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**Testimony on
*RIN Fraud: EPA's Efforts to Ensure Market Integrity in the Renewable
Fuels Program***

**Subcommittee on Oversight and Investigations
House Energy and Commerce Committee
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Chairman Stearns, Ranking Member DeGette, thank you for the opportunity to appear before the subcommittee today. My name is Jon P Fjeld-Hansen and I am the Managing Director of Musket Corporation (“Musket”). Musket is an affiliate company of Love’s Travel Stop & Country Stores, Inc. (“Love’s”). Established in 1964, Love’s today owns and operates a nationwide chain of 300 travel centers and convenience stores in 39 states. Love’s sells diesel fuel for on the road trucks for the nation’s trucking fleets and independent owner-operated trucks that deliver goods to businesses across the United States. We are committed to meeting then exceeding the needs of our many customers by providing the highest quality fuel at competitive prices. Biodiesel blends are an important part of that commitment.

One of the primary functions of Musket is to manage the fuel supply, including biodiesel for Love’s. Musket purchases biodiesel from a wide variety of producers and transports the product directly to the Love’s travel centers or to various bulk facilities for blending into the diesel. In order to create blending capacity, Musket has completed 76 construction projects in 25 states since the inception of the Renewable Fuel Standard. Many of these projects have brought jobs to the constituents of the members of this committee. From Calvert City, Kentucky to Baytown, Texas to Kankakee, Illinois the Renewable Fuel Standard has created American jobs.

On December 19th 2007 the President signed the Energy Independence and Security Act (EISA) into law with the stated purpose

“To move the United States toward greater energy independence and security, to increase the production of clean renewable fuels, to protect consumers, to increase the efficiency of products, buildings, and vehicles, to promote research on and deploy greenhouse gas capture and storage options, and to improve the energy performance of the Federal Government, and for other purposes.”

Under EISA the Renewable Fuel Standard (“RFS”) program was expanded to include diesel and increased the volume of fuel required to be blended into transportation fuel. Under RFS2, every properly produced gallon of biodiesel comes with 1.5 Renewable Identification Numbers (“RINS”). The value of the RINS creates sufficient value to make biodiesel cheaper than clear diesel. Upon blending biodiesel with clear diesel to create a ratio of no greater than 20% biodiesel and 80% clear diesel, Musket separates¹ the RINS from the associated physical gallon of biodiesel and then sells those RINS. Musket sells RINS to obligated parties under RFS2, typically large petroleum refiners. In short, the RINS create for Musket and other discretionary blenders² an economic incentive to provide biodiesel at competitive prices to our nation’s transportation system.

Musket believes the value and the integrity of the RINS are essential to the implementation of EISA. However, RIN fraud in its various forms frustrates the purpose of the law and perpetrates a theft upon those businesses who have invested jobs and capital in our nation’s biodiesel infrastructure and reduces the economic incentive for Musket to continue investing in the biodiesel market. We believe that fraud in the RIN market is damaging to the legitimate market participants, such as the participants of this panel, who have invested substantially to bring biodiesel into on-road diesel within the spirit and letter of RFS2. To date, the EPA has brought enforcement actions alleging the generation and sale of 130 million fraudulent RINS. Clean Green was convicted of selling over 32 million fraudulent RINS. Absolute Fuels is alleged to have sold over 48 million fraudulent RINS. Green Diesel is alleged to have generated and sold over 60 million fraudulent RINS. As a participant in the market, Musket has been directly impacted by fraud in the RIN market. Having bought RINS from Clean Green, Absolute Fuels, and Green Diesel, Musket has incurred significant expense with respect to RINS deemed invalid by the EPA.

¹ “Separate” with respect to RINS refers to detaching a RIN from the physical gallon (K-1 RIN) making it a K-2 RIN which can be bought and sold independent of the physical gallon.

² Love’s is a discretionary blender of biodiesel and only blends biodiesel when economics are favorable to do so.

