

**STATEMENT OF
GREGORY M. SCOTT
COUNSEL
NATIONAL ASSOCIATION OF CONVENIENCE STORES
AND
SOCIETY OF INDEPENDENT GASOLINE MARKETERS OF AMERICA
AT THE EPA PUBLIC HEARING ON
THE RENEWABLE FUEL STANDARD PROGRAM PROPOSED RULE
Friday, October 13, 2006
Chicago, Illinois**

Good morning. My name is Greg Scott. I appear at this hearing today as counsel to the National Association of Convenience Stores (“NACS”) and the Society of Independent Gasoline Marketers of America (“SIGMA”). I ask that my written statement be made part of the official record of this hearing.

NACS is an international trade association comprised of more than 2,200 retail member companies operating more than 100,000 stores. The convenience store industry as a whole sold 143.5 billion gallons of motor fuel in 2005 and employs 1.5 million workers across the nation.

SIGMA is an association of more than 240 independent motor fuel marketers operating in all 50 states. Last year, SIGMA members sold more than 58 billion gallons of motor fuel, representing more than 30 percent of all motor fuels sold in the United States in 2005. SIGMA members supply more than 35,000 retail outlets across the nation and employ more than 350,000 workers nationwide.

Together, NACS and SIGMA members sell approximately eighty per cent of the gasoline and diesel fuel purchased by consumers across the nation each year. The vast majority of the renewable fuels mandated under the Renewable Fuel Standard (“RFS”) of the “Energy Policy Act of 2005” (“EPAAct”) will be sold to consumers through our wholesale and retail outlets. The smooth and rational implementation of the RFS is of paramount importance to the nation’s motor fuel marketers.

The vast majority of our members are not “obligated parties” under EPAAct and thus we are not required to use renewable fuels in the gasoline and diesel fuel sold at our outlets. However, most of our fuel suppliers are obligated parties under EPAAct and thus will be blending renewable fuels into the gasoline and diesel fuel they sell to NACS and SIGMA members.

NACS and SIGMA will be filing detailed written comments on the proposed RFS regulations. At this hearing, I will concentrate on highlighting briefly aspects of the RFS proposal of particular interest to marketers – aspects of the proposal we support and aspects we do not support.

NACS and SIGMA did not support the adoption of the RFS in EPAAct. Philosophically, motor fuel marketers are opposed to government mandates on fuel composition, whether the mandate is for renewable fuels or for oxygenates in gasoline. Our position does not reflect hostility towards renewable fuels. In fact, independent motor fuel marketers have been among the largest users of ethanol and biodiesel for decades. Rather, our position stems from the significant doubt that the government’s judgment is superior to the markets’.

As an initial matter, NACS and SIGMA are concerned that EPA has not addressed some important issues in the proposal because the agency has concluded that renewable fuel use will outpace the RFS mandate over the next several years. As a result of this potentially short-sighted

conclusion, EPA has sidestepped issues, such as potential hoarding of Renewable Identification Numbers (“RINs”) and the potential need to state RFS waivers in the proposal.

We agree with EPA that, for the next several years, renewable fuel use likely will outpace the RFS mandate levels. However, we also are aware that renewable fuel advocates already are agitating for significant statutory increases in the RFS mandate levels – perhaps to levels two to three times the current RFS and perhaps as soon as next year’s farm bill. While it currently may be reasonable for EPA to conclude that there will be little or no economic incentive to hoard RINs or for one obligated party to attempt to disadvantage competitively another obligated party through withholding excess RINs under the current RFS, circumstances may change in the near future. If RFS mandate levels are increased dramatically sometime in the near future, and renewable fuel demand outstrips supply, then EPA’s current proposal will be exposed as inadequate to protect consumers and the marketplace.

Given that the regulatory constructs that EPA has proposed likely will be the foundation for the RFS program into the future, including potentially a significantly expanded RFS mandate, NACS and SIGMA urge EPA to re-examine the proposal with an eye toward such future events. We are certain that several aspects of the proposal that EPA virtually ignored would become more important through this new perspective.

In general, NACS and SIGMA found the RFS proposal consistent with EPA’s statutory language. We have the following specific comments on provisions within the proposal.

- **Scope of Obligated Parties** – We agree with EPA that “blenders” of products to produce gasoline or diesel fuel are “obligated parties” under the RFS, while “oxygenate blenders” or parties that only add ethanol to gasoline or biodiesel to diesel fuel in small quantities are not obligated parties. The terms “blender” and “oxygenate blender” are defined separately in EPA’s fuels regulations and it was not Congress’ intent to include “oxygenate blenders” within the scope of obligated parties under the RFS.

