NATIONAL GOVERNORS' ASSOCIATION

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Raymond C. Scheppach
Executive Director

Hall of the States
444 North Capitol Street
Washington, D.C. 20001-1512
Telephone (202) 624-5300

Cookie-
Please make
a copy for
Mike Schmidt
& Brian Burke

Date: 9/1/93

FAX

TO: ~~Kathy Way~~
~~Rita Fitzgerald~~

FROM:
- [x] *Margaret Siegel*
- [ ] *Nolan Jones*
- [ ] *Carl Volpe*
- [ ] *Patty Sullivan*
- [ ] *Julie Strawn*
- [ ] *Jackie Hall*

FAX: (202) 624-5313

Total No. of Pages (including cover): 13

NOTES:

If there are any problems receiving this fax, please call Jackie Hall at

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September 1, 1993

MEMORANDUM

TO: Kathi Way
Oleta Fitzgerald

FROM: Margie Siegel

RE: Attached Materials

We are looking forward to meeting with you tomorrow morning in room 331 of the Hall of the States at 10:00 a.m. We thought it would be helpful to give you an advance copy of our current consolidated waiver requests, which are divided up by agencies, and include responses from agencies where we have information. This is, as you know, an evolving document, but is as current as possible.

There are several issues we would like to discuss with you, including:

- The Task Forces, their timing, strategy, plans, and our potential involvement in their work;
- Plans for more meetings and briefings both here and in the states, and your role in coordinating these efforts. We would like to ensure that the states have the best information available regarding future conferences/summits, etc.
- Clarification on the use of previously allocated funds, reimbursement mechanisms, and projections for timing on grant agreements, etc.