In response to this RIN fraud, Musket has responded aggressively under the purview of the EPA's Buyer Beware Policy by scrutinizing every producer of biodiesel it transacts with, every RIN that it separates, and every counter-party with whom it transacts downstream. However, fraud in the RIN market takes many forms and Musket believes there is a problem that is considerably larger than the above mentioned fraud cases, biodiesel exports. Musket believes there are many who are exporting biodiesel, either blended as a diesel blend (B5), blended into heating oil and bunker fuel, or as straight B100 (100% biodiesel) and are not declaring their obligation to retire/buy RINS pursuant to §80.1430 of EISA. Internally, we refer to this practice as "Strip and Ship." Currently there is no economic incentive to export biodiesel to Europe if the rules are properly followed. Freight costs to ship to Europe plus the countervailing duty make biodiesel substantially more valuable to blend and use in the US. However, if an exporter strips the RINS from the physical gallons of biodiesel, sells those RINS to the market, and ships the biodiesel overseas without retiring or buying back RINS as required under the rules³ – an exporter can make a substantial profit.

Musket believes the magnitude of this exporting activity far overshadows the fraud cases brought forward to date. Although §80.1430 mentions only gasoline and diesel blend exports specifically, we believe many people have exploited the lack of specificity in regard to heating oil blended with biodiesel and have exported a significant volume of biodiesel without declaring an obligation to retire the RINS in blatant contravention of the spirit and purpose of the RFS. Since these exporters are not buying RINS back from the market, an excess of RINS are left depressing the price of

³ 40 CFR § 80.1430 requires "any party that owns any amount of renewable fuel, whether in its neat form or blended with gasoline or diesel, that is exported from any of the regions described in §80.1426(b) shall acquire sufficient RINS to comply with all applicable Renewable Volume Obligations under paragraphs (b) through (e) of this section representing the exported renewable fuel." Exporters of biodiesel must declare and comply with an obligation to buy an amount of RINS (X 1.5) equivalent to the volume exported. 40 CFR § 80.1427 requires "each party that is an obligated party under §80.1406 and is obligated to meet the Renewable Volume Obligations under §80.1407, or is an exporter of renewable fuels that is obligated to meet Renewable Volume Obligations under §80.1430, must demonstrate pursuant to §80.1451(a)(1) that it is retiring for compliance purposes a sufficient number of RINS."

RINS and threatening the existence of small biodiesel producers and undermining the entire purpose of EISA.

While some may have ignored the impact of biodiesel exports on the market because US based biodiesel plants benefit by making the additional gallons, Musket believes this practice threatens all US based biodiesel producers in the medium and longer term. Musket suspects that a substantial volume of biodiesel has been exported since January 2011 for which no obligation has either been declared and/or satisfied through the purchase of RINS. Foreign producers are already approved to make biodiesel with RINS, and many more have applied for approval. Without effective policing of exports, RFS2 will increasingly become a foreign produced/foreign consumed program. Foreign produced biodiesel will make but a brief stop in our ports only for the purpose of stripping and selling the RIN.

To address this policy flaw, we recommend three common sense changes for Congress to consider immediately.

1. Require RINS to be retired immediately upon export of biodiesel and renewable diesel;
2. Require the EPA to coordinate monitoring and enforcement actions with US Customs and Border Protection and the U.S. Department of Energy on exports of biodiesel, diesel containing biodiesel, and heating oil containing biodiesel; and
3. Require all sellers of diesel sold in the US to disclose the biodiesel content.

Under the current ASTM standard, wholesalers and retailers are not required to disclose biodiesel content up to 5 percent. This frustrates up stream buyers, blenders and ultimately truck owners.

Accordingly exporters of ASTM diesel may not know they are exporting biodiesel and thereby creating an obligation to retire RINS.

We believe that if these changes are made, the true intent of the EISA will be upheld and the US biodiesel industry will remain vibrant. Again Chairman Stearns and Ranking Member DeGette, thank

you for the opportunity to appear before the Committee today. At this time I will be happy to any questions you may have.