit depending upon who is in office and what that
174 administrator considers appropriate for the disparate interest
175 involved in this issue.

176 If you are looking for certainty, this is not a recipe for
177 it. On top of that, just as Congress guessed wrong in 2007 on

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178 the levels and types of fuels that would be in the marketplace
179 a decade or more later, we cannot predict market forces or trade
180 impacts, or other political pressures on allocations, nor should
181 Congress repeat the error of making fuel choices during any major
182 change in auto technology, fuel efficiency regulation, and a push
183 for removing liquid and higher carbon-based fuels from the
184 marketplace.

185 Rather than looking at individual federal transportation
186 fuel policies on their own, I urge my colleagues, as we have done
187 in a high-octane proposal, to take a wider view of those policies
188 and consider how they might using -- rather than manipulating
189 the marketplace work together to bring more value to consumers
190 and more certainty to stakeholders.

191 Our bill would transition from blend-specific mandates to
192 performance-based standards for future fuels and vehicles, remove
193 longstanding barriers to the availability and usability of higher
194 ethanol blends, provide an additional decade of certainty for
195 advanced biofuels, and harmonize EPA and DOT vehicle efficiency
196 programs.

197 It's time that Congress pursue this type of comprehensive
198 reform. Stakeholders on all sides of this debate have been
199 whipsawed for months by rumored and actual administration
200 actions.

201 Media reports and legal actions and the uncertainty will

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202 only increase after 2022 when EPA receives even broader discretion
203 to set biofuel blending requirements.

204 I welcome the witnesses today and their organizations back
205 to the committee. I hope you will provide us with a constructive
206 and, hopefully, objective and productive dialogue.

207 And with that, I'd like to yield the remainder of my time
208 to Mr. Flores, my colleague and friend from Texas.

209 Mr. Flores. I thank the gentleman for yielding.

210 At a hearing last December on the 21st Century Transportation
211 Fuels Act I outlined some basic concerns with respect to the status
212 quote of America's current fuel policies.

213 Number one, biofuel producers consistently raise concerns
214 about the annual implementation on the RFS.

215 Number two, refiners face increased cost of complying with
216 the RFS and those costs are borne by consumers.

217 Number three, automakers face challenges in complying with
218 the efficiency programs under two different agencies inside the
219 EPA and the DOT.

220 And four, some environmental communities believe that
221 first-generation ethanol creates environmental problems.

222 Almost 11 months since that hearing we are back in the same
223 room fighting over the same RFS. The 21st Century Transportation
224 Fuels Act developed after several bipartisan roundtables and
225 hearings addressed many of these concerns by taking a holistic

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226 view over Transportation fuel policies.

227 For consumers, higher octane fuels can bring increased
228 efficiency and performance for the next generation of engines.

229

230 For stakeholders, transitioning the RFS to a national octane
231 standard creates new market opportunity for biofuel producers
232 and gives compliance certainty to refiners and automakers.

233 Mr. Shimkus and I have reintroduced this bill on October
234 the 16th and, as I've said before, we need to go with the status
235 quo which almost everybody has said is broken.

236 If we can have compromised solution like the 21st Century
237 Fuels Act, I can guarantee all of you in this room and that are
238 listening that we are not going find a perfect solution that gives
239 everybody 100 percent of what they want.

240 With that, I look forward to questioning our witnesses and
241 I yield back the balance of my time.

242 Mr. Tonko. And Mr. Shimkus yields back.

243 The chair now recognizes Mr. Pallone, chairman of the full
244 committee, for five minutes for his opening statement.

245 Chairman Pallone?

246 The Chairman. Thank you, Chairman Tonko.

247 Today, this committee is continuing its oversight of the
248 Trump administration by examining the EPA's abuse of secret
249 waivers to undermine the Renewable Fuels Standard program, or

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250 RFS.

251 Right now, President Trump is pitting farmers and refiners
252 against each other to the detriment of all stakeholders and
253 consumers. As a result, the RFS does not appear to be working
254 the way it should for anyone involved.

255 Last Congress, then Chairman Shimkus held a series of
256 roundtables and hearings on the RFS in a quest to try to determine
257 a new course for the program, going forward.

258 And while I disagreed with the proposal he developed, his
259 efforts were sincere and the hearings illuminated many important
260 issues that we must deal with as we approach 2022 and the
261 sunset of the current phase of the program.

262 Unfortunately, President Trump does not seem interested in
263 making the program work. In fact, the Trump administration has
264 done its best to undermine the program at a time when American
265 farmers are already struggling to deal with the collapse of
266 markets for many of the products they grow here at home.

267 The idea that EPA Administrator Andrew Wheeler is somehow
268 acting without the president's knowledge or approval defies
269 logic. As we have seen throughout the last three years, anyone
270 in the administration who acts against President Trump's stated
271 desires is either subject to a public browbeating or they are
272 dismissed from the administration.

273 So it's clear that Administrator Wheeler is acting on the

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274 president's orders -- orders that, once again, show President
275 Trump is captive to the oil industry.

276 Nowhere is this more evident than the president's huge
277 expansion of small refinery waivers. Before President Trump had
278 taken office, EPA normally approved around seven or eight
279 petitions for these waivers each year.

280 But that changed dramatically when Trump came to office.
281 Former Administrator Pruitt retroactively approved 19 exemptions
282 for 2016, and then 35 were approved for 2017, followed by 31 in
283 2018.

284 Now, I think it's fair to say that some exemptions to the
285 law's renewable fuel blending requirements are necessary and that
286 there are refineries that would be harmed without an exemption.

287 In New Jersey, we have a number of small refineries and these
288 waivers can be important for a struggling facility. But,
289 unfortunately, today we have no way of knowing whether any of
290 the refineries granted these exemptions are actually experiencing
291 the hardship envisioned by Congress when we created the RFS and
292 it is a frustration shared by both Democrats and Republicans.

293 Senator Chuck Grassley has said, and I quote, he is "very
294 skeptical that every company receiving waivers truly needs them."

295 And this skepticism is completely understandable
296 considering these hardship exemptions are granted in secret, with
297 EPA not even revealing the name of the companies that receive

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298 them.

299 Not even our committee, which created the RFS, receives that
300 information, and there is simply no transparency in the process
301 and these decisions are far too consequential to be made in a
302 dark back room without any sunlight.

303 So that's why today we are holding a hearing on these
304 exemptions and, specifically, on Representative Peterson's
305 bipartisan legislation to bring at least part of this process
306 out into the open.

307 H.R. 3006, the Renewable Fuel Standard Integrity Act of 2019,
308 requires public disclosure of any information included in
309 petitions for exemption from the annual blending requirements.

310 The bill also sets an annual deadline of June 1st for small
311 refineries to petition for exemption from the upcoming year's
312 blending requirements in order to make the process more
313 predictable and rational.

314 Now, some of the information contained in the small refinery
315 exemption petitions is likely to be confidential business
316 information that shouldn't be divulged to the general public.

317 But there is, clearly, a logical middle ground between
318 releasing every bit of information on a petition and the complete
319 blackout we are all subject to today.

320 So we should be able to find a middle ground and move a version
321 of this bill through the committee with bipartisan support and

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322 that is what we are hoping to achieve today.

323 And I thank you again, Chairman Tonko. This, I think, is
324 a very important hearing. Thank you.

325 I yield back.

326 Mr. Tonko. You are welcome. The gentleman yields back.

327 The chair now recognizes Mr. Walden, ranking member of the
328 full committee, for five minutes for his opening statement.

329 Congressman Walden?

330 Mr. Walden. Thank you very much, Mr. Chairman, and to our
331 witnesses, thank you for being here.

332 I understand today's hearing has multiple objectives. It's
333 a legislative hearing on H.R. 3006, the Renewable Fuels Standard
334 Integrity Act. It's an oversight hearing of both small refinery
335 exemptions and the recent supplemental proposed rule on required
336 production of certain renewable fuels.

337 I am sure H.R. 3006 is a well-meaning attempt to address
338 concerns that biofuel feedstock producers have about the issuance
339 of waivers. But I have questions about the legislation.

340 From my reading, I am confused about the timing between the
341 deadline for requesting a waiver and the rules establishing
342 required volumes.

343 I am also troubled by the broadness of the precedent the
344 bill sets for removing protections for any legitimate trade sector
345 intellectual property submitted to EPA as part of a waiver.

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346 I hope our witnesses can help us understand whether this
347 bill needs changes to be workable and whether they would consider
348 this a good policy if it applied to them.

349 As the EPA's recent supplemental proposal on the required
350 production amounts for certain biofuels in 2020 and 2021 and its
351 administration of the small refinery waiver, I wish we had a
352 witness from the EPA here to explain its logic for proposing the
353 change calculations of renewable fuel percentages, how that will
354 ensure industry blends what is intended, and required volumes
355 are not reduced by future hardship waivers.

356 Now, I understand the EPA offered alternate dates to appear
357 before our committee. But considering the EPA is holding a public
358 hearing on this subject tomorrow and it will be taking comment
359 for another 30 days, it seems it would have been prudent for the
360 committee to postpone long enough for us to engage in meaningful
361 oversight.

362 But this is hardly the only issue of the RFS. A broader
363 hearing on the entire program seems like it would have been a
364 more appropriate way to tackle this.

365 Take renewable fuel source of woody biomass, something I've
366 talked about for years and actually is occurring in my district,
367 or will soon.

368 Not only can woody biomass produce the most desired yet least
369 produced fuel under the RFS, it also helps thin our forests and

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370 reduce the risk of catastrophic fire that pumps carbon emissions
371 into the atmosphere.

372 Despite these advantages, RFS treats wood from private and
373 federal land differently, even though there is no scientific
374 difference. This is a missed opportunity.

375 If we are serious about expanding renewable fuels and further
376 lowering carbon emissions, we cannot establish arbitrary
377 conditions and be so narrowly focused on who owns the wood.

378 We need innovation, preparation, and conservation -- based
379 solutions. Let me be clear, though. The RFS is important to
380 many people, particularly in a time of uncertainty and commodity
381 markets.

382 If we are going to look at this program seriously, we should
383 do it in a way that's broader and improves the program for
384 consumers and not just incumbent producers.

385 Finally, let me say something about the most obvious part
386 of this hearing. We are holding a hearing on the need for more
387 bio-based liquid transportation fuels when every other indication
388 from the majority, whether talking points, its ill-defined 100
389 by 50 proposal of which we have many questions, Green New Deal,
390 or the LIFT Act, each revolve around doing away with liquid fuels
391 to power light-duty and heavy-duty vehicles fuel mix.

392 Based on this policy desire, Department of Energy data
393 showing decline in the use of liquid fuels, it's perplexing that

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394 we have this hearing to promote the use of liquid fuels and the
395 Renewable Fuel Standard at the same time -- that it's promoting
396 policies against continued use of these fuels.

397 Now, in the last Congress, I tasked Mr. Shimkus and Mr. Flores
398 with the tough duty of coming together to see if we could figure
399 a way through this for a modern RFS system and if -- well, you
400 know what happened.

401 First, Mr. Shimkus announced he's not running again. Then
402 Mr. Flores announced he's not running again and then I announced
403 I am not running again.

404 So it's a hell of a mess but it's one that I would caution
405 anybody who wants to get close to -- and you dropped out too.

406 So --

407 Mr. Loeb sack. I am running again.

408 [Laughter.]

409 Mr. Walden. Yes. I mean, it's -- I am just warning anybody
410 on the committee stay away. Stay away from RFS.

411 But it's a tough one. We all know that. Lots of competing
412 interests and I think we all want to get it right, Mr. Chairman.

413 So, as always, we look forward to working with you, sir,
414 and as this moves forward.

415 And I yield back.

416 Mr. Tonko. Well, we appreciate those comments and the
417 warnings.

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418 Mr. Walden. Good luck.

419 Mr. Tonko. And the warnings. The gentleman yields back.

420 The chair would like to remind members that pursuant to
421 committee rules, all members' written opening statements shall
422 be made part of the record.

423 Now we will introduce our witnesses and we welcome them all
424 for joining us on what is a very important discussion.

425 We will begin with Mr. Geoff Cooper, president and CEO of
426 Renewable Fuels Association. Seated next to him is Mr. Gene
427 Gebolys, president and CEO of World Energy.

428 Next to him, Mr. Chet Thompson, president and CEO of American
429 Fuel and Petrochemical Manufacturers, and then finally, Mr. Kelly
430 Nieuwenhuis, president of Sioux Land Energy Cooperative.

431 Before we begin, gentlemen, I would like to explain the
432 lighting system. In front of you are a series of lights. The
433 light will initially be green at the start of your opening
434 statement. The light will turn yellow when you have one minute
435 remaining.

436 Please begin to wrap up your testimony at that point. The
437 light will turn red when your time has expired.

438 At this time, the chair will now recognize Mr. Cooper for
439 five minutes to provide his opening statement and, again, welcome,
440 Mr. Cooper.

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441 STATEMENTS OF GEOFF COOPER, PRESIDENT AND CEO, RENEWABLE FUELS
442 ASSOCIATION; GENE GEBOLYS, PRESIDENT AND CEO, WORLD ENERGY; CHET
443 THOMPSON, PRESIDENT AND CEO, AMERICAN FUEL & PETROCHEMICAL
444 MANUFACTURERS; KELLY NIEUWENHUIS, PRESIDENT, SIOUX LAND ENERGY
445 COOPERATIVE

446

447 STATEMENT OF GEOFF COOPER

448 Mr. Cooper. Well, thank you, Mr. Chairman, and good
449 morning, Chairman Tonko, Ranking Member Shimkus, Ranking Member
450 Walden, and members of the subcommittee.

451 My name is Geoff Cooper and I am the president and CEO of
452 the Renewable Fuels Association, a trade association representing
453 the U.S. ethanol industry.

454 I appreciate the opportunity to share our industry's
455 concerns regarding EPA's rampant abuse of RFS Small Refinery
456 Exemptions, or SREs.

457 When properly implemented, the Renewable Fuel Standard is
458 an extraordinary program. It decreases reliance on imported
459 petroleum, reduces greenhouse gas emissions, lowers gas prices
460 and boosts the economy.

461 The RFS achieves these goals by ensuring that biofuels are
462 afforded access to a fuel market that is otherwise closed to
463 competition.

464 Unfortunately, the current administration's approach to

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465 implementation has destabilized the RFS and created significant
466 uncertainty in the marketplace.

467 Specifically, EPA's flagrant abuse of SREs has resulted in
468 lower production and use of ethanol, increased emissions, higher
469 gas prices, and lost jobs.