- **Differentiating Between Parties** – Throughout the preamble to the proposal, EPA appears to use the terms “blender” and “oxygenate blender” interchangeably, or at least in ways that could lead to confusion among regulated parties. NACS and SIGMA suggest that, in the final rule, EPA pay particular attention to distinguishing between these two terms to avoid confusion or misinterpretation when the RFS program is implemented. In addition, we urge EPA to clarify that a party that blends biodiesel into diesel fuel is not considered a “blender” and thus an obligated party under the RFS.
- **“RIN-Stripping”** – NACS and SIGMA previously have voiced concerns to EPA regarding the portion of the RFS proposal that permits an obligated party to strip the RINs from a batch of renewable fuel prior to the blending of the physical gallon of renewable fuel into gasoline or diesel fuel. We renew those concerns today. We urge EPA to adopt a final rule that prohibits any party from stripping away RINs until the renewable fuel is blended into motor fuel. EPA’s current proposal may give rise to RIN hoarding, fraud, and confusion as renewable fuels with and without RINs circulate through the motor fuel distribution system. Contrary to the assertions in the preamble to the proposal, our suggestion would not complicate enforcement of the RFS program. A similar system has been in place for over a decade with respect to reformulated gasoline oxygenate credits, and this system could be adapted for the RFS program.
- **“Excess” Equivalent RIN Values for Renewable Fuel Producers** – NACS and SIGMA oppose that portion of the RFS proposal which would allow renewable fuel producers to retain that portion of a RIN that exceeds 1.0 RIN per gallon. This proposal violates the fundamental concept that renewable fuel producers not be permitted to strip and potentially hoard RINs. This concept was an important part of the discussions NACS and SIGMA had with EPA during the agency’s stakeholder interaction while the proposal was being drafted. At no time during those stakeholder discussions was this concept raised, except to state that renewable fuel producers would not be permitted to strip RINs from physical gallons of renewable fuels. Renewable fuel producers have a vested economic interest in increasing demand for renewable fuels. If these producers withhold these “excess” equivalent value RINs from the banking and trading marketplace, it will lead inevitably to increased demand for renewable fuel. NACS and SIGMA strongly urge EPA to drop this provision from the final rule and uphold the concept that renewable fuel producers should not be afforded the opportunity to distort the marketplace for renewable fuels and RINs.
- **Restrict RIN Trading** – NACS and SIGMA do not support EPA’s proposal to permit any party to trade RINs. We request that RIN trading be restricted to obligated parties and parties that gain ownership of RINs through blending physical gallons of renewable fuels into gasoline and diesel fuel. Again, renewable fuel producers should be restricted from owning RINs because they have an economic interest in increasing demand for their products and could withhold RINs from the market. In addition, permitting any party to trade RINs will lead undoubtedly to speculation in RINs by parties outside of the motor fuel production and distribution system, potentially increasing RIN costs and, as a result, motor fuel costs to consumers.

- **Small Refinery and Small Refiner Exemption** – NACS and SIGMA support those portions of the proposal that would exempt both small refineries and small refiners from the RFS mandate for several years, unless the refiner or refinery elects to join the program voluntarily. It follows from these proposed exemptions that the gasoline output from these exempted parties should be excluded from the overall calculation of national gasoline production. The inclusion of small refiners in this exemption is a reasonable exercise of regulatory interpretation by EPA and we urge EPA to finalize this portion of the proposal as published.
- **“RIN-Less” PTDs** – EPA asked for comments on whether product transfer documents (“PTDs”) for batches of renewable fuel from which the RINs have been stripped should note that fact affirmatively. NACS and SIGMA support this idea and urge EPA to adopt such a requirement as part of the final rule. A requirement that the absence of RINs with a batch of renewable fuel be noted on the batch’s PTDs will avoid confusion, fraud, and unintentional mistakes. The addition of this requirement will alert each party in the renewable fuels distribution chain of the exact “RIN status” of each batch of renewable fuel.

NACS and SIGMA have one final comment before closing this statement. Congress enacted the RFS as a national program to promote the use of renewable fuels. EPA is taking a significant step toward this congressional goal through this RFS proposal. However, Congress’ intent, and EPA’s, for a nationwide RFS is being undermined by state governments that are adopting state renewable fuel mandates. NACS and SIGMA urge EPA to defend the very national RFS program it is seeking to implement through this proposal by seeking federal restrictions on state boutique renewable fuel mandates. Without such restrictions, there is no assurance that the flexibility that Congress built into the RFS, and the flexibility that EPA is attempting to build into the regulations implementing the RFS, will not be destroyed by a patchwork of additional state boutique fuel mandates.

Thank you for the opportunity to present this statement. If this statement has raised questions, I would be pleased to attempt to answer them.