

Statement of

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On Behalf of the

National Association of Convenience Stores (NACS)

And the

Society of Independent Gasoline Marketers of America (SIGMA)

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**“The 2017 Hurricane Season: A Review of Emergency Response and
Energy Infrastructure Recovery Efforts”**

I. SUMMARY OF TESTIMONY

1. The 2017 hurricane season significantly damaged the U.S. fuels infrastructure. Notwithstanding this damage, the Federal and state governments' timely action with regard to fuel, transportation, and other emergency waivers ensured that the retail fuel market had a continuous source of supply, benefitting American consumers.
2. In addition, the unique and effective collaboration between state governments and the private sector in Florida and Texas mitigated the damage inflicted and enabled the market to respond swiftly and nimbly to the natural disasters.

II. INTRODUCTION

Chairman Upton, Ranking Member Rush, and members of the Subcommittee, thank you for the opportunity to testify today on the retail fuels community's recent hurricane disaster response efforts. My name is Max McBrayer, and I am the Chief Supply Officer and the Chief Financial Officer of RaceTrac Petroleum, Inc. ("RaceTrac").

I am testifying today on behalf of the National Association of Convenience Stores ("NACS")¹ and the Society of Independent Gasoline Marketers of America ("SIGMA").² Members of NACS and SIGMA, including RaceTrac, account for approximately 80 percent of retail motor fuels sales in the United States.

The 2017 hurricane season was a historic multi-part weather event that tested the nation's fuel infrastructure to a degree previously unseen. Yet, it was also a moment of triumph for cooperation between the government and the private sector. In response to the situation surrounding Hurricanes Harvey, Irma, Maria, and Nate, the Federal government along with state governments expeditiously issued over 60 various fuel, hours of service, Jones Act, and Supplemental Nutrition Assistance Program waivers that enabled the marketplace to respond more quickly to the natural disaster. But the government did not act in a vacuum. The governments of Florida and Texas both opened effective direct lines of communication with the private sector, which enabled a degree of robust real-time collaboration never before seen.³ This communication and collaboration permitted the market to address concerns swiftly as they arose

¹ NACS is an international trade association representing the convenience store industry with more than 2,200 retail and 1,600 supplier companies as members, the majority of whom are based in the United States.

² SIGMA represents a diverse membership of approximately 260 independent chain retailers and marketers of motor fuel.

³ Other state governments assisted with the response efforts by waiving hours of service requirements for truckers transporting supplies to the affected areas.

and thereby lessened the harm from the hurricanes. My testimony addresses all of these points in greater detail below.

A. BACKGROUND ON THE FUEL RETAILING AND CONVENIENCE INDUSTRY

In 2016, the fuel wholesaling and convenience industry employed more than 2.3 million workers and generated \$549.9 billion in total sales, representing approximately 3 percent of U.S. Gross Domestic Product. Of those sales, approximately \$317 billion came from fuel sales alone. Because of the number of fuel and other transactions in which the industry engages, fuel retailers and marketers handle approximately one of every 30 dollars spent in the United States. Fuel retailers serve about 160 million people per day—around half of the U.S. population—and the industry processes over 73 billion payment transactions per year. Nevertheless, the convenience store and fuel retail industry is truly an industry of small businesses. Approximately 63 percent of convenience store owners operate a single store.

The fuel wholesaling and convenience store market is one of the most competitive in the United States. Fuel retailers operate on tiny margins (around 2 percent or less) and are unable to absorb incremental cost increases without passing them on to consumers. Today, there are approximately 150,000 retail fueling facilities throughout the nation, and less than 5 percent are owned and operated by the integrated oil companies. The majority are owned by independent companies, whether single-store operators or regional chains, and each of these businesses have different approaches to how they buy and sell fuel.

B. ABOUT RACETRAC

Headquartered in Atlanta, Georgia, family-owned RaceTrac has been serving guests since 1934 and now operates more than 450 convenience store locations and employs nearly 9,000 team members. Every day, RaceTrac operates under its mission to “make people’s lives simpler and more enjoyable”—and for that reason, the company has been named a top workplace across many of the states in which it operates, and has been recognized on the Forbes list of largest private companies every year since 1998. In fact, in 2014, Convenience Store Decisions named RaceTrac as its “Chain of the Year.”

