Statement Of

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On behalf of the

Society of Independent Gasoline Marketers of America (SIGMA)

and the

National Association of Convenience Stores (NACS)

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INTRODUCTION

Chairman Whitfield, Ranking Member Rush, members of the Subcommittee, thank you for the opportunity to present testimony before you today. My name is Joe Petrowski. I am CEO of the Cumberland Gulf Group headquartered in Framingham, Massachusetts. Gulf Oil is a premier gasoline brand supplying over 2500 stations in 29 states with a heavy concentration in the Northeast corridor. Lundberg Survey has sited us as one of the fastest growing brands in the United States. The company also supplies fuel to non-Gulf branded sites and premier non-branded marketers such as convenience retailer WAWA and big box retailer BJ's. We are also a supplier of over the road diesel and home heating oil. Overall we serve a wholesale customer base in excess of 1,000 and a retail base in the millions. Gulf remains a market leader in petroleum distribution as well as in the development of next-generation alternative fuels and other state-of-the-art solutions for our consumer's engine performance needs. We blend over 1 million gallons of biofuels daily. Our convenience store brand, Cumberland Farms, has almost 600 stores spanning 11 states across the northeast and Florida. All told, we employ approximately 7500 people, and 1.5 million customers transact at a Cumberland Farms convenience store, Gulf Branded station, or a third party branded outlet we supply every day.

In the interests of full disclosure, I am also a Board member of South Jersey Industries (NYSE ticker symbol "SJI"), a natural gas utility and diversified energy services company in Atlantic City, New Jersey. The company supplies natural gas, solar, electricity, and Central Power and Heating systems on a nationwide basis. I have also served in a number of capacities for diverse energy-related companies for the past 22 years including past Chairman of the New England Power Pool Board of Review and President of Consolidated Natural Gas Energy Services prior to its acquisition by Dominion Resources in 2000.

I am testifying today on behalf of both the Society of Independent Gasoline Marketers of American (SIGMA) and the National Association of Convenience Stores (NACS). SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel. Ninety-two percent of SIGMA's membership are involved in gasoline retailing, 66 percent are involved in wholesaling, 36 percent transport product, 25 percent have bulk plant operations, and 15 percent operate terminals. Member retail outlets come in many forms, including travel plazas, traditional "gas stations," convenience stores with gas pumps, cardlocks, and unattended public fueling locations. Some members sell gasoline over the Internet, many are involved in fleet cards, and a few are leaders in mobile refueling.

NACS is an international trade association composed of more than 2,200 retail member companies and more than 1,800 supplier companies doing business in nearly 50 countries. The convenience and petroleum retailing industry has become a fixture in American society and a critical component of the nation's economy. In 2011, the convenience store industry employed more than 1.8 million workers and generated $689.1 billion in total sales, representing approximately 4.5 percent of the United States' GDP – or one of every 22 dollars spent – in 2011.

America's love affair with the automobile is not going away. Neither is the need for transportation fuels that underpin the economy and create jobs. In a country as vast as ours with a density of 79 people per square mile (as opposed to the Netherlands with 1300 people per square mile), the cost of transport is central to economic health. Our industry is committed to facilitating this contribution to the American economy, and doing so in a manner that complies with all applicable laws and regulations. We devote vast resources to offering and adapting to new technologies and market opportunities. My company is constantly striving to identify the best new products and services we can bring to our stores and facilities. Consequently, we are not beholden to any specific product. While Gulf Oil has a long and accomplished history beginning in 1901, it is no longer a fully integrated oil company and neither explores nor refines. We are truly fuel agnostic.

Our sole objective is to sell what our customers want to buy and, as new fuels enter the market, we want to be able to sell them lawfully and with minimal volatility and risk. While agnostic on fuel we do have a bias: We believe it is best for the American consumer and our industrial position in the world marketplace to have reasonably low and stable priced energy. This can best be accomplished by focusing on developing diverse fuel sources from at the least secure, friendly regions and at best domestic sources for optimal results. It is a fact that when total national energy costs are less than 10% of GDP, economic growth is robust. When total national energy costs exceed 16% of GDP a recession or worse is almost always the result. The United States' current accounts trade balance for all energy products recently exceeded $1 trillion dollars, and while it has currently been reduced to one half that amount on an annualized basis we look forward to the day when the United States is a net energy exporter. Not only will that be positive to GDP and job growth, but it will position us to revitalize our industrial production, especially in energy-intensive industries with an eye toward value added product exports. And no policy would be more beneficial for the spread of world democracy and social justice than low energy prices driven by North American production. Decreasing the amount of energy the world buys from dictatorial, abhorrent and kleptocratic regimes guarantees the elimination of their importance on the world stage if not the end of these malevolent states.