470 In recent years, EPA has granted an unprecedented number
471 of SREs and disregarded the established requirements for
472 eligibility. SREs were intended to be temporary, meaning there
473 should be fewer exemptions granted each year as more small
474 refineries come into compliance.

475 Further, exemptions were meant to be available only to
476 refineries that demonstrate compliance with the RFS itself would
477 cause them disproportionate economic hardship, something that
478 would be incredibly difficult for any refinery to show today,
479 given historically low RIN prices and the fact that compliance
480 costs are fully passed through to the refiner's customers.

481 Under the current administration, EPA has granted an average
482 of 28 SREs per year, eroding renewable fuel blending requirements
483 by an average of 1.35 billion gallons annually.

484 That compares to just seven SREs per year on average and
485 a reduction in the RFS requirements of just 230 million gallons
486 under the previous administration.

487 So we have seen a fourfold increase in the number of
488 exemptions granted and a sixfold increase in the volume of

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489 exemptions granted. The dramatic increase in SREs has resulted
490 in demand destruction and some of the worst market conditions
491 in the industry's history.

492 The RFS was intended to continually grow the volume of
493 domestic ethanol consumption. But, unfortunately, the demand
494 increase promised by the RFS has not materialized due to the SREs.

495 After 22 straight years of successive increases, U.S.
496 ethanol demand in 2018 fell from 2017 levels, and before the
497 massive increase in SREs, U.S. ethanol consumption for this year
498 -- 2019 -- was expected by EIA to top out at above 14.8 billion
499 gallons.

500 EIA now expects 2019 consumption will be closer to 14.3
501 billion gallons. So a loss of 500 million gallons of demand.

502 Ethanol consumption would have fallen even further if not
503 for the dramatic downward adjustment in ethanol prices. Ethanol
504 had to maintain competitiveness and so prices fell, and as prices
505 fell net returns at ethanol plants deteriorated to the lowest
506 levels since at least 2007.

507 Facing weaker negative margins, ethanol plants have been
508 forced to idle or permanently shutter. We have seen 19 ethanol
509 plants -- at least 19 plants -- idle or close since spring of
510 2018 when this issue really began.

511 When an ethanol plant goes down, the local community suffers.
512 We are talking about lost jobs. We are talking about a reduction

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513 of \$.20 to \$.25 per bushel in corn prices.

514 We estimate that, you know, with these 19 plants that have
515 recently idled or closed, we are talking about 700 direct jobs
516 that have been lost and about 2,800 jobs indirectly that have
517 been affected in related sectors.

518 Unfortunately, EPA's recent supplemental proposal, which
519 was intended to implement a relief package promised by President
520 Trump, fails to correct these problems.

521 The bait and switch employed by EPA in this latest proposal
522 does not ensure that the statutory volume for conventional
523 biofuels will be enforced in 2020 or beyond, and we think it is
524 likely the 2020 requirement for conventional biofuels could,
525 again, be eroded to less than 15 billion gallons.

526 In short, EPA's proposal will not bring idle plants back
527 online and it won't put furloughed workers back to work.

528 I want to close by expressing RFA's strong support for H.R.
529 3006 -- where I come from we'd call that 30 aught 6 -- which begins
530 to resolve some of the problems we are discussing today.

531 The bill would ensure EPA's final RVOs are actually enforced
532 and not eroded by SREs. The bill also contains important
533 provisions that would greatly enhance transparency.

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

535 [The prepared statement of Mr. Cooper follows:]

536

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538 Mr. Tonko. You're most welcome, and thank you for your
539 presentation.

540 Now we'll recognize Mr. Gebolys for five minutes for your
541 opening statement, please.

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542 STATEMENT OF GENE GEBOLYS

543

544 Mr. Gebolys. Good morning, Chairman Tonko, Ranking Member
545 Shimkus, and members of the committee.

546 I am Gene Gebolys, president and CEO of World Energy, one
547 of the largest and longest-standing advanced biofuels suppliers
548 on North America.

549 Thank you for the opportunity to be here today on behalf
550 of the National Biodiesel Board and the 65,000 workers associated
551 with America's biomass-based diesel industry who, collectively,
552 generate \$17 billion in economic activity, dramatically reduce
553 our nation's reliance on fossil fuels, and substantially lighten
554 the national carbon footprint.

555 On August 9th, the Environmental Protection Agency announced
556 that it had waived Renewable Fuel Standard requirements for
557 another 31 refineries, bringing the total issued in just the last
558 two years alone to 85.

559 The move ensured that over 4 billion gallons of biofuels
560 would be replaced by fossil fuels in the national fuel tank, adding
561 more than 20 million tons of carbon back into the atmosphere.

562 For an agency whose namesake mission is environmental
563 protection, these moves are not only alarming but fully
564 perplexing. For years, the EPA had routinely issued seven or
565 eight waivers a year, totalling a couple hundred million gallons

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566 in total impact.

567 But now, the most recent waiver deluge set off a wave of
568 plant closures, impacting thousands of workers in biofuels,
569 agriculture, and related industries.

570 On August 16th, one week after the EPA announcement, I had
571 to tell our employees, suppliers, and the communities where we
572 work that we were shutting down production at our plants in Rome,
573 Georgia, Natchez, Mississippi, and Harrisburg, Pennsylvania as
574 a direct result of the EPA's misuse of its Small Refinery Exemption
575 authority.

576 Our closures alone impacted more than a hundred workers
577 directly and many hundreds more indirectly. An analysis
578 conducted at the University of Illinois found that Small Refinery
579 Exemptions issued over just the last two years have slashed demand
580 for biomass-based diesel by over 2 billion gallons with the
581 economic damage expected to reach \$7.7 billion.

582 The blowback to the latest round of waivers has been swift
583 and widespread, and by the end of August President Trump promised
584 a giant package to address the problems stemming from the EPA's
585 excessive use of waivers.

586 On October 4th, the White House announced that a deal had
587 been reached to use an average of the gallons exempted over the
588 previous three years to estimate expected 2020 waivers in
589 establishing the renewable fuel volume obligations for the coming

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590 year.

591 While the deal would not make up for the billions of gallons
592 of advanced biofuels demand already lost, if implemented
593 correctly it promised to soften the blow of exemptions in the
594 future.

595 Now the EPA has offered its proposed solution in the form
596 of a supplemental rulemaking and, regrettably, it falls woefully
597 short of the president's advanced billing.

598 Again, the EPA had gone astray. Now, instead of taking the
599 average of the waivers the EPA actually granted over the last
600 three years, the agency is proposing to offset in 2020 the average
601 volume that the Department of Energy originally recommended that
602 the EPA grant.

603 Why? Because what DOE advised is dramatically lower than
604 what EPA has actually done. Now we know what we suspected all
605 along, that EPA ignored DOE recommendations and handed out nearly
606 twice as much waiver volume as DOE had recommended.

607 As hard as that is to fathom, it's harder still to understand
608 why it would make sense for EPA to now go back to the very same
609 DOE recommendations it blatantly ignored to account for next
610 year's proposed waivers.

611 The agency is doing nothing to assure that they will
612 discontinue the practice of promoting compliance avoidance over
613 compliance and is doing little to establish RFS stakeholder

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614 confidence that the agency intends to chart a new course based
615 on the plain intent of Congress to grow the nation's use of
616 advanced biofuels.

617 EPA's job is to administer the law Congress enacted, not
618 to rewrite it. EPA must be held to account to do the public's
619 bidding in public.

620 There should be nothing secretive about who gets waivers,
621 why they get them, and for how many gallons the relief is provided.

622 There is absolutely nothing confidential about the damage our
623 industry is experiencing.

624 How can it be reasonable that those seeking noncompliance
625 can be allowed to continue to lurk in EPA's shadows when those
626 of us impacted by their actions have nowhere to hide?

627 When EPA finalizes its 2020 renewable fuel obligations rule
628 by the end of this year, it must fully account for Small Refinery
629 Exemptions -- those actually given, not those recommended but
630 ignored.

631 The agency must recognize and support the biodiesel
632 industry's ability to grow under the RFS in 2020 and beyond, as
633 Congress intended. The war on biofuels in agriculture must end.

634

635 It's time for the secret waiver program to be brought into
636 the light and for EPA to reestablish public trust.

637 [The prepared statement of Mr. Gebolys follows:]

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639 Mr. Tonko. Thank you, Mr. Gebolys.

640 And next, we will move to Mr. Thompson. You are recognized

641 for five minutes with your opening statement, please.

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642 STATEMENT OF CHET THOMPSON

643

644 Mr. Thompson. Good morning.

645 Good morning, Chairman Tonko, Ranking Member Shimkus -- let
646 me turn my microphone on -- and the rest of the subcommittee.

647 I appreciate the opportunity to testify --

648 Mr. Tonko. And if you could just move the mic closer to
649 you. There you go.

650 Mr. Thompson. I appreciate the opportunity to testify today
651 and to share the views of AFPM on the topics of today's latest
652 RFS hearing.

653 My members produce the gasoline, the diesel, the jet fuel,
654 and other products that make modern life possible, as well as
655 20 percent of U.S. ethanol and a substantial amount of renewable
656 diesel.

657 My members are obligated parties under the RFS and, hence,
658 are directly impacted by this program, SREs, H.R. 3006, and EPA's
659 recent supplemental proposal.

660 This morning I would like to highlight just a few of the
661 points made in my written testimony.

662 First, our nation's more than 50 small refiners are national
663 security assets. They are critical sources of our fuel supply.

664 They employ tens of thousands of women and men across the country
665 and they are the lifebloods of communities, again, all across

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666 the country. This very body -- Congress -- recognized the
667 importance of these refineries and the threat posed to them by
668 the RFS.

669 Thus, Congress first exempted small refineries from the
670 program outright and then allowed small refineries to seek
671 waivers, quote, "at any time" and instructed EPA to grant them
672 upon a showing of a disproportionate economic hardship.

673 As predicted by DOE as far back as 2011, the RFS's rising
674 mandates and the emergence of the blend wall has created hardships
675 for the entire refining industry but, particularly, small
676 refineries. Rising RIN and compliance costs of the RFS is what
677 explains the rise in SREs in recent years.

678 Second, as the graphs on the chart and the screen show, the
679 notion that SREs are hurting biofuel market share is false. EIA
680 data, the government's own data demonstrate that biofuel
681 consumption and blending are at or near all-time highs.

682 Third, H.R. 3006 would be bad for small refineries, bad for
683 their workforce, and bad for consumers all across the country.

684

685 Requiring facilities to apply for waivers months before EPA
686 has even finalized and, in some cases, probably even proposed
687 the RVO and requiring that all supporting financial data be
688 publicly disclosed would effectively eliminate this very critical
689 important safety net, again, one established by Congress.

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690 It would be challenging to make the requisite showing of
691 disproportionate hardship without knowing some pretty key
692 information such as the volume of the mandate in the particular
693 year and the price of RINs.

694 Having one fixed application date as well, as proposed on
695 June 1st, would deprive facilities of the ability to seek waivers
696 in response to the many unforeseen circumstances that can arise
697 in a given year.

698 And as you know, waiver applications require very sensitive
699 financial data such as profitability, cash flow and balances,
700 refining margins, debt, loan covenants, and business plans.

701 Mandating that the public -- that all this information be
702 publicly released, which is exactly what H.R. 3006 would do, would
703 create a Hobson's choice for small refiners: forego the waiver
704 and experience the disproportionate hardship calls by the RFS
705 or apply for the waiver and grant your competition into an ability
706 to exploit your financial weaknesses.

707 It is clear that the real purpose of H.R. 3006 is certainly
708 not to reform the waiver process but to eliminate it. For this
709 reason, we cannot and do not support it.

710 AFPM similarly opposes EPA's supplemental proposal. This
711 supplemental proposal is unfair to nonexempt refineries and
712 unnecessary to maintain the robust demand for domestic biofuels,
713 as the chart on the screen shows.

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714 Its only beneficiary would be foreign biofuel producers.

715 Finally, we continue to support smarter fuel policies that
716 can really help all stakeholders. That is why we testified twice
717 before this very committee last year about the great potential
718 of transitioning away from the RFS to a 95 RON octane standard.

719

720 By better optimizing fuels and engines, we can increase
721 vehicle efficiency at a lower cost, increase market-driven
722 potential for biofuels, and reduce compliance costs for
723 refineries.

724 As refiners and as producers -- as I said, 20 percent of
725 the U.S. ethanol -- we believe 95 RON would be a win for all
726 stakeholders and for the environment.

727 So we -- to that end, we appreciate the efforts of Congressmen
728 Shimkus and Flores to advance that discussion, and they will be
729 missed.

730 We also support near-term bipartisan legislation by
731 Congressmen Flores and Welch that recognizes the blend wall and
732 sets volumes based on what the market we have today rather than
733 the one that was incorrectly projected more than a decade ago.

734 With that, I thank you again for being here and I look forward
735 to answering any of your questions.

736 [The prepared statement of Mr. Thompson follows:]

737

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739 Mr. Tonko. Thank you, Mr. Thompson, and welcome again.

740 And finally, Mr. Nieuwenhuis, you are recognized for five

741 minutes and appreciate your testimony.

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742 STATEMENT OF KELLY NIEUWENHUIS

743

744 Mr. Nieuwenhuis. Chairman Tonko, Ranking Member Shimkus,
745 and members of the subcommittee, my name is Kelly Nieuwenhuis.

746 I've been farming for 37 years with my brothers and father near
747 Primghar, Iowa.

748 We grow corn and soybeans on our family farming operation
749 and, roughly, 95 percent of the corn we produce goes to ethanol.

750 I also serve as president of Sioux Land Energy Cooperative.

751 I am taking time away from harvest because today's topic is
752 critically important.

753 Plain and simple, the EPA's abuse of Small Refinery
754 Exemptions under the RFS is crippling rural America. I've seen
755 this firsthand as president of Sioux Land Energy, a farmer-owned
756 ethanol plant in Sioux Center, Iowa.

757 Each year our plant produces up to 80 million gallons of
758 clean renewable biofuel including up to 2 million gallons a year
759 of cellulosic ethanol.

760 Because of the EPA's actions to help the oil industry's
761 bottom line at the expense of farmers and the biofuels producers,
762 we had to make a hard decision to idle our plant and shut off
763 a key market for hundreds of local farmers, including myself.

764 The morning we announced that we were idling our plant, I
765 was tasked with delivering the bad news to our 42 employees.

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766 The team sat quietly, wondering about their future in the event
767 we would have to permanently close our facility. This is one
768 of the toughest things I have ever had to do.