RaceTrac Petroleum, Inc. is composed of two operating retail divisions: RaceTrac and RaceWay, and a mix of subsidiaries. RaceTrac operates more than 450 RaceTrac retail fuel and convenience stores across four southern states: Georgia, Florida, Louisiana, and Texas; and also owns 250 contract-operated RaceWay retail fuel and convenience stores in 12 states (Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia). Energy Dispatch, the transportation company that hauls fuel for RaceTrac, endeavors to provide the best-in-class fuel hauling services for RaceTrac and RaceWay. Metroplex Energy is a wholesale fuel supplying company that secures bulk fuel to supply RaceTrac and RaceWay stores and other third-party companies by rail, pipeline, truck, barge and vessel.

Due to RaceTrac's presence in 12 states, we play an important role in providing fuel to consumers in different markets—and we are fully aware of the many statutory, regulatory, logistical, and other factors that affect different fuel markets. Each day, we must ensure that our stores remain stocked with the fuels that meet the required federal and state specifications of a particular market. In addition, because we operate throughout the Gulf Coast and along the Southeastern United States,⁴ we are very attuned to the weather risks and logistical impediments that may impact our ability to supply our retail locations—and were directly affected by the 2017 hurricane season. As described in more detail below, we learned from that most recent experience that effective public-private sector collaboration is essential to ensuring the successful functioning of the retail fuels market during a natural disaster.

III. U.S. FUEL MARKET INFRASTRUCTURE & HURRICANES

Fuel industry infrastructure spans across the country, making up a complex system of interconnected refineries, blenders, pipelines, terminals, transporters, and retailers. As with other supply chains, disruption in even one area can cause a ripple effect to spread throughout the entire industry. During natural disasters, those effects are often more dramatic, as disruption may occur across more than one part of the supply chain. The hurricanes of the past summer wrought harm to much of the fuel supply chain, from manufacture to retail.

In late August, Hurricane Harvey made landfall in Texas, ultimately dumping more than 50 inches of rain on affected areas and setting the record for the most rainfall ever recorded in the continental U.S. from one storm.⁵ The rain and winds adversely affected the ability of fuel retailers to operate—both in terms of acquiring necessary fuel supply and delivering that fuel out to customers. More damaging, however, was the severe flooding, which was severely detrimental to the fuels infrastructure. Many fuel dispensers ended up underwater and out-of-service and the flooding crippled the fuels market from the point of manufacture, immediately shutting down about 10 out of the 141 U.S. refineries—and ultimately damaging about 48 total refineries—meaning that more than one-third of the nation's refining capacity was harmed by the hurricane. The effects of refinery closures, as well as pipeline closures,⁶ spread across the country and up the Eastern seaboard, resulting in limited fuel supply and causing fuel prices to rise sharply.

⁴ For example, Florida is home to more than 200 RaceTrac stores and more than 40 RaceWay locations (this number can vary as new stores open, but as of the date of this testimony, there are around 250 total in the state); Texas is home to more than 110 RaceTrac stores and 50 RaceWay locations (again, numbers can vary, but there are around 160 stores in Texas).

⁵ Erin Brodwin and Skye Gould, Rains from Hurricane Harvey Broke 60 Years of U.S. Continental Records - Here's Why, *BUS. INSIDER* (Aug. 29, 2017), www.businessinsider.com/harvey-rain-rainfall-break-record-2017-8.

⁶ Colonial Pipeline Co, which transports product from Texas to the Eastern seaboard, and Explorer Pipeline, which transports product from Texas north to the Midwest, both closed temporarily due to effects from Hurricane Harvey. Other pipelines affected included certain Magellan Midstream and Kinder Morgan pipelines.

See Catherine Ngai, Key Fuel Lines Restart as Concerns Ease over Supply Crunch after Harvey, *REUTERS* (Sept. 3, 2017), <https://www.reuters.com/article/us-storm-harvey-energy/key-fuel-lines-restart-as-concerns-ease-over-supply-crunch-after-harvey-idUSKCN1BE0I0>; *see also* Kenneth Rapoza, Here's How Many Barrels of Oil Have Been Lost

As refineries and pipelines slowly began to re-open after the damage wrought by Hurricane Harvey, Hurricane Irma headed towards Florida where state and local officials issued mandatory evacuation orders, leading to increased demand for fuel in anticipation of the storm. Florida does not receive fuel via pipeline—its markets rely on trucks, tankers, and barges. Prices in Florida already had begun to rise in the state due to disruptions in the overall U.S. fuel supply chains resulting from Hurricane Harvey. The subsequent diversion of land and sea traffic due to Hurricane Irma, as well as the significant wind damage created once the storm made landfall, further affected the Florida fuels market and caused prices to rise even higher; in some places, prices increased by up to \$0.40/gallon. The fuels market was further battered by Hurricanes Maria and Nate, which dealt blows to Puerto Rico and oil production in the Gulf of Mexico, respectively.