Attachment

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
General Assistance/FEMA	Waive the 25% match for the Individual and Family Grant Program.	Requires a change in the Stafford Act.
	Waive the 50% state and local match for the Hazard Mitigation Program .	Requires a change in the Stafford Act.
	Waive the 25% state and local match for the Public Assistance Program	After Hurricane Andrew, Florida received waiver of matching funds after $32.5 million. This "threshold" figure was determined based on a population formula.
	Waive Section 414 of the Stafford Act so that Uniform Relocation Act provisions do not apply when a family is displaced by the disaster.	July 28, Report to the President on the 1993 Inter-Agency Long Range Flood Recovery Assistance states "Section 14 of the Stafford Act will be waived, so that Uniform Relocation Act provisions do not apply when a family is displaced by the disaster."
Housing/HUD	Waiver of environmental review requirements, particularly for historic preservation buildings.	In July 16, 1993 letter to Gov. Thompson, Sec. Cisneros states that this is a statutory requirement and cannot be waived.
	Reduce environmental review comment period for the HOME program from a 30 day to a 15 day period.	Waiver was verbally granted during the Aug. 26-27 HUD conference in Des Moines.
	Waiver of Section 203(b) property valuation limits.	HUD's June 23, 1993 interim rule eliminates the 203(b) limits. HUD will waive the statutory requirement that property values cannot exceed 95% of median area purchase price. (July 16 letter)
	Waiver of Housing Quality Standards.	Waiver granted (July 16 letter)
	Waive definition of first time buyer.	HUD will waive the statutory requirement that persons assisted to purchase homes must be first-time buyers (July 16 letter)
	Clarify procedure regarding use of funds for relocation and buyouts.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Housing/HUD	Waive Davis Bacon wage rate.	Statutory requirement which cannot be waived (July 16 letter)
	Waive relocation requirements, particularly notification.	Statutory requirement which cannot be waivers (July 16 letter).
	Waive match on 1993 and 1994 HOME funds spent.	Match on 1993 funds will be waiived (July 16 letter).
	Waive rental period of affordibility period.	Statutory requirement which cannot be waived (July 16 letter)
	Waive owner period of affordibility period.	Statutory requirement which cannot be waived. However, it applies only to assistance to a first-time home buyer. It does not apply to assistance to an existing homeowner to rehabilitate his property or assist an owner of a mobile home to move his home, rehabilitate or build a permanent foundation for it, or rent/purchase a site (July 16 letter).
	Waive use of mobile homes where owner does not own the site.	No waiver is necessary (July 16 letter).
	Waive HOME tenant based rental assistance for home owners.	No waiver is necessary (July 16 letter).
	Eliminate the 15% set-aside for funding for Community Housing Development Organizations.	July 28, 1993 Report to the President states that "set aside of 15 percent of fund .... be eliminated."
	Simplify income targeting for rental housing to allow eligibility for any family below 80% of median income.	July 28, 1993 Report to the President states that "income targeting for rental housing will be simplified to eliminate deeper targeting below 80 prevent (currently 90 percent of funds must assist families below 60 percent of median and 30 percent of the families in each project must be below 50 percent of median."
	Waive bid process and procurement standards.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Housing/HUD	Allow funds already allocated to be redirected to meet flood needs.	
	Waive citizen participation process requirements.	
	Under the Mortgage Bond Program, allow the following: ■ Rebuilding or rehabilitation ■ Refinancing ■ Waiver of federal income limits, house price limits, and first time home buyer requirements.	States officials were told that a statutory change is necessary.
	Under the Small Cities Development Block Grant program, allow the following: ■ Waiver of environmental review process required for housing rehabilitation ■ Provision of housing assistance based on financial need rather than federal income levels.	
	Expand the definition of "Targeted Areas" currently defined in Section 143(j) of the Federal Tax Code to include any geographical areas that have been declared a Federal or State Disaster Area. Individuals residing in these areas need not be first-time home buyers for the purpose of becoming a "qualified home buyer:" if they wish to relocate away from the declared area.	
	Amend law to approve permanent extension of the Mortgage Revenue Bond Program to allow for a long term commitment to the flood affected areas.	
	Allow Community Service Block Grant Act funds to be used for construction.	
	Provide additional funds for weatherization.	
Transportation/DOT	Waive Emergency Relief program requirement that "heavy maintenance activities" are not eligible for reimbursement.	
	Waive the 15% state by state distribution requirement for the Light Rail Freight Assistance Program prior to October 1 as stated in the Supplemental budget.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Transportation/DOT	Waive some penalties and requirements for motor carriers affected by flooding.	
	Waive some fuel tax interest and penalties as well as audit penalties for affected carriers.	
Labor/DOL	Reimbursement for the benefit charges for employers covered by UC law who incurred unemployment compensation costs.	Sec. 410(a) of the Stafford Act provides for Disaster Unemployment Assistance (DUA) when an individual is not entitled to Unemployment Insurance (UI). The funding source and statute prohibit reimbursement for UI costs. States can enact legislation to non-charge employers for disaster related UI payments.
	Waive the 30 day deadline to apply for Disaster Unemployment Assistance.	20 CFR 625.8(a) provides for a "good cause" waiver on a case-by-case basis after 30 days. DOL has approved "blanket" waivers under the good cause provision for late filling based on state requests and justification.
	Funding to raise the Disaster Unemployment Assistance benefit amount for all those whose weekly benefit rate is below the average $176.	Regulatory change to 20 CFR 625 is needed. Will be considered for future disasters.
	Clarify the starting date of the 26 week Disaster Unemployment Assistance period.	
	Add another 20 weeks to the 26 week Disaster Unemployment Assistance period.	Statutory change is needed. The Disaster Assistance Period (DAP) is established by Sec. 410(a). of the Stafford Act.
	Change the interpretation of the Disaster Unemployment Assistance to allow payments to all family members who work, regardless of marital or student status.	DUA is an unemployment program only covering those not eligible for UI. It is not a needs based program, therefore, not all individuals are eligible.