769 Even eight years ago during a 50-year drought our plant had
770 significantly more debt than we do today and yet we had no problem
771 accessing capital. This time around, our local bank increased
772 the scrutiny for borrowing, given the lack of certainty with the
773 RFS.

774 The reality is that they read the same news that we read
775 and they understand the EPA is taking actions that have
776 dramatically undermined the market.

777 The economic crisis created by the EPA's abuse of SREs
778 started three years ago. At first we couldn't put a finger on
779 what it was. But the fundamentals and our markets seemed off.

780 It was only after the press started reporting the rapid
781 escalation of SREs being granted behind closed doors by the EPA
782 that we began to understand what was happening to our business.

783 I am a simple numbers guy. In 2018, if the integrity of
784 the RFS was upheld and we blended 15 billion gallons of ethanol,
785 coupled with the 1.7 billion gallons of exports, that's 16.7
786 billion gallons of ethanol demand.

787 That year, the U.S. ethanol industry set a record production
788 of 16.1 billion gallons. If the RFS had been upheld, then today
789 we'd be growing this industry.

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790 A few weeks ago, we did get a small piece of good news for
791 our plant at Sioux Land Energy. The state of California is using
792 a significant amount of ethanol to meet its requirements under
793 the low-carbon fuel standard and CARB lowered our plant's carbon
794 score by, roughly 10 percent, giving us a new market opportunity.

795 As a result, now we are back online and operating at 50
796 percent capacity. So we are only losing slightly less money than
797 we would be if our whole plant was idle

798 This small boost came directly from California, not the EPA.
799 The regulatory attempts by the EPA give us little confidence
800 that we will see the relief we need.

801 That's why the agricultural and biofuels industry strongly
802 support H.R. 3006, the RFS Integrity Act, sponsored by
803 Representatives Collin Peterson and Dusty Johnson.

804 This bill would address the EPA's dismal record on SRE
805 transparencies. We have no idea of the specific used by DOE or
806 EPA in making SRE decisions, and this bill takes care of these
807 basic transparency concerns by setting a reasonable deadline for
808 SRE applications and giving the public greater insight on this
809 murky process.

810 On behalf of our employees and the ethanol producers, thank
811 you for the opportunity to appear today and I look forward to
812 your questions.

813 [The prepared statement of Mr. Nieuwenhuis follows:]

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816 Mr. Tonko. Thank you, Mr. Nieuwenhuis, and thank you again
817 to our panel for your contributions here this morning.

818 We'll now move to member questions and I will start by
819 recognizing myself for five minutes.

820 Mr. Cooper, let's begin with you. Can you briefly explain
821 the relationship between SRE approvals and RIN prices?

822 Mr. Cooper. Thank you for the question, Mr. Chairman, and
823 I certainly can.

824 I think the clearest example of the impact of Small Refinery
825 Exemptions on RIN prices really occurred in the first quarter
826 and second quarter of 2018.

827 Prior to that, if you looked at the late 2017, early 2018,
828 we had RIN prices for ethanol -- D6 RINs -- that were trading
829 in the \$.80 to \$.90 per gallon range. That was really stimulating
830 investment in downstream infrastructure for higher blends. It
831 was stimulating growth in production.

832 When the public and the marketplace became aware of this
833 first massive round of SREs from former Administrator Pruitt,
834 RIN prices tanked immediately and we went from \$.80 or \$.90 to
835 about \$.20 for RIN prices virtually overnight and we've been at
836 that low level -- around \$.20 or below -- for RIN prices really
837 ever since the first or second quarter of 2018.

838 That's had a dramatic impact on the investment signal for
839 downstream retailers and blenders and it's had, you know,

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840 obviously, a significant impact on the incentive to produce
841 ethanol as well. We are seeing plants close down and seeing
842 reduced output rates as well and we point to the drop in RIN prices
843 as partly responsible for that.

844 Mr. Tonko. Thank you.

845 And what role does the RVO play in providing a signal to
846 market participants from the refineries all the way over to the
847 biofuel producers?

848 Mr. Cooper. Well, in the past when the marketplace had faith
849 that the RVO was a real number it sent a strong signal and it
850 would -- you know, if the RVO was interpreted by the marketplace
851 as a number that was going to be hard to meet, RIN prices reacted
852 and you would see strong RIN prices and they would do their job
853 to kind of force more biofuel into the marketplace.

854 Today we have a situation where nobody in the marketplace
855 views the RVO -- the annual number -- as a real number because
856 they know it's going to be eroded and undermined by these
857 retroactive Small Refinery Exemptions.

858 So when EPA last fall published a 15 billion gallon
859 requirement for conventional biofuels in 2019, the market barely
860 blinked. The market barely reacted because nobody believes the
861 number is real.

862 Mr. Tonko. Thank you.

863 And, Mr. Gebolys, your company has existed and grown since

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864 the RFS began. Is having confidence in certainty in the RVO
865 important for investments and business decisions that you have
866 made?

867 Mr. Gebolys. Yes, it's absolutely critical. The big
868 investment that we are working on right now is a -- is our renewable
869 aviation fuel and renewable diesel facility in Los Angeles.

870 We've announced a project to expand capacity there
871 substantially. We'll be investing hundreds of millions of
872 dollars. We are making that investment because of California
873 legislation, not because of the federal legislation.

874 At our plant in Houston, Texas, where we have been working
875 on a substantial expansion we've had to put that project on hold
876 because that project only serves the non-California market.

877 So just by looking at those two facilities alone, we are
878 spending money in California because California policy works.

879 We are not spending money in Texas because federal policy doesn't
880 work.

881 Mr. Tonko. Thank you.

882 And Mr. Nieuwenhuis, in regards to that RVO impact, what
883 are your thoughts?

884 Mr. Nieuwenhuis. It's definitely part of the certainty of
885 the industry. You know, I talked about our financing at our local
886 plant, and eight years ago when we had a lot more debt we had
887 no problem with capital.

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888 Now, with the fear of the RFS being undermined by these SREs
889 and the RVO numbers not being where they're supposed to be, that's
890 the uncertainty in the industry and it's fearful.

891 Mr. Tonko. Mr. Cooper, do you believe that RIN market
892 manipulation is possible due to the current secrecy around the
893 issuance of exemptions?

894 Mr. Cooper. Well, Mr. Chairman, I think there's a very clear
895 correlation between the issuance of SREs and the reaction of the
896 RIN market and it's pretty clear that -- at least in my opinion
897 -- you know, EPA is using the SRE program as a back door way of
898 managing RIN prices and controlling RIN prices, which was,
899 clearly, not something that anyone intended EPA to be doing.

900 The RIN market was intended to operate freely to help --
901 you know, help achieve the goals of the Renewable Fuel Standard,
902 which is to grown the consumption and use of biofuels.

903 Mr. Tonko. Thank you very much.

904 The chair now recognizes Mr. Shimkus for five minutes to
905 ask questions.

906 Mr. Shimkus. Thank you, Mr. Chairman.

907 Our hearing title today suggests a desire to keep liquid
908 fuels powering passenger cars and light vehicles for a long time
909 and I like that.

910 Yet, last week, Senator Schumer proposed \$454 billion
911 program to get all Americans out of their liquid fuel-powered

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912 vehicles and into electric-powered vehicles.

913 Mr. Cooper and Mr. Nieuwenhuis, what would be the impact
914 of this proposal on rural farm economies?

915 Mr. Cooper. Thank you, Mr. Shimkus.

916 You know, I think the impact of -- if we are talking about
917 H.R. 3006 --

918 Mr. Shimkus. No, we are talking about Senator Schumer's
919 proposal last week to move all passenger vehicles to electric.

920 Mr. Cooper. Okay. I think there's a broad understanding
921 that even if that proposal were to be enacted it would be very
922 long-term transition. I think we all agree that we are going
923 to be using liquid fuels for a very, very long time.

924 Mr. Shimkus. Okay. All right. I am disappointed in that
925 answer because it's a simple answer and a simple question. If
926 we moved to all electric vehicles that's less liquid
927 transportation fuels.

928 Mr. Nieuwenhuis?

929 Mr. Nieuwenhuis. I guess I don't know a whole lot about
930 the electric vehicle industry but I do know the ethanol industry
931 has been working for 40 years and we are working on infrastructure
932 and I can't see how the electric industry can change that
933 infrastructure that fast. So I don't have --

934 Mr. Shimkus. What would it do, basically, on your ability
935 to sell a commodity product like ethanol if all our vehicle

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936 transportation fleet moves to electric? Do you have a market?

937 Mr. Nieuwenhuis. I don't know. I don't know that answer

938 because I've seen a lot of --

939 Mr. Shimkus. Well, let me -- let me go to --

940 Mr. Nieuwenhuis. I've seen a lot of information from --

941 Mr. Shimkus. Let me go to Mr. Thompson.

942 What would be the impact of such a proposal on unionized
943 workers at your members' facilities?

944 Mr. Thompson. It would, obviously -- it would, obviously,
945 be very bad. Right now, we produce approximately 143 billion
946 gallons of gasoline to supply today's transportation fleet. If
947 it all went electric, that would go away. There is no ethanol
948 used in an electric vehicle.

949 Mr. Shimkus. Would this be a good policy for consumers and
950 taxpayers?

951 Mr. Thompson. No, it would be a very bad policy. One only
952 needs to look at the data out there of how much more expensive
953 electric vehicles are and, certainly, there's lots of research
954 that show they're not better for the environment. I do not think
955 it's better for consumers --

956 Mr. Shimkus. Let me go to Mr. Gebolys because, you know,
957 as we move in this debate on electric vehicles for passengers
958 -- and we've already had this in the heavy transportation hearing
959 we had last week -- there will be -- there will be a movement

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960 to eventually go to electrify heavy-duty vehicles. What would
961 do -- what would that do to your market?

962 Mr. Gebolys. It would be a very long transition. The
963 average --

964 Mr. Shimkus. Okay. But all right, I got the answer.

965 Mr. Gebolys. The average diesel vehicle is on the road,
966 sir, for up to 15 years.

967 Mr. Shimkus. I know. We had a hearing last week and the
968 Port of Los Angeles is exploring electric heavy-duty vehicles
969 that would get recharged halfway to the distribution center.

970 Can you sell biodiesel to an electric vehicle?

971 Mr. Gebolys. We cannot.

972 Mr. Shimkus. Okay. Thank you.

973 Ten months ago I asked many of your groups about the future
974 of RFS. I stated absent legislative action, the EPA will retain
975 its waiver authority -- now, we are talking about certainty here
976 -- including the authority to exempt certain refiners from their
977 obligations under the RFS, especially after 2022 when all agency
978 loses its statutory biofuel targets in 2022.

979 So if you can, give me a higher, lower, the same. Given
980 the Energy Information Agency projects 31 percent decrease in
981 motor fuel consumption by 2017 to 2025, do you expect RVOs to
982 be higher or lower post-2022 than they are today?

983 Higher, lower, or the same, if the Energy Information Agency

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984 predicts less liquid fuel use?

985 Mr. Cooper?

986 Mr. Cooper. Well, thank you. And the RFS is not a
987 percentage-based program. It's a --

988 Mr. Shimkus. Higher, lower, or the same?

989 Mr. Cooper. The same.

990 Mr. Shimkus. Okay. Mr. Gebolys?

991 Mr. Gebolys. The same.

992 Mr. Shimkus. Okay. Mr. Thompson?

993 Mr. Thompson. Substantially lower.

994 Mr. Shimkus. Okay. And Mr. Nieuwenhuis?

995 Mr. Nieuwenhuis. The same.

996 Mr. Shimkus. Given that ethanol is such an overwhelming
997 cheap octane enhancer in addition to environmental benefits,
998 wouldn't some refiners be more competitive if they were to opt
999 for this lower cost of octane?

1000 Mr. Cooper?

1001 Mr. Cooper. Yes, I believe they would.

1002 Mr. Shimkus. Mr. Thompson, seeing as your members are in
1003 competition against one another for the client business, to what
1004 extent do you think refiners would be influenced by market forces
1005 to use the cheapest source of octane, which is ethanol, in order
1006 to keep their productive -- their product prices competitive?

1007 Mr. Thompson. Very influenced by that, which is why data

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1008 shows that lend rates are as high as they've ever been today even
1009 with the SREs.

1010 All the -- all the testimony that we've heard today is
1011 contradicted by EIA data that I put on the screen. Every -- this
1012 is the highest ethanol blend rates as a country we've ever had
1013 and the reason for that is because my members make blends stocks
1014 that cannot be sold until the octane is added and the cheapest
1015 source of octane is ethanol. That's why the data is not
1016 consistent with the testimony today.

1017 Mr. Shimkus. Thank you, Mr. Chairman. My time has expired.

1018 Mr. Tonko. The gentleman yields back.

1019 Before we go to our next member, I want to recognize the
1020 presence of Congressman Dusty Johnson of South Dakota, who is
1021 co-sponsor of H.R. 3006, and we welcome him here today. You are
1022 welcome.

1023 And next, the chair will recognize Congressmember Barragan
1024 for five minutes for questions.

1025 Ms. Barragan. Thank you.

1026 I want to start off by being the member who represents the
1027 Port of Los Angeles and applauding them for their efforts to go
1028 electric.

1029 The district is one where we have high air pollution and
1030 from everything I have seen indicates that electric will help
1031 the environment. And so I wanted to take my opportunity to

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1032 applaud them in their efforts.

1033 There's a lot of conversation about oh, well, it doesn't
1034 go very far. When you take a look at distribution from the Port
1035 and to the Port, it's coming from the Inland Empire. That's not
1036 more than 150 miles. And so I just wanted to put that on the
1037 record, given this is a continuing issue I keep hearing about
1038 in the reference to the Port.

1039 I want to start off by saying that I share the goal of many
1040 on this committee and on this panel to reduce America's dependence
1041 on oil. I also think it's reasonable to want predictability on
1042 EPA regulatory decisions such as exemptions that alter the intent
1043 of our laws.

1044 However, I think we need a much broader conversation on the
1045 future of the Renewable Fuel Standards. My district, as I
1046 mentioned, is 90 percent African American and Latino. It bears
1047 a great part of the burden of our dependence on fossil fuels.

1048 We have had to live with urban oil wells, liquefied petroleum
1049 gas facilities, Superfund sites, and under regulated heavy
1050 industry.

1051 Consequently, we have had some of the highest asthma rates
1052 in the country and it is one of the most heavily polluted district
1053 in this country.

1054 No one wants America to move off of oil more than I do.
1055 However, we have to be mindful of the unintended consequences

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1056 of the policies we are putting in place to bring us to a fossil
1057 fuel-free economy.