My testimony today will focus on the current situation facing the retail marketplace, and present some recommendations for Congress as you consider options for increasing the use of alternative and renewable fuels as part of your strategy for improving America's economic outlook and creating jobs.

COMPOSITION OF THE RETAIL FUELS MARKET

To fully understand how fuels enter the market and are sold to consumers, it is important to know who is making decisions at the retail level of trade.

Our industry is dominated by small businesses. In fact, of the 120,950 convenience stores that sell fuel, almost sixty percent of them are single-store companies – true mom and pop operations.

Many of these companies sell fuel under the brand name of their fuel supplier. This has created a common misperception in the minds of many policymakers and consumers that the large integrated oil companies own these stations. The reality is that the majors are leaving the retail marketplace and today own and operate fewer than 2% of the retail locations. Although a store may sell a particular brand of fuel associated with a refiner, the vast majority are independently owned and operated like mine. When people pull into an Exxon or a BP station, the odds are good that they are in fact refueling at a small mom-and-pop operation.

We are in the customer service business. We have to make decisions each day regarding what products to sell and which services to offer to our customers, and we often take risks – you cannot be successful without doing so. But taking a chance by offering a new food product is very different from switching my fueling infrastructure to accommodate a new fuel. So when a new fuel product becomes available, our decision to offer it to our customers takes more time. We need to know that our customers want to buy it, that we can generate enough return to justify the investment, and that we can sell the fuel legally.

These are the fundamental issues that face the introduction of new renewable and alternative fuels today.

THE BLEND WALL AND THE NEED FOR A CONGRESSIONAL FIX

Since the enactment of the Energy Independence and Security Act (EISA) of 2007, we have heard much about the impending arrival of the so-called "blend wall" – the point at which the market cannot absorb any additional renewable fuels. Most of the fuel sold in the United States today is blended with 10% ethanol. If 10% ethanol were blended into every gallon of gasoline sold in the nation in 2011 (133.9 billion gallons), the market would reach a maximum of 13.39 billion gallons. However, the 2012 statutory mandate for the RFS is 15.2 billion gallons. Meanwhile, the market for higher blends of ethanol (E85) for flexible fuel vehicles (FFVs) has not developed as rapidly as some had hoped. Clearly, we have reached the blend wall.

As you are likely aware, EPA recently authorized the use of E15 in certain vehicles. However, this has so far done very little to expand the use of renewable fuels, due largely to retailers' liability and compatibility concerns, as well as state and local restrictions on selling E15. Congress can do something immediately to mitigate other obstacles preventing new fuels from entering the market. H.R. 4345, the Domestic Fuels Protection Act of 2012—currently before the subcommittee on Environment and the Economy—addresses three of these obstacles: infrastructure compatibility, liability for consumer misuse of fuels, and retroactive liability of the rules governing a fuel change in the future.

Before I discuss these issues in more detail, it is important to note that H.R. 4345 is not an E15 bill – it applies to *any* new fuel formulations or additives approved and registered by EPA. E15 is often used as the primary example to demonstrate how this legislation would affect the market because it is a fuel with which we are now very familiar. However, H.R. 4345 is designed to facilitate the introduction of *all* innovative new fuels.

H.R. 4345: THE DOMESTIC FUELS PROTECTION ACT OF 2012

Infrastructure Compatibility

The reason the retail market is unable to easily accommodate additional volumes of renewable fuels begins with the equipment found at retail stations. By law, all equipment used to store and dispense flammable and combustible liquids must be certified by a nationally recognized testing laboratory. These requirements are found in regulations of the Occupational Safety and Health Administration.[1]

Currently, there is essentially only one organization that certifies such equipment – Underwriters Laboratories (UL). UL establishes specifications for safety and compatibility and runs tests on equipment submitted by manufacturers for UL listing. Once satisfied, UL lists the equipment as meeting a certain standard for a certain fuel. Prior to 2010, UL had not listed a single motor fuel dispenser (aka a gas pump) as compatible with any fuel containing more than 10% ethanol. This means that any dispenser in the market prior to early 2010 is not legally permitted to sell E15, E85 or anything above 10% ethanol – even if it is able to do so safely.

If a retailer fails to use listed equipment, that retailer is violating OSHA regulations and may be violating tank insurance policies, state tank fund program requirements, bank loan covenants, and potentially other local regulations. In addition, the retailer could be found negligent per se based solely on the fact that his fuel dispensing system is not listed by UL.

