



June 12, 2017

The Honorable John A. Barrasso  
Chairman  
Environment and Public Works Committee  
410 Dirksen Senate Office Building  
Washington, D.C. 20510

The Honorable Tom R. Carper  
Ranking Member  
Environment and Public Works Committee  
456 Dirksen Senate Office Building  
Washington, D.C. 20510

Dear Chairman Barrasso and Ranking Member Carper,

On behalf of the National Association of Convenience Stores (“NACS”) I wish to express support for S. 517: the Consumer Fuel and Retailer Choice Act.<sup>1</sup>

NACS’ members aim to sell lawful products that the public wants to purchase in a lawful manner, including E15. The association’s members represent approximately 80 percent of the retail sales of motor fuel in the U.S. As such, NACS members have significant experience with E15 sales.

Currently, the lack of a 1 pound waiver for E15 has created market obstacles, which limit and complicate the sale of a product that is otherwise legally available for sale nine months out of the year. By removing this market impediment, S. 517, would facilitate the sale of E15. In addition, removing the obstacle preventing the sale of this product for all 12 months of the year would minimize consumer confusion about this product. For these reasons, NACS supports S. 517.

Related to the sale of E15 – as well as all other motor fuel products – is the matter of retailer liability for the misfueling of vehicles by consumers. Misfueling occurs when the wrong type of fuel is put into a vehicle, and may occur for many reasons, including retailer or consumer error.

Retailers must comply with strict fuel labeling requirements to prevent consumer misfueling. Yet, even if a retailer properly labels his or her fuel dispensing equipment, consumers may still put the wrong fuel in their vehicles. A consumer’s misfueling of his or her vehicle should never, however, be attributed to any failure on the part of a retailer who has properly adhered to all labeling requirements related to the dispensing of fuels. It is essential the law make clear that if a retailer complies with all applicable labeling requirements, then a consumer’s misfueling of his or her vehicle cannot result in liability for the retailer.<sup>2</sup> Of course, if

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<sup>1</sup> NACS is an international trade association representing the convenience store industry with more than 2,100 retail and 1,600 supplier companies as members, the majority of whom are based in the United States.

<sup>2</sup> Today, retailers may be held liable for a consumer’s misfueling of his or her vehicle. *See e.g.*, 42 U.S.C. 7604 (citizen suits), 42 U.S.C. 7545 (regulation of fuels), 42 U.S.C. 7524 (civil penalties); *see* 40 C.F.R. 80.1504; *see also* EPA, Final Rule, Regulation to Mitigate the Misfueling of Vehicles and Engines with Gasoline Containing Greater Than Ten Volume Percent Ethanol and Modifications to the Reformulated and Conventional Gasoline Programs, 76 Fed. Reg. 44406 (July 25, 2011).

a retailer's employee misfuels a consumer's vehicle or if a retailer does not comply with all applicable labeling requirements, the liability may be assessed against that retailer.

NACS appreciates this opportunity to provide comments on S. 517 and retailer liability for a consumer's misfueling. Please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in blue ink that reads "Paige Anderson". The signature is written in a cursive style with a long horizontal flourish at the end.

Paige Anderson  
Director of Government Relations