1058 The Renewable Fuel Standards was well intentioned. But we
1059 have seen since learned -- we have since then learned from the
1060 EPA's own 2018 report titled, "Biofuels and the Environment"
1061 second triennial report to Congress that the increased demand
1062 for biofuels has driven land conversion here and abroad to
1063 biofuels to produce corn and soybeans and palm oil. This has
1064 led to the national and international land use changes that have
1065 replaced carbon sequestering and biodiverse natural landscapes
1066 with large corn and soybean farms.

1067 Further, efforts to meet the advanced biofuel mandate has
1068 led to the importation of biofuels from palm oil in countries
1069 such as Indonesia, causing widespread deforestation.

1070 I hope that in the future this committee can take up the
1071 work of crafting a comprehensive evidence-base policy approach
1072 to reforming the Renewable Fuel Standards.

1073 Building off that statement, I have a joint Pro Publica
1074 investigative report and New York Times article titled, "Palm
1075 Oil Was Supposed to Save the Planet. Instead It Unleashed a
1076 Catastrophe." It's dated November 20th, 2018. I would like to
1077 request unanimous consent to enter it into the record.

1078 [The information follows:]

1079 Mr. Tonko. Without objection, so ordered.

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1081

*****COMMITTEE INSERT*****

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1082 Ms. Barragan. My question for the biofuel representatives
1083 on the panel is what steps are you taking to make sure that you're
1084 not sourcing biofuels from land at home or abroad that has been
1085 converted from forest land or natural wilderness to farmland?

1086 Mr. Cooper. Thank you for the question.

1087 On the ethanol side, which I can comment on, the RFS law
1088 itself, the statute -- the 2007 statute -- includes a provision
1089 that specifically prohibits our member companies from using
1090 feedstock that was cultivated on land that wasn't already in
1091 cultivation at the date of enactment in 2007.

1092 If they were to do that, and EPA annually conducts an analysis
1093 to see if land has expanded and if they find that it has as a
1094 consequence of the RFS, that triggers all sorts of new onerous
1095 requirements -- reporting and record keeping requirements for
1096 the industry.

1097 What EPA has found every single year when they do that
1098 analysis is that crop land is shrinking and that crop -- the amount
1099 of crop land under cultivation today is lower than it was in 2007
1100 when the act was passed and far lower than it was 40, 50, 70,
1101 100 years ago.

1102 So this narrative that we hear that the RFS is somehow driving
1103 expansion of crop land is not borne out in the data. It is not
1104 -- there is no evidence of that.

1105 Now, you know, the EPA triennial report, there's modelling

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1106 studies and economic, you know, modelling exercises, scenario
1107 analysis, and when you plug the right numbers in, yeah, it'll
1108 give you a scenario where crop land expands.

1109 The real-world evidence shows that it not occurring,
1110 however, certainly in terms of U.S. crop land and, frankly,
1111 globally crop land expansion has not accelerated in the era of
1112 biofuels. You know, the trend of crop land expansion globally
1113 is today what it was prior to passage of the RFS.

1114 Mr. Gebolys. If I might just quickly add, the RFS
1115 specifically excludes the use of palm oil. Soybeans are not grown
1116 for their oil.

1117 They're grown for their meal, and we use feedstocks that
1118 are -- that come from used cooking oil, animal fats, and oil that
1119 exist because we use protein from soy to feed animals and people.

1120 Ms. Barragan. And my time has expired. The issue is, I
1121 believe, not how much crop land there is. The issue is how much
1122 conversion has happened. I am interested in that.

1123 Thank you, and I yield back.

1124 Mr. Tonko. Okay. The gentlelady yields back. The chair
1125 now recognizes Representative Rodgers from Washington State for
1126 five minutes for questions, please.

1127 Mrs. McMorris Rodgers. Thank you, Mr. Chairman.

1128 And I, too, want to thank the panel for joining us today
1129 as we just -- as we discuss the RFS and its future. I think it's

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1130 important to be conscious of consumer demand and advances in
1131 vehicle technology and how that affects the fuel market.

1132 So I wanted to ask the panel, as automobiles and truck fleets
1133 turn over to more efficient vehicles, what will this do for demand
1134 for fuels? Do the statutory blending goals of the RFS program
1135 still make sense when looking at the future of the transportation
1136 fleet?

1137 Maybe I will just start right here and ask each one of you.

1138 Mr. Cooper. Happy to answer that question, and yes, I think
1139 as we look at the evolution of the light-duty vehicle fleet into
1140 more efficient internal combustion engines, those engines want
1141 and need and the automakers are demanding higher octane, which
1142 Congressman Shimkus and Mr. Flores, of course, have been very
1143 much focussed on.

1144 Ethanol is the highest cleanest source of octane available,
1145 you know, on the market and so we think when you pair those two
1146 things and RFS and a high octane fuel standard, the RFS
1147 requirements do make sense long term.

1148 They guarantee that the octane source for more fuel efficient
1149 vehicles, higher octane, high compression ratio engines comes
1150 from biofuels and not from, you know, dirty hydrocarbons which
1151 lead to the asthma problems that we just heard about in California.

1152 Mrs. McMorris Rodgers. Thank you. Very good.

1153 Mr. Gebolys. So my business works primarily in the diesel

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1154 side of the equation. On the diesel side, the equipment tends
1155 to exist for a very long time. So the transition on the diesel
1156 side will be slow in coming.

1157 Progress will come and that's a good thing. Vehicles should
1158 get more efficient. We should move to cleaner and better
1159 technologies over time.

1160 But we shouldn't make the perfect the enemy of the good.

1161 While we are transitioning to cleaner and better technologies,
1162 we have cleaner and better technologies today.

1163 Advanced biofuels are called advanced because they reduce
1164 carbon footprint by 50 percent or more and it's important that
1165 we continue to do what the RFS was put in place to do, which is
1166 to continue to use more of them while we continue to use vehicle
1167 diesel equipment.

1168 Thank you.

1169 Mrs. McMorris Rodgers. Very good. Thank you.

1170 Mr. Thompson. Certainly, the more efficient car on the road
1171 today is part of what explains why gasoline demand is much lower
1172 today than it was when this program was created.

1173 When the program was created it was premised on the estimate
1174 of today about 160 billion gallons of gasoline use, which is why
1175 there was no concern of the blend wall back then.

1176 Today, we are about 142 or 143 billion gallons, which is
1177 what is causing the root cause of the problem is there's no place

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1178 for the ethanol to go once the blend wall is reached, right around
1179 14.2 or .3 billion gallons of ethanol.

1180 That's the root cause of the problem. That's why,
1181 fundamentally, this program needs to be reformed.

1182 Mrs. McMorris Rodgers. Okay.

1183 Mr. Nieuwenhuis. I guess I would just like to say that I
1184 realize in the future higher octane fuels are going to be used
1185 for the engines designed for better efficiencies.

1186 And I think the one advantage to the ethanol industry is
1187 to grow the blend rate to a higher blend and mainly because of
1188 the Clean Air Act and benefits of ethanol and the less greenhouse
1189 gas emissions created from ethanol.

1190 So I think it would be down the road the higher blends of
1191 ethanol will help with the higher octane engines and also the
1192 environment.

1193 Mrs. McMorris Rodgers. I would be interested in hearing
1194 what you believe should be done to address the implementation
1195 of the statute while protecting the interests of small refiners
1196 from disproportionate harm, as Congress had envisioned.

1197 Anybody want to start that? Yes, Mr. Thompson?

1198 Mr. Thompson. We would say that, again, last year and,
1199 frankly, for the last couple years we have been working with
1200 Congressman Shimkus about such an alternative, which is why we
1201 supported the concept of moving away from the RFS -- the command

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1202 and control approach -- into a 95 RON approach, which we believe
1203 would be better for all stakeholders, for the biofuel industry,
1204 for the auto industry -- it makes for a more efficient automobile,
1205 for consumers and, certainly, refiners.

1206 We believe if we transitioned away to a performance-based
1207 standard that would be better for small refiners because it's
1208 the compliance costs of the program that is causing the hardship,
1209 not the use of ethanol in and of itself.

1210 Mrs. McMorris Rodgers. Okay. Anyone else?

1211 Yes?

1212 Mr. Gebolys. This really isn't very complicated on the --
1213 on the existing RFS side. The law is extremely straightforward.

1214 At this point in the program, advanced biofuels are supposed
1215 to be making up the vast majority of the program's growth.

1216 The SREs are by -- have, clearly, caused that not only to
1217 stop but to start to retrench. We don't have to look any farther
1218 than the data that AFPM has put up there earlier and keeps pointing
1219 to. That data, clearly, makes my point.

1220 The expansion should be happening in the advanced biofuels
1221 sector. Now it's not because of the SREs. We need to have a
1222 light shined on what's happening in the SRE program.

1223 Mrs. McMorris Rodgers. Okay. Thank you.

1224 My time has expired.

1225 Mr. Tonko. The gentlelady yields back.

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1226 The chair now recognizes the gentlelady from Delaware,
1227 Representative Lisa Blunt Rochester, for five minutes for
1228 questions.

1229 Ms. Blunt Rochester. Thank you, Chairman Tonko, and Ranking
1230 Member Shimkus, and I want to thank the panel for your testimony
1231 today.

1232 All of the panellists have raised concerns about how the
1233 RIN market is functioning, and so I have one two-part question
1234 to each member of the panel and in the interests of time you will
1235 each get about a minute to answer this one two-part question.

1236 Do you think the RIN market has functioned properly
1237 throughout the lifetime of the RFS program, and if you do think
1238 there is a problem with the RIN market, how has it affected your
1239 business or industry?

1240 And we'll start with Mr. Cooper.

1241 Mr. Cooper. Well, thank you for the question and I will
1242 try to answer briefly.

1243 I think the answer to whether the RIN market has functioned
1244 properly relies upon was EPA enforcing the RVOs, and when they
1245 were enforcing the RVOs that were finalized annually, yes, the
1246 RIN market was doing its job. It was helping to expand and grow
1247 the market and provide the incentive to do that.

1248 When EPA is not enforcing or implementing the program
1249 properly, the RIN market does not function properly.

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1250 And then, secondly, you know, I think the lack of
1251 transparency in the RIN market, which has been brought up a few
1252 times today, is absolutely an impediment to the effective
1253 operation of that market and that's something that I know that
1254 the legislation we are discussing here today would help address.

1255 Ms. Blunt Rochester. Thank you.

1256 Sir?

1257 Mr. Gebolys. Yes, the fundamental logic of the RIN
1258 component of the RFS makes perfect sense and, theoretically, it
1259 should work perfectly fine and, largely, does when there's open
1260 access to information.

1261 But when some participants in a market have more information
1262 than others, markets don't function properly. The fundamental
1263 structure of the RIN market makes sense. The fundamental logic
1264 of the RFS makes sense.

1265 But it all is dependent on EPA administering the program
1266 such that all market participants have the same amount of
1267 information at the same time.

1268 Ms. Blunt Rochester. Mr. Thompson?

1269 Mr. Thompson. We certainly don't believe the RIN market
1270 has operated as envisioned. At the time the program was enacted
1271 RINs were supposed to be a minor transactional cost.

1272 As we all know, that is not the case today. It's created
1273 great hardship for not only small refineries but all refineries.

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1274 Now, as far as to some of the testimony that the biofuel
1275 industry believes there needs to be higher RINs to drive demand,
1276 simply not true.

1277 Analysis after analysis shows zero correlation between RIN
1278 prices and -- D6 RIN prices and ethanol consumption. Zero
1279 correlation, and only a weak correlation as it relates to
1280 biodiesel.

1281 So the assertion that you need high RIN prices, there's only
1282 one thing that -- high RIN prices do two things. It creates
1283 hardship for the refining industry and more expensive fuel for
1284 consumers.

1285 Ms. Blunt Rochester. Thank you.

1286 Mr. Nieuwenhuis?

1287 Mr. Nieuwenhuis. I believe the RIN market has worked
1288 successfully with the RFS. You know, it's a pass-through cost
1289 to the refineries. If they meet their obligations they recoup
1290 the price.

1291 But also in our situation at Sioux Land Energy we produce
1292 about 2 million gallons a year of cellulosic ethanol through
1293 cell-based or fiber-based ethanol, and the D3 RIN values help
1294 promote that project to create some cellulosic ethanol with our
1295 corn fiber.

1296 So I do think it's been a successful part of the RFS.

1297 Ms. Blunt Rochester. Thank you so much, and I would also

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1298 agree with Mr. Walden. This is one of the complex issues that
1299 this committee has to deal with. So thank you for your testimony
1300 and thank you for your leadership.

1301 Mr. Tonko. The gentlelady yields back.

1302 The chair now recognizes the gentleman from West Virginia,
1303 Representative McKinley, for five minutes.

1304 Mr. McKinley. Thank you, Mr. Chairman, and thank Mr. Walden
1305 for giving up his slot so that I could ask this question.

1306 The biofuel industry argues that granting hardship
1307 exemptions to small refineries -- boutique refineries like Ergon
1308 in Newell, West Virginia, which produces 23,000 barrels a day,
1309 and they say if we grant that exemption, it will be, quote, "demand
1310 destruction" is what I am hearing from the biofuels.

1311 Now, let's put this in context. That may sound like a lot
1312 of production -- 23,000 barrels. But Marathon produces over 3
1313 million barrels a day, 130 times what Ergon is producing.

1314 So there's a reason for these exemptions for small refineries
1315 that were put in the Clean Air Act and it's been upheld by the
1316 courts. It was for facilities just like Ergon.

1317 I would like to ask unanimous consent to enter letters of
1318 record from the labor organizations which support these small
1319 refinery exceptions and oppose the RFS from the steelworkers,
1320 the plumbers and pipefitters, the boiler makers, the IBEW,
1321 Northwest Building Trades, the National Building Trades, and the

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1322 AFPM -- organizations that say we should do this.

1323 [The information follows:]

1324

1325 *****COMMITTEE INSERT*****

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1326 Mr. McKinley. Now, EIA data that, Mr. Thompson, you brought
1327 up shows that the ethanol production and blending has gone up
1328 to record highs so even when these exemptions have been granted
1329 that they say were so sinister in the last two years plus.

1330 When do you think biofuels will be able to compete in an
1331 open market without a mandate?

1332 Mr. Thompson. That's a difficult question. I will say when
1333 they become, you know, more -- at least from the biodiesel side,
1334 when they become more cost competitive, frankly, right.