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Labor/DOL	Suspend work search requirements for Disaster Unemployment Assistance claimants.	DUA is an unemployment program like state unemployment insurance and UI must be paid if individuals are eligible. Therefore, if a state suspends work search for UI, it is suspended for DUA by 20 CFR Part 625.
	Permit the use of disaster dislocated workers in supervised clean-up and repair of private property.	Not allowed. JTPA funded workers may only perform activities that states or local public employees may perform.
	Funds for those ineligible for Unemployment because of lack of base earnings.	For UI or DUA?
	Waive prohibition of JTPA expenditures beyond September 30, 1993 so that Title II-B monies may be used through the end of the year.	Waiver was granted in July 16 letter to Missouri Dept. of Economic Development.
	Waive federal procurement requirements, under the conditions of a national exigency, so that JTPA funds can be used as soon as possible.	Current regulations provide the Governor flexibility to waive federal procurement requirements in an emergency.
	Waive JTPA Title IIA and Title IIC requirements to restore funding to year-round employment and training programs.	DOL does not understand the question.
	Transfer funding for the Youth Service Corps directly to states, bypassing normal agency procedures.	This is typically state funded. But, if federal Title II-B funds are used, DOL cannot waive the JTPA legislative requirements.
Natural Resources/Interior	Waive match requirements for reforestation and plantation and technical assistance.	
	Waive matching requirements for levee rebuilding and repair.	
	Waive cost share requirement (for one year) of the Land and Water Conservation Fund administered by the National Park Service.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Establish grace period for private levees to meet the eligibility for Soil Conservation Service and Corps of Engineers funding and allow participation in emergency funding.	
Environment/EPA	Waive state and local matching costs for emergency water and sewer system repair and rehabilitation.	
	Provide direct grants for the repair or replacement of water and wastewater treatment facilities (rather than use the Revolving Loan Fund).	
	Waive Clean Water Act regulations (40 CFR. pt. 122) for sewage treatment works affected by the flood. Waiver of requirements would include a suspension of monitoring and reporting of effluents, and bypassing of raw or partly treated sewage.	EPA Regional offices have verbally agreed to waiver.
	Waive Clean Water Act regulations (40 .CFR. 122.21) requiring a NPDES permit for the pumping of flood waters from behind levees or in homes or from industrial or commercial plant sites.	In the July 28, 1993 Report to the President, EPA states that "Under the Clean Water Act, 40CFR 122 41(n), a permittee can establish an affirmative defense of "upset" to a charge that an effluent limitation was violated. Facilities concerned with violations of DI permits during the flood are likely to be able to use this provision."

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Environment/EPA	Waive Safe Drinking Water Act regulations (40 CFR. pt. 141) relating to the sampling, monitoring and reporting requirements of the following subparts: ■ Subpart B- Maximum Contaminant Levels ■ Subpart C - Monitoring and Analytical Requirements ■ Subpart D - Reporting, Public Notification and Record keeping ■ Subpart G- National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels ■ Subpart H - Filtration and Disaffection ■ Subpart I - Control of Lead and Copper.	In the July 28, 1993 Report to the President, EPA states that it has "No general authority to waive or suspend statutory or regulatory requirements during a major natural disaster." However, the report also states that "EPA may exercise its discretion under statutes where there are various provisions for emergency permits, deadline extensions, and compliance.orders that would protect against citizen suits."
	Ensure that "individually exempt small quantity generators" retain that status under RCRA regulations (40 CFR. 261.5) even if they produce a higher volume of waste due to flood conditions.	
	Allow generators of hazardous waste to accumulate flood debris hazardous waste on-site for greater time periods than prescribed by rules without having to obtain a new permit (40 CFR. 262.34).	
	Allow waste transporters to accumulate flood debris hazardous waste at transfer facility for greater than 10 days (RCRA 40 CFR 263.12).	
	Grant owners and operators of underground storage tanks located in flood area additional time to file reports (40 CFR 280.62(b) and 280.63(b).	
Agriculture/USDA	Waive asset limits for Food Stamp (FS) households; fair market value of vehicle for FS households; and replacement of food lost in flooding for FS households.	
	Waive state match for Food Stamp Employment and Training program.	
	Amend the TEFAP plan to provide additional funding for state administration, required match, transfer, warehouse and local agency costs.	
	Waive the payment of advance deficiency payments.	Waiver granted in Supplemental .