This brings us to the primary challenge: if no dispenser prior to early 2010 was listed as compatible with fuels containing greater than ten percent ethanol, what options are available to retailers to sell these fuels?

In order to comply with the law, retailers wishing to sell E10+ fuels can only use equipment specifically listed by UL as compatible with such fuels. Because UL did list any equipment as compatible with E10+ fuels until 2010, only those units produced *after* that date can legally sell E10+ fuels. All previously manufactured devices, even if they are the exact same model using the exact same materials, are subject only to the UL listing available at the time of manufacture. (UL policy prevents retroactive certification of equipment.)

Practically speaking, this means that a vast majority of retailers wishing to sell E10+ fuels must replace their dispensers. This costs an average of $20,000 *per dispenser*. It is less clear how many underground storage tanks and associated pipes and lines would require replacement. Many of these units are *manufactured* to be compatible with high concentrations of ethanol, but they may not be *listed* as such. Further, if there are concerns with gaskets and seals in dispensers, care must be given to ensure the underground gaskets and seals do not pose a threat to the environment. Once a retailer begins to replace underground equipment, the cost can escalate rapidly and can easily exceed $100,000 per location.

[1] 29 CFR 1926.152(a)(1) "Only approved containers and portable tanks shall be used for storage and handling of flammable and combustible liquids." "Approved" is defined at 29 CFR 1910.106 (35) ("Approved unless otherwise indicated, approved, or listed by a nationally recognized testing laboratory.")

Last year, EPA issued guidelines for determining the compatibility of underground storage tank equipment with new fuels. Those guidelines, which are now being incorporated into legally binding regulations, stipulate that compatibility can be demonstrated either with a listing from a nationally recognized testing laboratory, written documentation by the equipment manufacturer, or another standard to be adopted by the states. NACS and SIGMA support these regulations, but they offer retailers very limited certainty.

First, the regulations do not establish a minimum standard of care to govern the self-certification procedures of the equipment manufacturer.

Second, the regulations apply only to underground storage tank systems – they do not cover the fuel dispenser itself.

Finally, these regulations do not protect a retailer from his legal obligations for using compatible equipment enforced by other jurisdictions. It is unclear whether the regulations will satisfy OSHA regulations, tank insurance, or other requirements.

H.R. 4345 seeks to fix these problems. The legislation directs the EPA to revise these regulations to establish a minimum standard of care for manufacturer self-certification to ensure there is no backsliding in protecting the environment; it establishes that the compatibility regulations will apply to the fuel dispenser; and it provides the equipment owner with regulatory and legal certainty by stipulating that equipment which satisfies the EPA compatibility requirements will be considered to satisfy all compatibility-related requirements that may be applied to the retailer.

It is important to note that H.R. 4345 does not in any way relieve a tank owner from any responsibilities regarding a fuel release. The retailer will remain responsible for preventing a fuel release and for cleaning up any contamination that may occur as a result of a release. However, the retailer will not be per se negligent provided that his equipment satisfies the requirements established by the EPA. NACS and SIGMA members take very seriously their responsibility to protect the environment and prevent releases from their systems. Their support for this legislation is based upon the realization that some of their equipment is perfectly compatible and can safely store and dispense new fuels, yet the law precludes them from doing so. If their equipment is safe and compatible, they see no reason why they should be required to incur significant expense to replace it.

Misfueling

The second major issue facing retailers is the potential liability associated with improperly fueling an engine with a non-approved fuel. The EPA decision concerning E15 puts this issue into sharp focus for retailers. Under EPA's partial waiver, only vehicles manufactured in model year 2001 or more recently are authorized to fuel with E15. Older vehicles, motorcycles, boats, and small engines are not authorized to use E15.

For the retailer, bifurcating the market in this way presents serious challenges. For instance, how does the retailer prevent the consumer from buying the wrong fuel? Typically,

when new fuels are authorized they are backwards compatible so this is not a problem. In other words, older vehicles can use the new fuel. When EPA phased lead out of gasoline in the late 1970s and early 1980s, for example, older vehicles were capable of running on unleaded fuel – newer vehicles, however, were required to run only on unleaded. These newer vehicle gasoline tanks were equipped with smaller fill pipes into which a leaded nozzle could not fit – likewise, unleaded dispensers were equipped with smaller nozzles.

E15 is very different: legacy engines are not permitted to use the new fuel. Doing so will violate Clean Air Act standards and could cause engine performance or safety issues. Yet there are no viable options to retroactively install physical countermeasures to prevent misfueling. Further, the risk to retailers of a customer using E15 in the wrong engine – whether accidentally or intentionally –are significant.

