

Opening Statement  
Chairman Paul D. Tonko  
Subcommittee on Environment and Climate Change  
Energy and Commerce Committee  
Hearing on “Protecting the RFS: The Trump Administration’s Abuse of Secret Waivers”  
October 29, 2019

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

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

Today is an opportunity to provide oversight regarding the recent rise of these waivers and the Administration’s overall implementation of the program.

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

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

During the Obama Administration, EPA followed the Department of Energy’s advice on which waivers to grant.

This resulted in numerous years with fewer than 10 exemptions granted annually. Often half of the petitions or more were rejected.

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

For 2016, 19 waivers were granted. Just 1 was denied.

For 2017, 35 waivers were granted and 1 denied.

And for 2018, there were 31 granted and 6 denied.

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

H.R. 3006 seeks to bring needed transparency into the process.

The bill would set an annual deadline of June 1st for small refineries to petition for exemptions for the following year.

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

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

The bill would also require public disclosure of any information included in exemption petitions.

While I understand there are legitimate issues around Confidential Business Information in these applications, surely there is some information that we can all agree would be appropriate to release.

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

Currently, we do not know which, or even how many, facilities are receiving exemptions until long after they do.

For a program that relies on trading to enable compliance, it is unbelievable that the program's regulator would give some participants market-driving information that can be traded on while everyone else is left in the dark.

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

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

The recent use of small refinery exemptions is failing to advance these goals. The Administration is undermining market signals and certainty, which ultimately hurts rural communities.

Adding greater certainty and transparency to the RIN market, and the RFS more broadly, is a necessary and valuable improvement. I look forward to hearing the perspectives of our witnesses on whether H.R. 3006 can help achieve those objectives.