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Agriculture/USDA	Extend authorization of federal funds for loan mediation beyond the 1995 sunset.	
	Raise the Commodity Credit Corporation (CCC) loan rates to affect commodity prices.	Addressed in Supplemental.
	Change the Federal Crop Insurance program in the following manners: ■ reform the yield coverage provisions to more clearly reflect actual production. ■ extend the late planting period to twenty-five days after the final planting date. ■ reform Prevented Planting Coverage by guaranteeing fifty percent of coverage for crop if farmers are unable to plant.	
	Provide authority to tap CCC funds as necessary to meet the demand for disaster relief.	Waiver granted in Supplemental.
	Extend loan sign up for feed grains and soybeans.	
	Provide earlier refunds of dairy assessments for dairy farmers who will not increase milk production this year.	
	Extend discretionary authority to FmHA County Supervisors regarding feed loans to farmers.	
	Provide funds and waive matching requirements for the restoration of conservation structures.	Funds provided in Supplemental.
	Extend loan availability at least 60 days from May 31.	
	Eliminate 50.04% pro-rate in formula for crop-loss disaster assistance.	Granted in Supplemental.
	Release conservation cost-share funds.	
	The Commodity Credit Corporation should assume responsibility for grain under loan on the farm, identical to warehouse-stored grain.	
	Use discretionary authority to raise allowable plantings of 1994 wheat to at least 105% of base, as was done in 1990.	
	Open Conservation Reserve Program (CRP) land for grazing and haying without reducing CRP payments	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Release set-aside acres for haying and grazing, and in severely affected counties, activate the emergency feed program.	
Health Services/HHS	Waive the following assets limits: • asset limit for AFDC households • equity limit for vehicles for AFDC households • 100 hour work rule for AFDC households.	
	Streamline the normal timeline and paperwork process for receiving waivers before waiver requests are completed and submitted.	
	Waive the Federal Financial Participation (FFP) match requirement for AFDC emergency funds for both benefit and administration dollars. Approve an AFDC Plan amendment to allow for waiver or $96 per eligible AFDC family members max to meet specific needs as a result of the flood.	
	Increase the FFP rate for the AFDC benefit and administration to 83% for the period July 1, 1993 to June 30, 1994.	
	Waive any state match requirement for increased caseload for AFDC, Food Stamps and State Supplemental assistance including administrative costs for increased caseload .	
	Waive FFP match requirements for projected increases in AFDC and JOBS.	
	Extend requirement that hours of child care must be reasonably related to employment and training for Child Care fund recipients who have lost a job due to disaster or who are doing unreimbursed disaster cleanup activities at home or at the workplace.	
	Continue to pay Child Care funds for JOBS program or AFDC transition year recipients while they are unable to participate in their EDP because of flood conditions and flood related cleanup.	
	Allow temporary inclusion of flood related job loss as "good cause" for Transition Year families.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Health Services/HHS	Waive income guidelines for families who receive day care assistance	
	Waive state match for ICF/MR, case management, day treatment, and partial hospitalization.	
	Waive state match for control groups for family investment program and food stamp welfare reform waivers.	
	Waive state match for child and family services programs.	
	Delay and/or relax error rate auditing and penalties for AFDC, Title XIX, and Food Stamp programs.	
	Release federal JOBS allocation dollars that states have not been able to match.	
	Provide flexibility under state Medicaid Plan as the state responds to needs in federal disaster counties. HCFA should consider the following: ■ allowing states to exceed the limit on in-home services for the elderly in disaster counties ■ allowing the state to increase the limit on hours per person through an amendment to the state Medicaid Elderly Waiver ■ allowing coverage for hospitalization above the normal length of stay.	
	Request relief from the non-federal share in social services programs.	
	Request relief from potential fiscal sanctions for both AFDC and Food Stamps.	
	Request 100% reimbursement for nursing home costs for elderly or disabled persons who go to a nursing home because of damage to or loss of their home due to storms or flooding.	
	Waive verification requirements for farmers who lost their records due to storm of flood damage.	
	Waive farm income from eligibility determinations.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Release Low-Income Home Energy Assistance (LIHEAP) funds designated for emergency use.	Funds released in Supplemental.
Energy/DOE	Request funding from Contingency Funds through the Energy Assistance Program	

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NGA FAX TRANSMISSION FORM

DATE: 9/18/93

TO: Kathi Way

FAX NUMBER: 456-7028

FROM: MARGARET SIEGEL
202-624-5340 (Commercial)
202-624-5313 (fax)

NUMBER OF PAGES: 18 (including this page)

REMARKS: this just arrived from Olszka -

PLEASE CALL JACKIE HALL AT 202-624-5341 WITH ANY PROBLEMS.