On a normal day, prices fluctuate in the retail fuels market. This is because the fuel commodities market is one of the most competitive commodities markets in the nation. In fact, margins on fuel sales often fluctuate between 2¢ - 20¢ and retailers must constantly react to changes in supply and demand to ensure that their prices remain competitive; the price on the sign is often the sole factor driving consumers' decisions about where to buy fuel. In a rapidly escalating wholesale market, retail market prices generally reflect the increase in the wholesale price. Retailers generally attempt to generate sufficient revenues to cover the costs of replacing the inventory which they have just sold. This phenomenon is most noticeable in markets where wholesale prices are escalating rapidly.

Price fluctuations during emergencies are unavoidable. During any severe weather event or catastrophe, including a hurricane, wholesale fuel prices become more volatile as the market tries to assess and anticipate supply availability and as access to wholesale product may become restricted. When these unwelcome changes occur, retailers respond to meet their costs (often at a fairly quick rate). With the effects of refinery and pipeline closures due to Hurricane Harvey impacting the market, supply during Hurricane Irma was limited, putting dramatically increased pricing pressure on fuel retailers, who then made individual decisions on whether to increase prices and risk losing consumers, or potentially take losses by keeping prices low (and not covering their increased wholesale replacement costs). It is also important to note that the supply concerns arising during the autumn hurricane season are always exacerbated by the transition from summertime to wintertime fuel that occurs on September 15th. This is because in the weeks leading up to the transition (and during the middle of the most active part of the hurricane season), everyone is drawing down on inventories at exactly the time when we need product in place. In other words, inventories of product that is usable through September 15th are being drawn down to minimums at the same time the inventories of product for use after September 15th are being built.

Seeking to mitigate the infrastructure impediments and the resulting negative market effects of the hurricanes, both the Federal government and state governments worked with fuel

to Hurricane Harvey, FORBES (Aug. 28, 2017), <https://www.forbes.com/sites/kenrapoza/2017/08/28/heres-how-many-barrels-of-oil-have-been-lost-to-hurricane-harvey/2/#6d8bbe04637c>.

industry stakeholders in an attempt to preempt negative effects of the storms, as well as deal effectively with the aftermath

IV. HURRICANE RESPONSE EFFORTS

The clear communication between state governments and the private sector and the timely response efforts of the Federal government were essential to our ability to effectively respond to the disaster.

A. STATE EFFORTS

State-level communication and coordination initiatives were critically important to fuel retailers' hurricane preparation and recovery efforts, and helped minimize service disruptions caused by Harvey and Irma. In Texas, Governor Greg Abbott's team held conference calls with the local state associations, including the Texas Food and Fuel Association, local retailers, and emergency responders—and the state was instrumental in petitioning the Environmental Protection Agency for fuel waivers to address supply concerns. Florida Governor Rick Scott and his administration deserve special recognition for their close engagement with a wide range of stakeholders in the fuel supply system during Hurricane Irma. Governor Scott led daily (and sometimes twice-daily) conference calls that included federal disaster response officials, convenience and fuel retailers (including NACS, the Florida Petroleum Marketers Association, and individual companies including RaceTrac), oil companies, terminal operators, and other segments of the supply chain before, during, and after the storm. The governor's office listened closely to industry concerns and rendered prompt assistance. For example, to help retail locations stay open as long as possible, the governor arranged for state police to help employees who stayed on the job until the last minute get to evacuation centers with their families.

Working with federal and local officials, the governor's office also rescinded weight and driver restrictions for highways, helped ensure that ports prioritized fuel shipments, and coordinated police and military escorts for fuel trucks and ships, easing the movement of product from tankers and barges, through ports and terminals, to retail fuel locations, and ultimately consumers' gas tanks. In addition, the state governments requested the fuel waivers that are discussed in further detail below. These are just a few examples of exemplary state-level actions highlighting the importance of real-time communication and cooperation between multiple levels of government and the fuel industry to ensure supply stability during a natural disaster.