1335 It's \$.75 to \$1.00 more expensive on a gallon basis of
1336 biodiesel than the diesel that my members produce. Ethanol is
1337 cost effective right now and, like I said, you know, ethanol is
1338 being used. Back to the data -- it's being used.

1339 So this isn't a fight. We are not anti-ethanol. We are
1340 anti-mandates and we are anti-programs that are trying to smother
1341 our small refineries.

1342 Mr. McKinley. Let me follow up with a second question with
1343 you. The legislation we are talking about today would require
1344 the release of proprietary business information. Is the intent
1345 of the bill, in effect, to keep small refineries from filing these
1346 hardship petitions and is it -- is that workable?

1347 Mr. Thompson. Well, it sure seems that way, as I talked
1348 about in my opening remarks, because you create this Hobson's
1349 choice, as I said, for refiners who are going to be asked to put

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1350 their most sensitive information into the public.

1351 There is no more competitive market in this country than
1352 it is for motor gasoline. Asking a small refinery to put all
1353 their financial data and then make it publicly available certainly
1354 plays right into that competition.

1355 It's not something that most small refineries would welcome
1356 and I think what it would do it would chill refineries from seeking
1357 such relief.

1358 Mr. McKinley. Thank you.

1359 Mr. Chairman, did you -- did I get unanimous consent?

1360 Mr. Tonko. You certainly did.

1361 Mr. McKinley. Thank you, and I appreciate that.

1362 Back to Mr. Cooper, as we close out on my time for
1363 questioning, let me just clarify. You said several times when
1364 you didn't answer Congressman Shimkus's question that it was going
1365 to take a long time.

1366 The Green New Deal says by 2030. Nine years, 10 years --
1367 is that a long time?

1368 Mr. Cooper. I think everyone who has looked at how this
1369 transition to electric vehicles could play out from a very
1370 analytical standpoint knows it's going to take more than 10 years.
1371 We are talking 40, 50 --

1372 Mr. McKinley. But that's what they're -- that's what
1373 they're pushing on it is the 10-year window and the presidential

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1374 candidates have all been embracing that.

1375 They think that's a great idea and I think that Congressman
1376 Pallone's offer is another alternative -- to change that to 2050.

1377 Again, we've heard from some other folks from the Department
1378 of Energy in a previous administration with Moniz and others have
1379 said that's not workable to be able to think about. Even 2050
1380 can't work.

1381 So I just want to make sure that you understand. I am aware
1382 of the time frame and I don't think even by 2050 we are going
1383 to be ready. The devastation it's going to do to our country
1384 is incredible.

1385 And, Mr. Chairman, I yield back my time.

1386 Mr. Tonko. The gentleman yields back.

1387 The chair now recognizes Mr. Pallone, full committee chair,
1388 for five minutes to ask questions, please.

1389 The Chairman. Thank you, Chairman Tonko.

1390 Let me just ask Mr. Gebolys, if I am pronouncing it right,
1391 your company has been in business for about 20 years, a little
1392 longer than the RFS program has existed, and the original RFS
1393 granted a blanket exemption for small refineries for several years
1394 in the beginning of the program.

1395 And when the blanket exemption in the law expired, EPA
1396 continue to approve some Small Refinery Exemptions virtually
1397 every year.

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1398 In your testimony, you say that recently you have had to
1399 close three facilities. So my question is has this type of
1400 setback happened in past years when there were fewer Small
1401 Refinery Exemption?

1402 Mr. Gebolys. Thank you for the question.

1403 As you -- as you point out, in the early days of the RFS
1404 there were waivers given as of right and then subsequently
1405 extensions of those.

1406 Starting around 2012, companies had to apply for the waivers
1407 and they were -- there were only a few given, seven, right --
1408 totalling about 200 million gallons annually.

1409 Those were -- those were relatively modest. They didn't
1410 substantially change the markets. In the early going, they
1411 didn't change markets at all because they were -- the waived
1412 gallons were picked up by other obligated parties.

1413 Only starting 15, 18 months ago with the very significant
1414 expansion of the waiver program did it show up in decreased RIN
1415 values, which go directly to our economics and our ability to
1416 produce.

1417 The Chairman. Right. But in your testimony, you said that
1418 one of your products is sustainable aviation fuel and last week
1419 we had a hearing on the transportation sector with a
1420 representative of Neste who talked about the need to increase
1421 demand for this fuel if we are to lower climate pollution from

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1422 the aviation sector.

1423 So let me just ask a couple questions. Are we going to get
1424 new investment in alternative fuels without the RFS?

1425 Mr. Gebolys. It makes it very difficult. As I was pointing
1426 out earlier, we are investing in California because California
1427 is investing in California.

1428 With the signals that we are getting out of the EPA, it makes
1429 it very difficult to invest.

1430 The Chairman. What is the --

1431 Mr. Gebolys. Not only does it chill demand in the moment,
1432 it makes it very hard to project forward an environment in which
1433 we can justify investments today that we'll have to pay out over
1434 time.

1435 The Chairman. And this is because the EPA continues to grant
1436 a large number of exemptions or what is it?

1437 Mr. Gebolys. For us directly so. I think there's been a
1438 lot of quoting of studies one way or the other. There's
1439 absolutely zero question that the Small Refinery Exemptions are
1440 killing demand in biodiesel and advanced biofuels.

1441 The Chairman. And so the -- I mean, what kind of signals
1442 does this, you know, implementation of the RFS send to the
1443 investment community with respect to advanced biofuels,
1444 essentially?

1445 Mr. Gebolys. Well, it's not a positive one.

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1446 The Chairman. Okay.

1447 Can I ask Mr. Cooper and Mr. Nieuwenhuis, you know, about
1448 the same topic, if you want to express your views?

1449 Mr. Cooper?

1450 Mr. Cooper. Thank you for the question, and I guess I would
1451 respond by really challenging what you have heard from Mr.
1452 Thompson regarding demand destruction in the ethanol industry.

1453 We absolutely have experienced demand loss in the ethanol
1454 industry as a consequence of these Small Refinery Exemptions and
1455 the signal that sends to the industry is, hey, stop investing.

1456 If there's not going to be a market for larger volumes of
1457 renewable fuels, we are not going to invest in expanding capacity.

1458 You know, as I said in my testimony, 2018 consumption was
1459 about 150 to 200 million gallons lower than it was in 2017.

1460 That's the first time in more than 20 years that we saw a
1461 year over year loss in ethanol consumption, and now this year
1462 EIA is saying actual consumption is likely to be about 500 million
1463 gallons lower than they initially projected.

1464 So there absolutely has been demand destruction in the
1465 ethanol side as well and we expect that to accelerate now that
1466 we have another 31 exemptions that came out in August.

1467 Mr. Thompson's slide showed everything going through July.

1468 Well, you know, what about the impact of these 31 waivers that
1469 were announced after --

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1470 The Chairman. I think I have 20 seconds left for Mr.
1471 Nieuwenhuis, if you want to say something.

1472 Mr. Nieuwenhuis. The August 9th 31 Small Refinery
1473 Exemptions really crushed the ethanol market and crushed the
1474 prices, and that's when the bottom fell out of our industry.

1475 In our local plant that I am president of the board, like
1476 I talked about, our capital projects -- we are actually doing
1477 a capital call to our initial shareholders right now and to raise
1478 some cash to keep the plant running.

1479 So those Small Refinery Exemptions have done a lot of damage
1480 not only to the ethanol demand but also to the investment side
1481 of things and the fear of not having the certainty of an RFS that's
1482 being upheld.

1483 The Chairman. All right. Thank you. Thank you all.

1484 Mr. Tonko. The gentleman yields back.

1485 The chair now recognizes Mr. Walden, full committee ranking
1486 member, for five minutes to ask questions, please.

1487 Mr. Walden. Thank you, Mr. Chairman. Again, thanks to the
1488 panel, and as you have heard, some of us have a hearing upstairs
1489 and this one as well. But we appreciate your information.

1490 So I just have one question to start with for everybody on
1491 the panel. I think businesses generally would have a problem
1492 with a blanket statement that anything submitted to the government
1493 that was unique to their operation's competitive position should

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1494 be given to the general public, right.

1495 So my question, does that seem reasonable to each of you
1496 and kind of a yes or no, if you can.

1497 Mr. Cooper?

1498 Mr. Cooper. Yes. You know, I think -- we are not suggesting
1499 that refineries should turn over private financial operational
1500 data to the public. Nobody's asking for that.

1501 Names of the refineries and their locations -- even EPA has
1502 said that's not confidential information and should be publicly
1503 available.

1504 Mr. Walden. All right. Let me work down the panel here.

1505 Mr. Gebolys. So a company chooses to seek an exemption,
1506 I cannot fathom why it doesn't make sense for that company to
1507 reveal who they are, where they are, and why they are seeking
1508 the exemption.

1509 Mr. Walden. Mr. Thompson?

1510 Mr. Thompson. Again, I've made it clear we certainly don't
1511 support that.

1512 Something Mr. Cooper said, that no one's asking for that
1513 to be the case. Unfortunately, that's what H.R. 3006 says
1514 directly, that any information submitted as a part of the waiver
1515 application shall be deemed to be, you know, available for public
1516 disclosure.

1517 Mr. Walden. Right.

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1518 Mr. Thompson. Now, even the name of a company can hurt you,
1519 given that all fuel markets are regional and very competitive;
1520 even people knowing you have got one and that your distress could
1521 put you at even further distress.

1522 Mr. Walden. All right.

1523 Mr. Nieuwenhuis. I realize the SREs are part of the RFS
1524 and they're -- it's designed for the small refineries, and, you
1525 know, and they're supposed to show a hardship.

1526 So unless you know who they are, how are they going to show
1527 that they are actually suffering a hardship from the RFS? So
1528 I think the SREs or the H.R. 3006 is very important, going forward,
1529 for transparency.

1530 Mr. Walden. All right. Thank you all.

1531 Mr. Gebolys and Mr. Cooper, for many years I've been
1532 promoting policies to increase the use of woody biomass in our
1533 environmental policies, given the great forest stocks we have
1534 and the need to thin out our forests and trying to figure out
1535 markets to pay for all that.

1536 So I recently visited an innovative project in Lake View,
1537 Oregon, where Red Rock Biofuels is constructing a gasification
1538 facility. Now, that will turn woody biomass into jet diesel fuel
1539 and they already have contracts.

1540 This is the first gasification project in the world to use
1541 woody biomass from forest thinning-related activities. It may

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1542 serve as a blueprint for producing advanced renewable biodiesel
1543 and at the same time help keep forests healthy and more resilient
1544 to these awful wildfires we've been having.

1545 So I understand it already has contracts with Southwest
1546 Airlines, Fed Ex, and DOD. One problem is due to RFS and tax
1547 credit prohibitions, the project cannot take biomass from federal
1548 lands or wood chips from a local mill. Yet, there's no way to
1549 determine whether chips are from federal or private land since
1550 it sources from both.

1551 So from your perspective, what are the prospects that
1552 innovative projects like this can provide additional fuel sources
1553 for biodiesel and transportation fuels and what would be the
1554 impact on greenhouse gas emissions?

1555 Do either of you want to comment?

1556 Mr. Gebolys. I can't speak to that particular project.
1557 But, in general, the way innovation happens is that there are
1558 market signals set and then companies compete to respond to those.

1559 And so whether it's the project that you referred to or the
1560 project that we are doing in Los Angeles or projects that are
1561 happening throughout the country, that is what the RFS was meant
1562 to do.

1563 It was meant to drive innovation. It was meant to push
1564 forward. And so I think we are all -- I can't speak to the
1565 particular --

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1566 Mr. Walden. Well, you could come out and visit and then
1567 you could. We'd be happy to --

1568 [Laughter.]

1569 Mr. Walden. -- anybody wants to come out to Lake View we'll
1570 take you.

1571 Mr. Cooper?

1572 Mr. Cooper. I would say that, you know, the issue we are
1573 talking about today -- Small Refinery Exemptions -- have
1574 absolutely, you know, dampened the incentive to invest in the
1575 type of innovation that you're talking about as well.

1576 We've talked a lot about the impacts on first-generation
1577 biofuels -- corn ethanol, soybean-based biodiesel. But when EPA
1578 issues an SRE it affects every category of the RFS. We've seen
1579 lower cellulosic RIN prices and, therefore, lower investment in
1580 those technologies as well.

1581 Mr. Walden. All right.

1582 Again, thank you all for helping us better understand the
1583 issues today and those that lie ahead in this big issue set.

1584 So with that, Mr. Chairman, I will yield back.

1585 Mr. Tonko. The gentleman yields back.

1586 The chair now recognizes the gentleman from Florida,
1587 Representative Soto, for five minutes, please.

1588 Mr. Soto. Thank you, Mr. Chairman.

1589 This hearing is part of our historic set of hearings to try

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1590 to get to net zero carbon emissions by 2050, to have a Clean Climate
1591 Act for the 21st century.

1592 So when I hear that we can't get to clean energy by 2050
1593 I worry that our nation's in deep trouble and our world is in
1594 deep trouble if we can't do that.

1595 I just got a announcement the other day by the Union of
1596 Concerned Scientists about the rise in extreme heat in my district
1597 in central Florida from four days a year to 141 by the end of
1598 the century if we don't do anything.

1599 Coupled with extreme weather and rising seas, obviously,
1600 this is something that we are concerned about. For this
1601 particular hearing, how many of you all -- and we'll go down the
1602 list -- agree that the RFS lowers greenhouse gas emissions
1603 overall?

1604 We'll start from left to right. Do you agree or disagree?

1605 Mr. Cooper. I agree 100 percent.

1606 Mr. Gebolys. There's no question about it.

1607 Mr. Thompson. I agree there's reductions in greenhouse gas
1608 emissions.

1609 Mr. Nieuwenhuis. I agree 100 percent.

1610 Mr. Soto. Thanks. We want to at least establish basic
1611 facts as we are going forward on these issues.

1612 Overall, how many of you agree that these applications should
1613 remain secret or be in the sunshine? I come from a state where

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1614 everything is a public record unless you get an exemption -- the
1615 state of Florida.

1616 So let's go down the list and then I had some particular
1617 questions for Mr. Thompson to try to get at what may be common
1618 ground.

1619 But from left to right, how many of you agree that these
1620 should still be totally secret or not?

1621 Mr. Cooper. I believe that basic information about the
1622 petitioner should be revealed to the public. The name, identity,
1623 location of the refinery should absolutely be available to the
1624 public.

1625 Mr. Gebolys. The SEC requires that companies report
1626 material -- financial information and because of that we know
1627 some of who has pursued these, including Chevron, Exxon, and
1628 others.