First of all, retailers could be subject to penalties under the Clean Air Act for not preventing a customer from misfueling with E15. This concern is not without justification. In the past, retailers have been held accountable for the actions of their customers. For example, because unleaded fuel was more expensive than leaded fuel, some consumers physically altered their vehicle fill pipes to accommodate the larger leaded nozzles either by using can openers or by using a funnel while fueling. We may see similar behavior in the future given the high price of gasoline relative to ethanol. As in the past, the retailer will not be able to prevent such practices, but in the case of leaded gasoline the EPA levied fines against the retailer for not physically preventing the consumer from bypassing the misfueling countermeasures.

To EPA's credit, they have asserted in meetings with NACS and SIGMA that they would not be targeting retailers for consumer misfueling. But that provides little comfort to retailers – EPA policy can change in the absence of specific legal safeguards. Additionally, the Clean Air Act includes a private right of action and any citizen can file a lawsuit against a retailer that does not prevent misfueling. Whether the retailer is found guilty does not change the fact that defending against such claims is very expensive.

Further, the consumer may seek to hold the retailer liable for their own actions. Using the wrong fuel could void an engine's warranty, cause engine performance problems or even compromise the safety of some equipment. In all situations, some consumers may seek to hold the retailer accountable even when the retailer was not responsible for the improper use of the fuel. Once again, defending such claims is expensive.

H.R. 4345 addresses this challenge directly. It requires the EPA to issue misfueling regulations whenever the agency approves a fuel for only a subset of engines. EPA has already taken such steps with regards to E15 and has issued regulations requiring E15 retailers to affix a specific label to their dispensers to inform consumers of the authorized and prohibited uses of the fuel. In addition, certain inventory management procedures are required.

H.R. 4345 provides that neither a retailer, nor a retailer's supplier, can be held responsible for violating the Clean Air Act in the event a self-service customer introduces a registered fuel into an engine for which that fuel has not been approved provided the retailer complies with the Agency's misfueling regulations.

H.R. 4345 also addresses another potential liability associated with an engine warranty. The EPA decision to approve E15 for 2001 and newer vehicles is not consistent with the terms of most warranty policies issued with these affected vehicles. Consequently, while using E15 in a 2009 vehicle might be lawful under the Clean Air Act, it may in fact void the warranty of the consumer's vehicle. Retailers have no mechanism for ensuring that consumers abide by their vehicle warranties – it is the consumer's responsibility to comply with the terms of their contract with their vehicle manufacturer. Therefore, H.R. 4345 stipulates that no person shall be held liable in the event a self-service customer introduces a fuel into their vehicle that is not covered by their vehicle warranty. The notable exception also applies here – the retailer can be held liable if they fail to comply with the misfueling regulations issued by the EPA or if they are otherwise negligent.

H.R. 4345 does not stipulate what constitutes an appropriate misfueling regulation, and the retail community is prepared to comply with whatever is mandated. The current regulations affecting E15 include labeling and inventory management provisions. If EPA requires a certain fuel be sold from a locked cage, retailers who wish to sell that fuel will comply. We simply need some legal certainty with respect to our business operations. If we abide by the rules, we should be protected from liability.

General Liability Exposure

Finally, there are widespread concerns throughout the retail community and with our product suppliers that the rules of the game may change and we could be left exposed to significant liability. For example, E15 is approved only for certain engines and its use in other engines is prohibited by the EPA due to associated emissions and performance issues.

What if E15 does indeed cause problems in non-approved engines or even in approved engines? What if in the future the product is determined defective, the rules are changed and E15 is no longer approved for use in commerce?

There is significant concern that such a change in the law would be retroactively applied to anyone who manufactured, distributed, blended or sold the product in question.

Retailers are understandably hesitant to enter new fuel markets without some assurance that their compliance with the law today will protect them from retroactive liability should the law change in the future. It seems reasonable that law abiding citizens should not be held accountable if the law changes in the future. And that is what H.R. 4345 does. It helps overcome significant resistance to new fuels by providing assurances that market participants will only be held to account for the laws as they exist at the time and not subject to liability for violating a future law or regulation. If the rules change, retailers will adjust and comply, but they cannot be expected to comply with laws that do not yet exist.

CAFE AND RFS COMPATIBILITY

In addition to legal and logistical issues impeding new fuels' entry to the market, proposed fuel economy standards might unintentionally impede our retailers' ability to comply with other EPA regulations. In particular, there is concern that the proposed standards may render it extremely difficult and expensive to satisfy the requirements of the RFS.