B. FEDERAL EFFORTS

At the Federal level, disaster response efforts spanned a number of departments and agencies, including the Environmental Protection Agency (EPA), the Federal Motor Carrier Safety Administration (FMCSA), the Federal Energy Regulatory Commission (FERC), the Internal Revenue Service (IRS), the Department of Homeland Security (DHS), and the U.S. Department of Agriculture (USDA).⁷ Between the end of August, as Hurricane Harvey bore

⁷ The focus of this testimony is on the fuel supply chain, but the prompt efforts of USDA to provide emergency Supplemental Nutrition Assistance Program (SNAP) benefits and waive SNAP hot foods restrictions was critical to making sure hurricane victims had access to food.

down on Texas and Louisiana, to the end of September and even into October as Hurricanes Maria and Nate affected the Eastern U.S. coast, Federal agencies responded to state petitions and expeditiously issued more than 30 waivers in an effort to respond to fuel supply issues and prevent future problems.⁸

Of particular importance to RaceTrac were FMCSA's regional emergency declarations, which waived hours of service limitations and certain fee requirements for drivers providing direct assistance to states affected by the disasters. In a time of emergency, these waivers allowed drivers to quickly and efficiently travel through surrounding states to gain access to affected areas, enhancing supply lines and allowing vital goods, including fuel, to get to those in need. For RaceTrac, these waivers were the difference between getting fuel to our customers in a reasonably affordable and timely manner, and not being able to supply members of our communities with the fuel they needed.

Aside from improving transportation of goods during the emergencies, Federal agencies also eased restrictions on the type of product that could be sold by retailers.⁹ This is significant because the U.S. fuels market is characterized by "boutique" fuels, the natural result of states and municipalities implementing diverse fuel specifications for different geographic areas in order to reduce emissions and otherwise meet weather/seasonal needs. This means not all fuel is fungible: certain types of fuels can be used in some parts of the country but not in others—so when there are supply constraints, it can quickly become difficult for retailers to find market compliant fuel to sell. Thus, the fuel waivers issued by EPA, which relaxed fuel specification requirements in an assortment of geographical areas, were extremely important because they enhanced fuel fungibility and facilitated the speedy acquisition of fuel. For example, to "minimize or prevent the disruption of an adequate supply of gasoline," EPA waived certain reformulated gasoline requirements (RFG). In addition, EPA temporarily eliminated restrictions on the use of gasoline that contains 15 percent ethanol (*i.e.*, E15),¹⁰ effectively ending the summer ban and allowing the sale of E15 in 38 states and the District of Columbia.¹¹

EPA's timely response to market conditions led to the issuance of these and many necessary fuel waivers that were critical in helping fuel retailers, particularly small independent operators, to get product out to consumers and thereby lessening the impact of these natural disasters. In short, for many fuel retailers, these waivers were vital to ensuring they could keep their retail fuel locations "wet" (*i.e.*, supplied with fuel). Given RaceTrac's sophistication with regard to its fuel supply, however, EPA's fuel waivers were less significant to the day-to-day

⁸ For a compilation of federal and state waivers, *see* SIGMA, Hurricane Waivers and Resources, <https://www.sigma.org/hurricane-harvey>.

⁹ For example, recognizing the existence (or beginnings of) diesel fuel shortages, the IRS waived penalties related to the use of certain types of diesel fuel on highways.

¹⁰ Generally, fuel retailers are not allowed to sell E15 during the summer months, as it is considered too volatile and has less favorable emission characteristics.

¹¹ *See e.g.*, August 31, 2017 Waiver, <https://www.epa.gov/sites/production/files/2017-08/documents/secondmultistate083117.pdf>.

running of our business during the hurricane than were FMCSA's and various states' hours of service waivers. Nevertheless, the importance of the fuel waivers for the marketplace cannot be understated.

DHS also tried to boost the fuel industry supply chains when it waived the Jones Act¹²— a law requiring goods shipped in the U.S. to be carried aboard U.S. vessels.¹³ This waiver was designed to enable fuel to reach areas in need more quickly, regardless of the vessel transporting it. This was particularly important in Florida, which is not supplied by pipeline, and receives the majority of its fuel by ship or truck.