1629 Mr. Soto. Now, is that comprehensive or we just know --
1630 we get sort of a glimmer of some companies that are doing it but
1631 not all of them?

1632 Mr. Gebolys. We get what they deem to be material and what
1633 they share under SEC rules. At least the name, the location,
1634 and the volume has got to be the bare minimum.

1635 Mr. Soto. Sure.

1636 Mr. Thompson, I know you had mentioned just merely disclosing
1637 the hardship is an adverse consequence. We have, obviously, SEC

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1638 where you have disclose earnings and other things that companies
1639 have to do all the time.

1640 What could be disclosed? Or is your position that nothing
1641 should be disclosed because you're admitting a hardship?

1642 Mr. Thompson. Well, let me just start by answering your
1643 first question, which is I think the application should be --
1644 remain confidential. Let's use the correct words.

1645 Mr. Soto. Sure.

1646 Mr. Thompson. Not secret. Confidential, as long as the
1647 applicant desires them to remain confidential. By the way, this
1648 is the exact same policies under the Trump administration -- I
1649 mean, the Obama administration. Exact same.

1650 And they were kept confidential pursuant to CBI regulations
1651 that EPA must adhere to.

1652 Mr. Soto. But we have a lot of new --

1653 Mr. Thompson. This information is -- can jeopardize the
1654 competitive standing of organizations. It's always been treated
1655 as confidential.

1656 Mr. Soto. Well, we are here today because it's the opinion
1657 of the committee that it could be abused right now -- that we
1658 are seeing a bunch of new applications being sent forward and
1659 we have no way to determine whether or not they should have it.

1660 Mr. Thompson. Well --

1661 Mr. Soto. Just this -- your identification of it you are

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1662 opposed to because you think it'll be a hardship?

1663 Mr. Thompson. I would say that what EPA did recently with
1664 their website in which they announced the applications -- how
1665 many are granted, how many volumes, how many RINs -- I think that's
1666 a step in the right direction.

1667 And by the way, one last thing. There's no shortage of
1668 lawsuits filed by folks around me related to SREs. Obviously,
1669 this information is getting out in some quarters.

1670 Mr. Soto. Thank you, Mr. Thompson.

1671 Mr. Nieuwenhuis?

1672 Mr. Nieuwenhuis. Yes, I would like -- I would like to say
1673 I think these SREs need to be 100 percent transparent. But
1674 speaking from a farmer's perspective who, over the last 37 years,
1675 we've had farm subsidies and everybody knows that.

1676 But everybody sitting in this room can go online and find
1677 out how much my family has received from farm subsidies. And
1678 so I don't see where the Small Refinery Exemptions should be
1679 different than what agriculture has to deal with.

1680 Mr. Soto. Sure. So you all --

1681 Mr. Nieuwenhuis. And so I think 100 percent transparency
1682 in SREs is necessary.

1683 Mr. Soto. So you all, in effect, are admitting as farmers
1684 to having a hardship and needing that help, and we want you to
1685 have that help. Those programs are in place.

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1686 So there's other industries that have to admit when they
1687 many need a little help from the government and that hasn't put
1688 you under, has it?

1689 Mr. Nieuwenhuis. But one thing I will say is the farming
1690 industry -- we want to move away from subsidies. We want markets.
1691 We've been working on this for years. The biofuels industry
1692 has been the best thing that ever happened to my farming career
1693 and I want to see it continue to grow and give us markets so we
1694 don't need farm subsidies.

1695 Mr. Soto. Well, that's actually happening in actual trade
1696 policy on China and getting USMCA in for a landing. But that's
1697 for the Ways and Means Committee.

1698 So thanks for being here.

1699 Mr. Tonko. The gentleman yields back.

1700 The chair now recognizes Representative Flores for five
1701 minutes.

1702 Mr. Flores. Thanks, Mr. Chair.

1703 To our witnesses, I want to -- I've asked this question
1704 before, particularly last December when Chairman Shimkus and I
1705 had a hearing on this. Which of these two options would you
1706 prefer? Option A, keep the status quo and let the regulatory
1707 agencies decide what annual RFS compliance is, or option B, come
1708 up with a legislative solution to fix these concerns?

1709 Mr. Cooper, option A or option B?

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1710 Mr. Cooper. We would prefer that EPA enforce the law that
1711 Congress gave it.

1712 Mr. Flores. Mr. Gebolys?

1713 Mr. Gebolys. The same answer.

1714 Mr. Flores. Okay. Mr. Thompson?

1715 Mr. Thompson. B.

1716 Mr. Flores. Okay. Mr. Nieuwenhuis?

1717 Mr. Nieuwenhuis. I would prefer that the RFS stay intact
1718 and we do it the way it's been done.

1719 Mr. Flores. Is that option A?

1720 Mr. Nieuwenhuis. No.

1721 [Laughter.]

1722 Mr. Flores. It's not option A. So that's an option C then,
1723 I guess.

1724 Mr. Cooper, you seemed to hedge when I asked you that question
1725 last December. You did state, however, that there are things
1726 that could be improved with the current program and the EPA does
1727 have the administrative authority to make those fixes.

1728 Since that hearing last December, does your organization
1729 still prefer constant litigation of these RFS battles in the
1730 administration of courts or would you prefer a legislative
1731 solution?

1732 Mr. Cooper. We still believe that the administration can
1733 resolve these issues with their -- with EPA's administrative

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1734 authority. It just requires the will to do so and that's what
1735 we are focused on currently.

1736 Mr. Flores. To my next question, I imagine that liquid
1737 fuel-powered vehicles will face increased competition from
1738 electric and hybrid vehicles in the years ahead.

1739 So the questions are this. Do you agree that liquid fuel
1740 vehicles will have to find ways to improve fuel economy and lower
1741 emissions, and B, do you believe that high-powered -- excuse me,
1742 that a high octane standard is the most effective way to improve
1743 the fuel economy of liquid fuel-powered vehicles?

1744 Mr. Cooper?

1745 Mr. Cooper. Yes, I do believe there's a tremendous role
1746 for high octane fuel vehicles to improve efficiency and reduce
1747 emissions, moving forward.

1748 Mr. Flores. Okay. Yes to both questions.

1749 Mr. Cooper. Yes, sir.

1750 Mr. Flores. And Mr. Gebolys?

1751 Mr. Gebolys. Oh. Yes. Obviously, the world's changing
1752 and we are going to get to greater and greater efficiency and
1753 the liquid fuels market is going to have to change with it.

1754 Mr. Flores. Do you feel that high octane standards are a
1755 way to achieve that?

1756 Mr. Gebolys. I don't have an opinion on that one way or
1757 the other.

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1758 Mr. Flores. Okay. Mr. Thompson?

1759 Mr. Thompson. Certainly, we believe there's a lot of
1760 potential and, as you know, when transitioning away from the RFS
1761 to a 95 RON standard we believe that would be in the best interest
1762 of all stakeholders.

1763 Mr. Flores. Okay. Mr. Nieuwenhuis, do you agree that
1764 liquid fuel vehicles are going to have to find ways to improve
1765 fuel economy and lower emissions?

1766 Mr. Nieuwenhuis. Yes, absolutely.

1767 Mr. Flores. Okay.

1768 Mr. Nieuwenhuis. And I feel the best way is through high
1769 octane fuels with ethanol blends.

1770 Mr. Flores. Okay. Well, I think you all support the
1771 approach that Mr. Shimkus and I are trying to take versus the
1772 constant litigation and arguing with the EPA.

1773 Thank you. I yield back the balance of my time.

1774 Mr. Tonko. The gentleman yields back.

1775 The chair now recognizes the gentlelady from California,
1776 Representative Matsui, for five minutes, please.

1777 Ms. Matsui. Thank you very much, Mr. Chairman, for bringing
1778 attention to one out of the many issues that come out of this
1779 administration's handling of the Renewable Fuel Standard.

1780 While many of us were excited about the promise of the RFS
1781 and the opportunity to reduce greenhouse gas emissions from our

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1782 nation's transportation sector, it's been clear for the past two
1783 and a half years that it's not an interest of this administration
1784 to execute the programs Congress intended and abundantly obvious
1785 that the ultimate goal of the RFS to combat climate change is
1786 not one shared by the president or his political appointees.

1787 A critical issue that has been gaining attention lately is
1788 the liberal use of the small refinery exceptions -- SREs -- and
1789 how they are not only undercutting the program but hurting
1790 industries across the country including Pacific Ethanol, which
1791 is headquartered in my district of Sacramento.

1792 I met with Pacific Ethanol's CEO, who has communicated to
1793 me firsthand how SREs are hurting his company and threatening
1794 good-paying jobs in my district.

1795 Now, I want to now turn to the subject of advance biofuels.
1796 We have not seen the level of deployment of advanced fuels that
1797 was originally envisioned under the RFS. We can point to issues
1798 that have come up over the years.

1799 It is also clear that difference in emissions between this
1800 administration and the last is having an impact here.

1801 For example, the EPA under President Trump has put a freeze
1802 on all new cellulosic biofuel registrations and pathways.

1803 Mr. Cooper or Mr. Gebolys, how has this freeze impacted the
1804 ability to deploy a higher percentage of advanced biofuels,
1805 specifically, cellulosic biofuels, into our fuel mix, and if you

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1806 could be -- make it quickly.

1807 Mr. Cooper. Yes, thank you for the question.

1808 Pacific Ethanol is actually one of the leaders in adopting
1809 cellulosic ethanol technology and they are today producing
1810 cellulosic ethanol right alongside starch-based ethanol.

1811 We have 200 corn-based ethanol plants across the country.

1812 Every one of them was in a position to quickly adopt the same
1813 technology to produce cellulosic biofuels that would reduce
1814 carbon emissions 70 to 80 percent relative to gasoline.

1815 But as you mentioned, the EPA put a freeze on those
1816 registrations, put a freeze on those pathway petitions. And so
1817 today we have maybe half a dozen facilities that are using that
1818 technology.

1819 So EPA's, you know, mismanagement of the RFS goes far beyond
1820 the Small Refinery Exemptions and also deals with these pathway
1821 approvals and registrations.

1822 Ms. Matsui. Well, has the increase in approval of SREs
1823 impacted development of cellulosic biofuels' inability to
1824 penetrate the market? Either one of you.

1825 Mr. Gebolys. Yes, I can't speak to cellulosic, although
1826 it has. But more directly, by far the largest advanced biofuel
1827 in the country is biodiesel and biomass-based diesel, and the
1828 impact on biomass-based diesel has been severe and immediate.

1829 All of the -- all of the expansion in the RFS is supposed

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1830 to be in the advanced biofuels sector as of 2016 and we have
1831 flatlined despite the fact that the basic concept of the RFS was
1832 that the program would be emphasizing advanced biofuels, all of
1833 which have a 50 percent greater reduction in carbon impact.

1834 Ms. Matsui. Okay. So an issue that's come up as this year's
1835 rulemaking has unfolded is whether or not and in what volume the
1836 waived gallons of renewable fuel might be incorporated back into
1837 the market by requiring refineries that did not receive a waiver
1838 to blend additional gallons.

1839 Mr. Cooper, would H.R. 3006 June 1st deadline for Small
1840 Refinery Exemption petitions address this issue?

1841 Mr. Cooper. Yes, it would, on a prospective basis, moving
1842 forward. I think the 4 billion gallons that we've lost already
1843 as a consequence of these exemptions would not be addressed by
1844 the legislation.

1845 But it would stop the bleeding and ensure that, moving
1846 forward, those exemptions, which we are saying, you know, if a
1847 small refiner deserves one go ahead and give it to him. Just
1848 make sure that lost blending volume is made up and accounted for
1849 by larger nonexempt refineries. The bill would do that.

1850 Ms. Matsui. All right. Well, should there be additional
1851 public transparency milestones such as deadline for EPA to report
1852 to the public how many potions they have received? Is that
1853 helpful?

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1854 Mr. Cooper. Yes, that would be helpful.

1855 Ms. Matsui. Okay. What other information could be made
1856 public that is not currently available?

1857 Mr. Cooper. I think, as we've discussed, we think the
1858 identity of the refineries submitting a petition, the volume,
1859 you know, that is seeking an exemption, and the location of the
1860 refinery.

1861 Those are three basic things that are not confidential
1862 business information and don't involve financial or operational
1863 factors.

1864 Ms. Matsui. How about the criteria EPA uses to evaluate
1865 these petitions?

1866 Mr. Cooper. It would be very helpful to know exactly what
1867 criteria EPA is using and how that's changed, absolutely.

1868 Ms. Matsui. So you want more transparency all the way
1869 around?

1870 Mr. Cooper. Certainly.

1871 Ms. Matsui. Okay. Fine. Well, I've run out of time. So
1872 thank you very much. I yield back.

1873 Mr. Cooper. Thank you.

1874 Mr. Tonko. The gentlelady yields back.

1875 The chair now recognizes the gentleman from Oklahoma, Mr.
1876 Mullin, for five minutes.

1877 Mr. Mullin. Thank you, Mr. -- thank you, Mr. Chairman.

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1878 I've just got a couple questions.

1879 Mr. Thompson, under the RFS are waivers allowed?

1880 Mr. Thompson. Yes.

1881 Mr. Mullin. They are allowed?

1882 Mr. Thompson. Waivers? Yes.

1883 Mr. Mullin. Yes. Okay. Are there court cases to back this
1884 up?

1885 Mr. Thompson. Yes, there are lots of court cases including
1886 several that deal specifically with Small Refinery Exemptions.

1887 Mr. Mullin. So the president is within his authority to
1888 be able to do this, right?

1889 Mr. Thompson. Absolutely.

1890 Mr. Mullin. Okay. That's pretty much all my questions with
1891 that. I will yield to the gentleman from Georgia, Buddy Carter.

1892 Mr. Carter. I thank the gentleman for yielding.

1893 Gentlemen, can you clear something up for me? Mr. Thompson,
1894 you said in your testimony that the data -- the EIA data -- says
1895 that both volume and blend rates for ethanol are at a near all-time
1896 high.

1897 But I've heard you, Mr. Cooper, and you, Mr. Nieuwenhuis,
1898 say that they're -- they've decreased. I am confused. Who's
1899 right here? Who's wrong?