As indicated, under the RFS, a minimum of 36 billion gallons of qualified renewable fuels must be integrated into the motor fuels supply by 2022. This objective was expected to represent approximately 21-25% of the overall gasoline market. However, the proposed CAFE revisions could dramatically reduce the amount of motor fuel consumed in 2022 and beyond, creating a situation in which renewable fuels will be required to represent a significantly greater share of the market than originally anticipated.

NACS and SIGMA support efforts to enhance the nation's energy security, and do not oppose improving the fuel efficiency of the nation's vehicle fleet. However, we are concerned that the policies being enacted and proposed are not being effectively coordinated. The proposed CAFE standards will serve to exacerbate the difficulties associated with implementing the RFS, and make H.R. 4345 even more crucial to reaching our objectives with regards to alternative fuels.

Improved efficiency, enhanced sustainability, national energy security, and economic growth are not mutually exclusive goals. However, if they are not pursued in a strategic, coordinated effort, they can lead to unintended consequences that can derail progress towards all of the objectives.

SUPPLY

Contrary to popular misconception, fuel marketers prefer cheap gasoline. The less the consumer pays at the pump, the more money the consumer has to spend in our stores, where our profit margins are significantly greater. Additionally, high prices at the pump tend to weaken America's macro-economic standing, which harms our industry just as it does most other sectors of the economy. But like our customers, we are beholden to world oil markets and associated price fluctuations. Along those lines, I want to share with you our industry's views on how Congress can help create a reliable, steady supply of fuel so that prices remain as low and stable as possible.

For instance, the Keystone XL pipeline would deliver much-needed access to crude oil supplies from neighboring, friendly nations. We support swift action on the pipeline. With the uncertainty surrounding the Middle East region, approving this pipeline is the right energy policy for America. Canada is already our largest supplier of imported oil, responsible for 25% of our oil imports. With the proposed pipeline, that would reach 4 million barrels a day by 2020, twice what we currently import from the Persian Gulf.

Keep in mind that we are not refiners and we are not manufacturers. We do not support Keystone because it will lead to more direct profits for our businesses through oil sands

development or related refinery projects. Instead, we recognize the benefit this pipeline can have on our industry and the economy in general. This means a more reliable domestic supply of motor fuel, which leads to lower, more stable prices and an enhanced business environment for fuel marketers and our customers.

Another way Congress can help lower the price of gasoline is by ensuring regulators understand the impact their actions will have on prices at the pump. For example, EPA has publicly announced plans to have a final rule on Tier 3 gasoline standards, dramatically lowering the sulfur content in gasoline, completed by the end of this year. The Agency maintains these changes are needed to improve fuel economy and air quality, though I fear that regulators are not adequately considering the costs and consequences such regulations entail. Not only will the price at the pump go up due to higher fuel manufacturing costs, but product imports will inevitably increase, which is in no one's interests – except perhaps OPEC countries.

Of course, if the purported benefits of Tier 3 and other regulations in fact outweigh the costs, we would support them. NACS' and SIGMA's members do not believe they do. Again, we have not reached this conclusion because these regulations will have a *direct* impact on us – we do not manufacture gasoline so there are no direct costs on us. However, we recognize the cumulative impact these actions have on the markets in which we operate. I was happy to see that the House's recent passage of the Domestic Energy Jobs Act included language drafted by Chairman Whitfield requiring an interagency committee to conduct a cumulative analysis of the impact that certain EPA rules—including Tier 3—would have on the price of gasoline. That legislation would delay implementation of such rules until Congress had a chance to study the analysis.

This makes sense to me. Before we begin implementing potentially harmful regulations in this fragile economy, Congress should ensure that everyone understands what the consequences of EPA's regulations will be.

CONCLUSION

If Congress is serious about new and alternative fuels energy entering the marketplace, it must take action to lower the cost of entry and remove the threat of unreasonable liability. Only then will more retailers be willing to take a risk and offer a new renewable fuel. By lowering the barriers to entry, Congress will give the market an opportunity to express its will and allow retailers to offer consumers more choice. This is what retailers want – consumer choice. If consumers reject the new fuel, the retailer can reverse the decision without sacrificing a significant investment, but new fuels will be given a better opportunity to successfully penetrate the market.

The nation's fuel retailers are ready to assist Congress in its consideration of policies that will promote a stable and efficient market for transportation fuels.

I hope my comments have been constructive. I thank you for the opportunity to testify today and I look forward to answering any questions you may have.