C. SUCCESSES, LESSONS LEARNED, GOALS FOR THE FUTURE

The many successes of the 2017 hurricane response efforts stand in stark contrast to what occurred during Hurricanes Katrina and Rita in 2005, when fuel supply and distribution disruptions led to chaos in the marketplace. This is all the more remarkable since the 2017 hurricane season had a more substantial and sustained impact on U.S. refining capacity and the two major pipelines (Explorer and Colonial) compared to the 2005 hurricane season.¹⁴ In short, despite the major disruptions to the fuel distribution system after Hurricanes Harvey and Irma, the impact on consumers and the economy were significantly less than in 2005 because the government behaved much differently.

In the chaos after Katrina, the government confiscated or commandeered distribution equipment to respond to the emergency; in this instance, the public and private sector worked together to respond to the crisis. From this experience, we have learned that communication and collaboration are the keys to success. In preparation for a major weather event, it is important for government to have a “response checklist” of what needs to happen when, share that checklist with the private sector, and coordinate with the private sector to expand and effectuate that checklist. For example, rather than telling industry what to do, the Governors of Texas and Florida conducted regular communications with industry via open telephone conferences to troubleshoot issues.¹⁵ They asked the private sector what to do and when; and there was real-time

¹² The first Jones Act waiver was issued on September 8, 2017, https://www.dhs.gov/sites/default/files/publications/17_0908_AS1_Jones-Act-Waiver.pdf.

¹³ The Jones Act prohibits the transportation of cargo between points in the U.S., either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel that has a coastwise endorsement (e.g. a vessel that is built in and owned by persons who are citizens of the United States). *See* 46 U.S.C 55102, stating “a vessel may not provide any part of the transportation of merchandise by water, or by land and water, between points in the United States to which the coastwise laws apply, either directly or via a foreign port” unless the vessel was built in and documented under the laws of the United States and is wholly owned by persons who are citizens of the United States.

¹⁴ Rita and Katrina Have Shut 23 Percent of U.S. Oil Refining Capacity (Sept. 22, 2005), NY TIMES online, <http://www.nytimes.com/2005/09/22/business/rita-and-katrina-have-shut-23-percent-of-us-oil-refining-capacity.html>.

¹⁵ The governors opened lines of communication before the disaster struck and maintained those lines of communication during the hurricanes to ensure that the retail community and the government could respond and adapt to the communities' needs.

cooperation to respond to an ever-changing threat landscape. Such cooperation with industry is unique—and it is commendable.

Notwithstanding these successes, there are important lessons to be learned and goals to improve future response efforts. While there were open lines of communication to discuss on-the-ground response before and during the disasters, there was no concerted effort to shape the discourse on social media. As such, panic hit before and immediately after the hurricanes touched down and there was an instantaneous and significant pull on the available fuel supply. However, once people were appropriately informed there would be gasoline available, the market calmed and convenience store supply repositories stabilized. In short, once the government and the private sector was able to break through the social media “noise” and panic, we were able to alleviate anxiety and lessen the stress on the available supply. From this, therefore, I urge governments and the private sector to also plan to coordinate information campaigns to the public prior to weather events to preemptively contain the panic that is prone to ensue.

In addition, bottlenecks at ports and fuel terminals has been a recurring theme this hurricane season, and federal and state governments could do more to help alleviate the problem during future natural disasters. For example, this Committee could consider a legislative solution that would grant truck drivers and other employees critical to fuel delivery some kind of temporary “responder” status that would relax port authority access restrictions to allow non-local truck drivers temporary access to ports in affected areas in emergency situations.

A temporary “responder” designation would also help mitigate a related challenge that RaceTrac and similarly situated companies experienced during the recovery process: in the hurricanes’ aftermath, truck drivers and other employees critical to fuels systems operation found it extremely difficult to get into affected areas promptly. After Harvey, for example, when many of our Houston-based employees were stranded by flooding, we tried to send in employees from other in-state and out-of-state locations. Ultimately, however, those employees were unable to proceed much farther than Dallas, and could not get to the Houston area in a timely fashion. Anything state and federal government agencies can do to remove logistical hurdles for fuel transportation (*e.g.*, special consideration by state law enforcement, port authorities, or federal disaster response officials) would significantly expedite fuel supply recovery efforts in the wake of future hurricanes.

V. CONCLUSION

RaceTrac believes the swift collaboration between the public and private sectors was critical to the successful response to the 2017 hurricane season, and is proud to have been able to successfully serve many communities throughout the Gulf Coast and the Eastern seaboard during this difficult time.

Thank you for the opportunity to testify before you today. I am happy to answer any questions you may have.