1900 Mr. Cooper, do you want to take a shot at it?

1901 Mr. Cooper. Absolutely. I am not sure what EIA data Mr.

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1902 Thompson is looking at. The data we look at shows clear evidence
1903 of demand loss. We are consuming less ethanol last year than
1904 we have in 2017. That's the first year over year loss we've seen
1905 --

1906 Mr. Carter. And are you saying that the -- that the SREs
1907 are the reason for that?

1908 Mr. Cooper. They are certainly part of the reason for that,
1909 yes.

1910 Mr. Carter. How much of the reason for that, and why?

1911 Mr. Cooper. We would -- we would suggest that SREs are
1912 primarily responsible for that demand loss because you have
1913 reduced --

1914 Mr. Carter. Okay. Because --

1915 Mr. Cooper. You're reduced the requirement -- you know,
1916 the RFS requirement. You have lowered that below the so-called
1917 E10 blend wall and taken the pressure off the marketplace to expand
1918 ethanol blending.

1919 Mr. Carter. Okay. Mr. Thompson, what --

1920 Mr. Thompson. The only data that I have is from the EIA,
1921 and the EIA data which, again, was on display is pulled right
1922 form their website. It's the latest data available publicly.

1923

1924 It's only available up through July of this year and it shows
1925 that ethanol blend rates are at a 10.17 percent, which is the

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1926 highest of all time. It shows that bio consumption is certainly
1927 slightly down by it looks like 4,000 or so gallons. And so, you
1928 know, as far as they're -- I have proof for my data points. It's
1929 the EIA data.

1930 Mr. Carter. Okay. Well, and I am not -- I am not doubting
1931 you. I just -- I am just a little bit confused.

1932 Mr. Thompson. No, I am not suggesting you're doubting me.
1933 I am suggesting I have no way to refute the data that just happens
1934 to fall in their testimony.

1935 Mr. Carter. Okay.

1936 Mr. Thompson. You know -- right, this is the ethanol that
1937 speaks for itself.

1938 Mr. Carter. Fair enough. Fair enough.

1939 Well, let me ask you this. Would the SREs impact the ethanol
1940 more so than biofuels or would it be the same for both, Mr.
1941 Thompson?

1942 Mr. Thompson. Well, I would say that there's probably more
1943 of an impact on biodiesel than ethanol because, as we say, my
1944 members make blends -- you know, BOBs -- that have to be blended
1945 with octane before they can be sold and that octane source is
1946 ethanol.

1947 So regardless of SREs, remember, SREs only give relief from
1948 compliance of, you know, handing over RINs to the government.

1949 It does not give them relief from, you know, making sure that

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1950 they're selling to consumers a compliant product.

1951 Mr. Carter. Okay. Gotcha.

1952 Mr. Cooper?

1953 Mr. Cooper. Well, you know, again, we could -- and we have
1954 been, are arguing for quite some time about what the EIA data
1955 show.

1956 When you look at the facts on the ground, though, we have
1957 19 ethanol plants that have shut down. You can't tell me that
1958 that hasn't happened because there hasn't been some loss of demand
1959 and that's absolutely what has occurred. Our production is down.

1960 That's a response to the lower demand that we've seen as well.

1961 Mr. Carter. Okay. All right. Fine. Enough.

1962 Let me ask you this. I am going to shift gears and, Mr.
1963 Thompson, I am going to ask you this. You said in your testimony
1964 that the RFS is explicit in providing small refineries the ability
1965 to apply for a petition at any point in the year.

1966 How important is that to be flexible? I know that we've
1967 had a number of floods in the Midwest and, certainly, that had
1968 to have had some impact on it as well.

1969 Mr. Thompson. Well, you have hit it on its head. There's
1970 lots of circumstances that can arise.

1971 Again, it was Congress -- if you go back and look at the
1972 legislative history around SRES it goes back to the early 2000s.

1973 It was bipartisan. These small refineries are the lifebloods

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1974 of communities. You want to protect them and make sure they
1975 remain viable.

1976 And so there are things that can crop up at any time in the
1977 year that could impact the ability to comply and refineries should
1978 have the ability and the flexibility to seek relief when they
1979 need relief.

1980 Mr. Carter. Very good, and I am going to yield to Ranking
1981 Member Shimkus.

1982 Mr. Shimkus. I thank my colleague.

1983 And the point I -- the point I want to stress is, and whether
1984 you want to dispute this or not, is that the volume of the liquid
1985 transportation fleet, based upon the Energy Information Agency,
1986 is going to decline.

1987 Well, how fast? How slow? If we move to a Green New Deal,
1988 it's going to be rapid and it's going to be based upon in
1989 intervention by us, regulations, and rules.

1990 So we are trying to protect the liquid transportation market
1991 and we have to rewrite the law, and that's what I was trying to
1992 do and I need your help.

1993 I will yield back to my colleague.

1994 Mr. Carter. And I yield the remainder of my time. Thank
1995 you, Mr. Chairman.

1996 Mr. Tonko. The gentleman yields back.

1997 And now the chair recognizes the gentleman from California,

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1998 Mr. McNerney, for five minutes, please.

1999 Mr. McNerney. I thank the chair and I thank the witnesses.

2000 I apologize for missing your testimony.

2001 But this is a complicated issue and I appreciate there's
2002 a lot of different sides to it. My district has Pacific Ethanol,
2003 which produces 60 million gallons a year. So it is important
2004 to me.

2005 Mr. Cooper, in your testimony you mentioned how the response
2006 to sustained or weak negative margins trends that coincide with
2007 the Trump administration's expansion of the SRE program -- that
2008 ethanol plants have been forced to idle or shut down permanently.

2009 Can you speak to the impact that this has had on the biofuel
2010 producers specifically with regard to both the direct and indirect
2011 jobs associated with those losses?

2012 Mr. Cooper. Certainly, and thank you for the question.

2013 Yes, as I mentioned, we've seen 19 ethanol plants either
2014 temporarily idle or permanently close. There's four or five of
2015 those facilities that have shut their doors and will never come
2016 back online.

2017 The jobs -- each of those ethanol plants employs 45 to 50
2018 workers directly at the plant. Those are great jobs in rural
2019 areas, typically. But the impact goes far beyond that. There's
2020 lots of indirect and induced jobs.

2021 We have estimated the impact of these 19 plant closures as

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2022 700 lost direct jobs and 2,800 indirect and induced jobs. That's
2023 about 3,500 jobs that we believe have been affected because of
2024 these Small Refinery Exemptions. It's a serious issue.

2025 We are also experiencing the worst margins, you know, for
2026 a sustained period of time that this industry has probably ever
2027 seen.

2028 Mr. McNerney. Thank you.

2029 Mr. Gebolys, one of the biggest complaint surrounding how
2030 the EPA has managed the SRE program is there's been a lack of
2031 transparency -- that's come up several times this morning -- and
2032 with these waivers that's being granted, who's receiving them.

2033 Would you say that all the secretive and capricious nature
2034 of the SREs can have a destabilizing effect on the renewable energy
2035 sector specifically with regard to ethanol production and job
2036 loss?

2037 Mr. Gebolys. Yes. There's no question that the secretive
2038 nature destabilizes markets. Some market participants have
2039 information. Others don't. You can't have a functioning market
2040 like that.

2041 If I might just quickly add to your previous question, Mr.
2042 Cooper. Look, we can quote all the studies we want. I had to
2043 make a decision to close three plants.

2044 I couldn't personally be in three places at the same time
2045 so I had to do those by video. One after another after another,

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2046 even through video, I made eye contact with the folks that were
2047 going to be furloughed later that same day. There is zero
2048 question that these SREs are crushing small refineries. They're
2049 just idle refiners.

2050 Mr. McNerney. Thank you.

2051 Mr. Nieuwenhuis, can you speak to the impact of the EPA's
2052 decision to not fully reallocate the negotiated amount of 1.3
2053 billion gallons of SREs in 2020 --

2054 Mr. Nieuwenhuis. Yes, absolutely.

2055 The deal that we were approached with on October 4th from
2056 the Trump administration was to head back our three-year rolling
2057 average of the waived -- gallons that were actually waived of
2058 the 4.04 billion gallons. So that would be, like, 1.4 billion
2059 gallons per year in a three-year thing.

2060 No, there was some certainty in that proposal. But the
2061 proposal that the EPA came out with 11 days later cut that in
2062 half just in -- and that didn't even assure that the waivers that
2063 they granted wouldn't offset that to keep us under 15 billion
2064 gallons.

2065 So as president of a board of a plant, when we heard the
2066 first proposal we were excited and then when we heard the actual
2067 proposal from the EPA we were disappointed and saw that that wasn't
2068 going to be the answer to the situation.

2069 Mr. McNerney. Yes, businesses thrive on certainty and the

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2070 predictability, and this is, in my opinion and many people's
2071 opinion, a real problem.

2072 Mr. Cooper, you noted in your testimony that while the
2073 practice of issuing retroactive exemptions has continued since
2074 2013, they only emerged as a significant concern under the Trump
2075 administration's massive expansion.

2076 Can you speak to the importance of closing this loophole?

2077 Mr. Cooper. Absolutely, and again, this program -- you
2078 know, the Small Refinery Exemption program has been around since
2079 the beginning of the RFS.

2080 It hasn't really been an issue for us until the recent --
2081 until the last few years when the refining industry did fine
2082 numerous loopholes available in this program and exploited those
2083 loopholes and had a willing partner in EPA.

2084 So we do think there's a number of ways to close those
2085 loopholes. We believe H.R. 3006 begins to close some of those,
2086 the biggest loopholes, you know, being the deadline for submitting
2087 these petitions and ensuring that we know before that RVO is
2088 finalized every year what volume of gasoline and diesel is going
2089 to be exempted from an obligation.

2090 That allows that volume to be restored or redistributed to
2091 nonexempt parties. That's the big issue here.

2092 Mr. McNerney. Well, I mean, the EPA has the flexibility
2093 to deal with this. It's just using it in a bad way, in my opinion.

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2094 Mr. Cooper. Absolutely.

2095 Mr. McNerney. Thank you, Mr. Chairman.

2096 Mr. Tonko. The gentleman yields back.

2097 The chair now recognizes the gentlelady from Illinois,
2098 Representative Schakowsky, for five minutes, please.

2099 Ms. Schakowsky. Thank you, Mr. Chairman and Ranking Member.

2100 So the current issue surrounding the Renewable Fuel Standard
2101 perfectly, in my mind, sums up the priorities of the Trump
2102 administration.

2103 President Trump and his cronies they get theirs while
2104 ordinary Americans get hurt. We saw this in 2014 when the Trump
2105 Taj Mahal Casino filed for bankruptcy only to be bailed out by
2106 billionaire Carl Icahn, who bought it, and when casino workers
2107 went on strike two years later Icahn did everything he could to
2108 try to strip them of their pensions and bankrupt the casino to
2109 his benefit, and he is definitely an -- he is the definition of
2110 a vulture capitalist.

2111 Well, President Trump then rewarded Icahn with an advisory
2112 role in the White House. Icahn used his position to line up --
2113 to line his own pocket by pursuing the -- pushing the EPA to
2114 overhaul the Renewable Fuel Standard in order to benefit his own
2115 energy interests.

2116 And this administration is working overtime to promote big
2117 oil at the expense of farmers and rural communities and average

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2118 Americans everywhere.

2119 What's worse is that they're afraid to admit it, resulting
2120 in a shameful lack of transparency.

2121 Mr. Cooper, would you say that anything that I said just
2122 now -- this characterization -- is incorrect?

2123 Mr. Cooper. Well, I would say the president on numerous
2124 occasions has voiced strong support for the ethanol industry and
2125 the RFS specifically. But the actions of his EPA and the actions
2126 of this administration are inconsistent with those commitments
2127 and promises.

2128 Ms. Schakowsky. Thank you.

2129 Mr. Nieuwenhuis, has the Trump administration given small
2130 refinery waivers to big companies like those Icahn has invested
2131 in and put farmers' interests -- or has it put farmers' interests
2132 first?

2133 Mr. Nieuwenhuis. Well, from my perspective, it's put the
2134 oil industry's perspective first and the rural communities have
2135 taken a lot of abuse through these Small Refinery Exemptions.

2136 And, you know, part of the Small Refinery Exemptions when
2137 they started that discussion was because of the cost of RINs was
2138 the reason they were asking for the hardships.

2139 Well, August 9th when they granted the last 31 Small Refinery
2140 Exemptions RIN prices were at an all-time record low. So we were
2141 shocked when those were granted because we thought with record

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2142 low RIN prices why should anybody qualify for a hardship.

2143 Ms. Schakowsky. Thank you.

2144 So climate change has worsened disasters, such as floods
2145 across the Midwest, where I live. This endangered -- this
2146 endangers the food security of Americans and the livelihood of
2147 our farmers.

2148 Illinois has the third highest ethanol production capacity
2149 in the United States. Again, I want to ask Mr. Nieuwenhuis, as
2150 a farmer, is there any evidence that Carl Icahn, when he was at
2151 the White House -- in the White House has the best interests of
2152 Illinois farmers at heart?

2153 Mr. Nieuwenhuis. Oh, absolutely not. He has the best
2154 interests in his own pocketbook in that situation. You know,
2155 he was calling for the change of point of obligation to start
2156 with and just -- he's been trying to destroy the RFS since the
2157 Trump administration got into office.

2158 Ms. Schakowsky. Thank you.

2159 Mr. Cooper, what would the administration -- what the
2160 administration has proposed -- the changes that it's proposed
2161 to the Renewable Fuel Standard mean to Illinois farmers, in your
2162 view?

2163 Mr. Cooper. Well, as Kelly pointed out earlier, you know,
2164 the deal or the agreement that was promised to the biofuels
2165 industry was we are going to make whole the Renewable Fuel

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2166 Standard. We are going to make sure that in 2020 15 billion
2167 gallons of required blending actually means 15 billion.

2168 And there's a methodology for doing that that involved the
2169 three-year rolling average of actual exemptions that Mr.
2170 Nieuwenhuis referred to.

2171 What we've seen in the proposal is that EPA has gone back
2172 on that agreement and is proposing to use a surrogate for
2173 projecting those exemptions that would result in a 15 billion
2174 gallon number again eroding to something less than 15 billion
2175 gallons and being inconsistent with what appears in the statute.

2176 Ms. Schakowsky. Mr. Cooper, I saw you shake your head when
2177 it was suggested that -- on the question of transparency, et
2178 cetera, that essentially that the Obama administration has just
2179 been exactly like the Trump administration. Could you speak to
2180 that?

2181 Mr. Cooper. I would be happy to. In 2016, under the
2182 previous administration EPA actually proposed in a proposed rule
2183 that went out for public comment to kind of lift the veil on the
2184 Small Refinery Exemption program and they actually said, you know,
2185 and I quote, that "small refineries are not entitled to CBI
2186 protection for certain information" including the name and
2187 location of the refineries, the nature of the relief that was
2188 being sought, and the volumes affected.

2189 EPA tried to float that proposal out again recently and it

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2190 got withdrawn and pulled back. So it is inconsistent to say that
2191 the Obama administration had the exact same approach to
2192 transparency on this issue. They understood there was a problem
2193 and they were trying to resolve it.

2194 Ms. Schakowsky. Thank you.

2195 I yield back.

2196 Mr. Tonko. The gentlelady yields back.

2197 The chair now recognizes the gentleman from Vermont, Mr.
2198 Welch, for five minutes, please.

2199 Mr. Welch. Thank you very much. I appreciate the witnesses
2200 and the information provided. I am a little disappointed at the
2201 narrow scope of this hearing.

2202 The whole issue of the ethanol mandate has raised a lot of
2203 policy questions -- environmental, cost of food, impact on farmers
2204 who use grain.

2205 But I certainly appreciate the advocacy of friends like Mr.
2206 Loeb sack, who are really concerned about the well being of the
2207 farmers that grow grain that goes in -- corn that goes into
2208 ethanol.

2209 And I come from a dairy state where grain is feed, and there
2210 is a lot of evidence that the higher the ethanol mandate, there
2211 used to be a tax benefit and there used to be, as you know, a
2212 tariff. All of that added to the cost of the dairy farmers who
2213 were paying more for the corn.

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2214 So there's a dilemma here, okay. We like farmers, but if
2215 you're a corn producer you like the ethanol mandate. If you're
2216 a corn consumer for your dairy cows it's a lot tougher.

2217 And I've been working with Mr. Flores and others to try to
2218 deal with some of these problems and get some stability, and I
2219 want to just ask -- so I just needed to say that, that there's
2220 an immense amount of evidence that as a result of the ethanol
2221 policy -- in fact, I disagree with you're all raising your hand
2222 -- we are using more -- we are creating more greenhouse gases
2223 net than without it.

2224 There's an enormous amount of evidence about overproduction
2225 of row to row -- a lot more planting, millions of acres and the
2226 loss of habitat life and then higher costs for consumers if they're
2227 buying their food and a higher cost for farmers that are using
2228 grain, whether it's dairy, chicken, or hogs.

2229 So in full disclosure here, I love farmers. But I don't
2230 necessarily love ethanol. Let me ask just a couple of questions
2231 to get this moving.

2232 With the status of this confusion between EPA and everything
2233 you're talking about, what specifically, Mr. Nieuwenhuis, do you
2234 think has to be done to address this?

2235 Mr. Nieuwenhuis. I think the RFS needs to be upheld on this
2236 situation and on the Small Refinery Exemptions. You know, it's
2237 been excessive during the Trump administration -- the 4 billion

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2238 gallons that have been granted waivers -- and now it's a lot of
2239 demand that --

2240 Mr. Welch. So transparency and a limitation on waivers?

2241 Mr. Nieuwenhuis. Transparency and limitation would be
2242 huge.

2243 Mr. Welch. Okay. All right.

2244 And Mr. Gebolys -- did I pronounce your name right?

2245 The Greener Fuels Act, which I support, supports advanced
2246 biofuels and that, as I understand it, is what the RFS was
2247 originally intended for.

2248 Can the RFS as it is now get us to a broader demand and use
2249 of advanced biofuels and what are the major reforms to the program
2250 needed to achieve this goal?

2251 Mr. Gebolys. Thanks very much for the question.

2252 The response is absolutely, the RFS, as it is currently
2253 constructed, is not an ethanol mandate. It is a broad
2254 biofuels-pushing structure that was designed to start with
2255 conventional biofuels, get to a maximum of 15 billion gallons
2256 of ethanol by 2016, and then all of the growth after that was
2257 -- is designed to be in the advanced category.

2258 Mr. Welch. But it's not there.

2259 Mr. Gebolys. I am sorry?

2260 Mr. Welch. We are not getting it.

2261 Mr. Gebolys. We are not getting it because we are getting

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2262 SREs instead. I see Mr. Thompson react to the -- to my comment.

2263 But that is absolutely what is happening.

2264 There's an economist at the University of Illinois named
2265 Scott Irwin. He's written a paper in March of this most recent
2266 year that lays it out in three very easily-read pages on exactly
2267 how that is impacting us.

2268 Mr. Welch. And without having an argument about the net
2269 carbon impact of ethanol, there's no question that advanced
2270 biofuels have a much more significant carbon reduction impact.

2271

2272 Would you speak to that, Mr. Gebolys?

2273 Mr. Gebolys. Yes. You can't be an advanced biofuels unless
2274 you demonstrate without any question that your fuel reduces carbon
2275 by no less than 50 percent. In the biodiesel world, many of ours,
2276 depending on what you're using for feedstock, reduce the carbon
2277 impact by upwards of 85 percent.

2278 The other thing that I wanted to address is the issue about
2279 food versus fuel. The reason that soybeans, which are the main
2280 source of feedstock for biodiesel -- the reason those are grown
2281 is for the protein, not the oil, and when get a higher net back
2282 to the oil, the protein actually becomes less expensive.

2283 You get more value in the bean from the oil contribution
2284 and the protein, which is the good stuff, actually becomes less
2285 expensive.

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2286 So the growth of advanced biofuels actually goes hand in
2287 hand with the growth of protein.

2288 Mr. Welch. Okay. I yield back. Thank you.

2289 Thank you, Mr. Chairman.

2290 Mr. Tonko. The gentleman yields back. The chair now
2291 recognizes the gentleman from Iowa, Representative Loeb sack, for
2292 five minutes, please.

2293 Mr. Loeb sack. Thank you, Chairman Tonko and Ranking Member
2294 Shimkus, for allowing me to waive on to this subcommittee, and
2295 thank you to the witnesses for being here as well.

2296 The RFS does support, as we know, thousands of jobs across
2297 the country. It's an economic driver in many rural and farming
2298 communities in Iowa and across the Midwest.

2299 Unfortunately, over the past three years, this
2300 administration has undermined this program at every turn without
2301 providing a shred of transparency along the way, and today, dozens
2302 of these plants have shut down or halted production.

2303 Our farmers are feeling real pain watching their local
2304 economies disappear right along with their jobs. I am proud to
2305 have championed the legislation we are discussing today, the RFS
2306 Integrity Act, introduced by my colleague and fellow co-chair
2307 on the Biofuels Caucus, Collin Peterson, and co-sponsored by a
2308 number of Republicans as well.

2309 This much-needed legislation would increase transparency

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2310 around these waivers and allow EPA to account for waived gallons
2311 when setting the RVO for the coming year.

2312 And I've got a bunch of questions. I am going to go through
2313 them a little bit quickly, if I may.

2314 Mr. Cooper, why is it important that we know who is receiving
2315 these waivers and also exactly how many gallons are being exempted
2316 before the RVO is set?

2317 Mr. Cooper. Well, thank you for the question, and it really
2318 comes down to accountability and fairness. I mean, transparency
2319 is necessary if we are going to have an accountable program.

2320 Again, we are not suggesting that private, financial, or
2321 operational or sensitive data should be disclosed. But,
2322 certainly, the name and location of the facility, you know, that
2323 is asking for an exemption should be publicly available.

2324 Mr. Loeb sack. How many gallons are being exempted before
2325 the RVO is set then?

2326 Mr. Cooper. So, I mean, the last few years it's been an
2327 average of 1.35 billion gallons.

2328 Mr. Loeb sack. Okay.

2329 Mr. Cooper. We are simply asking EPA to add that into their
2330 RVO, moving forward, to make sure it's accounted for --

2331 Mr. Loeb sack. So does the current proposed rule guarantee
2332 15 billion gallons?

2333 Mr. Cooper. It doesn't, because EPA is proposing to only

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2334 project 770 million gallons of exemptions when the actual total
2335 has been 1.35 billion gallons. So about --

2336 Mr. Loeb sack. Can you address how the market has responded
2337 to the supplemental rule and whether the current proposal will
2338 circumvent the closure of more ethanol plants?

2339 Mr. Cooper. The market has barely blinked at the
2340 supplemental proposal from EPA. RIN prices have remained low.
2341 Corn prices, ethanol prices, did not react, you know, and I think
2342 that's a pretty strong signal that the market doesn't see this
2343 as a proposal that's really going to put the RFS back on the right
2344 track.

2345 Mr. Loeb sack. Thanks, Mr. Cooper.

2346 Mr. Nieuwenhuis, thank you for being here. It's good to
2347 see you again. I see you in Iowa from time to time. Too bad
2348 we don't have the Corn Indy 300 any longer.

2349 But at any rate, thank you for being here. I think it's
2350 just so important that we hear directly from an Iowa farmer about
2351 the consequences of these waivers.

2352 How did the most recent batch of SREs play into your decision
2353 to close down your ethanol plant? And I am happy that at least
2354 some -- it's going at least some capacity now.

2355 Mr. Nieuwenhuis. Thank you for the question, Mr. Loeb sack.

2356 You know, that August 9th announcement of the 31 last SREs
2357 being granted, ethanol prices dropped \$.18 to \$.20 a gallon in

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2358 a couple days. That's a huge move in the ethanol market and it
2359 just took the -- knocked the wind out of our sails in our plant
2360 at Sioux Center at that point.

2361 The month of August we lost millions of dollars. You know,
2362 if we would have had a crystal ball and knew this was going to
2363 happen, we probably would have idled our plant sooner. Did not
2364 drive it off a cliff --

2365 Mr. Loeb sack. And so what was -- and if I might, what was
2366 the local impact of this?

2367 Mr. Nieuwenhuis. You know, when we idled our plant it's
2368 a trickle down effect. We not only weren't producing ethanol
2369 but we weren't producing -- we produce 350,000 tons of wet
2370 distiller's grain in our plant alone every year and we got --
2371 it's all fed within a three-county area with two cattle producers.
2372 It's a huge market for our co-product there.

2373 We weren't producing any corn oil, which we either used for
2374 livestock feed as a high-energy product or it can go into
2375 biodiesel.

2376 Mr. Loeb sack. Right.

2377 Mr. Nieuwenhuis. And then also the trucking industry --
2378 our plant alone trucks in 24 million bushels of corn a year and
2379 it trucks out 75 million gallons of ethanol a year.

2380 Mr. Loeb sack. And I think that those effects -- those sort
2381 of forward and backward linkages the economists call them, right

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2382 -- I think that we often forget about those as well and that effect.

2383 Mr. Nieuwenhuis. And our plant is unique also. We usually
2384 crack and pack 4 to 5 million bushels of corn during harvest and
2385 we are not doing that this year.

2386 Mr. Loeb sack. So what about the effect on prices that
2387 farmers receive for their grain -- their ability to deliver during
2388 the harvest?

2389 Mr. Nieuwenhuis. You know what? It is huge. You know,
2390 our local location with our farmers -- and we have 385 members
2391 to our plant, which are pretty much majority farmers -- them not
2392 being able to deliver corn there and for us to take our bid off
2393 the tables is about a \$.15 to \$.20 a bushel drop in bases because
2394 of the --

2395 Mr. Loeb sack. If Mr. Wheeler were here today, what would
2396 you say to him about the proposal?

2397 Mr. Nieuwenhuis. Well, the latest proposal is woefully
2398 inadequate to give the certainty to our industry so we can move
2399 forward and grow the use of biofuels.

2400 Mr. Loeb sack. Thank you.

2401 And thank you, Mr. Chairman. I would like to ask unanimous
2402 consent to enter the following item into the record. It's a
2403 letter from the Biofuels Caucus including my Iowa colleagues,
2404 Representatives Axne and Finkenauer, to EPA Administrator
2405 Wheeler. I request unanimous consent that I enter that into the

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2406 record, if I could -- the letter to Mr. Wheeler.

2407 Mr. Tonko. So granted.

2408 [The information follows:]

2409

2410 *****COMMITTEE INSERT*****

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2411 Mr. Loeb sack. Okay. Thank you, and I yield back.

2412 Mr. Tonko. The gentleman yields back.

2413 I believe that concludes all members that were choosing --

2414 Mr. Shimkus. Mr. Chairman? Mr. Chairman?

2415 Can I just ask a point of personal privilege for one second?

2416 To all my friends here, I just want to go over a little
2417 history. My first legislative success was enacting biodiesel
2418 in the fleets in 1998 with Karen McCarthy and Clinton signed that
2419 bill.

2420 MTBE got excluded. Ethanol found a market. I was in this
2421 room when we passed the RFS, thanks to the then speaker. I voted
2422 for the Democratic 2007 RFS revision and expansion.

2423 I just want that on the record, as I've been trying to deal
2424 in this very contentious debate. I think we are trying to find
2425 a solution and I really would encourage my friends and my
2426 colleagues I think we are threatened by a changing world and we
2427 better get united.

2428 Thank you, Mr. Chairman. I yield back.

2429 Mr. Tonko. The gentleman yields back.

2430 I request unanimous consent to enter the following into the
2431 record: a letter from BIO, the Biotechnology Innovation
2432 Organization, a letter from the United States Steelworkers, a
2433 letter from New Energy America, a letter from 25 members of
2434 Congress to EPA Administrator Andrew Wheeler, a labor coalition

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2435 letter to EPA Administrator Andrew Wheeler -- Labor Coalition
2436 for Biofuels, a set of letters from the labor community to the
2437 administration submitted by Representative McKinley, an article
2438 published in the New York Times magazine entitled, "Palm Oil Was
2439 Supposed to Help Save the Planet. Instead It Unleashed a
2440 Catastrophe," testimony from EPA Acting Assistant Administrator
2441 for the Office of Air and Radiation, Anne L. Idsal, a post from
2442 EIA's website, and finally, a letter, I believe, from the Biofuel
2443 Caucus and a letter from a coalition of many organizations that
2444 was received on September -- dated September 10.

2445 Without objection --

2446 [Side comments.]

2447 Mr. Tonko. Without objection, so ordered.

2448 [The information follows:]

2449

2450 *****COMMITTEE INSERT*****

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2451 Mr. Tonko. And finally, that includes our business here.

2452 I would like to thank all of our witnesses for joining us at

2453 today's hearing.

2454 I remind members that pursuant to committee rules, they have

2455 10 business days by which to submit additional questions for the

2456 record to be answered by our witnesses.

2457 I ask each witness to respond promptly to any such questions

2458 that they may receive.

2459 And with that, we again thank them for appearing before the

2460 subcommittee, and at this time the subcommittee is adjourned.

2461 [Whereupon, at 12:44 p.m., the committee was adjourned.]

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