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

FAX TRANSMITTAL SHEET

Oleta Garrett Fitzgerald
Office of Intergovernmental Affairs

14th and Independence Avenue, S.W.
Room 219-A

Telephone Number 202-720-6643
Fax Number 202-720-8819

DATE: September 20, 1993

TO: Margaret Siegel

FROM: Oleta Fitzgerald

FAX NUMBER: 624-5313

NUMBER OF PAGES (INCLUDING COVER SHEET): 17

SUBJECT: Attached are additional Waivers for EPA and HHS not originally transmitted.

Environment / EPA

1. **Waiver Request:** Waive state and local matching costs for emergency water and sewer system repair and rehabilitation.

Response: The EPA cannot waive or reduce statutory match requirements, such as those in SDWA Section 1443 and CWA Sections 202 and 602. Statutory changes would be necessary to change those requirements. The Agency can waive or deviate from regulatory match requirements, under 40 C.F.R. 31.6(d).

2. **Waiver Request:** Provide direct grants for the repair or replacement of water and wastewater treatment facilities (rather than use the Revolving Loan Fund).

Response: The question seems to be asking about using funds appropriated to carry out the State Revolving Fund (SRF) program established in CWA Title VI. That program authorizes grants to States to capitalize SRFs from which States make loans and provide other assistance (but not grants) for construction of POTWs, implementing a nonpoint source management plan, and developing or implementing an estuary conservation and management plan. Without statutory changes, EPA cannot use Title VI funds for other "substitute" purposes. We cannot provide assistance for the repair or replacement of drinking water facilities or for grants to repair or replace wastewater facilities.

3. **Waiver Request:** Suspend Clean Water Act regulations (40 CFR, pt. 122) for sewage treatment works affected by the flood, including:

- suspending the monitoring and reporting of effluents;

Response: The bypass and upset regulations discussed below identify circumstances under which noncompliance with permit limitations may be permissible. Absent these circumstances, the NPDES regulations do not currently provide for temporary suspension of permit requirements. The Agency or authorized state may, however, exercise its enforcement discretion by not enforcing the limits or other requirements in the NPDES permit, or by issuing an administrative or judicial consent order that allows a specified time to come into compliance with the permit terms and specifies alternative interim effluent limitations or monitoring requirements.

- and bypassing of raw or partly treated sewage.

Response:

Under CWA regulations, this is possible. Bypasses are defined in 40 C.F.R. 122.41(m) as the intentional diversion of waste streams from any portion of the treatment facility. Bypasses are generally prohibited unless:

1. bypass was unavoidable to prevent loss of life, personal injury, or severe property damage [EPA has interpreted this to include the potential washing out of a treatment system because of high water volumes];
2. there was no feasible alternative to the bypass; and
3. the permittee submitted required notices to the permitting authority.

A demonstration of these factors is a defense to any enforcement action. Additionally, 122.41(m) allows EPA or an approved state to authorize anticipated bypasses of all or a portion of the treatment facility under specified circumstances, including the demonstration of the above factors.

An NPDES permit covering the specified discharge is a prerequisite to the ability to use the bypass provision. EPA has interpreted this provision to preclude authorization for discharge of waste streams that are not specified in an NPDES permit or discharges to outfall locations not specified in an NPDES permit. Additionally, the bypass provision can not be used to authorize discharges from a combined sewer overflow.

4. Waiver Request:

4A. Waive Clean Water Act regulations (40 CFR. 122.21) requiring a NPDES permit for the pumping of flood waters from behind levees or in homes or from industrial or commercial sites.

Response:

Discharges of stormwater runoff from anything other than a municipal separate storm sewer system serving a population greater than 100,000, or stormwater discharges associated with industrial activity are not generally required to obtain an NPDES permit under the CWA at the present time. Accordingly, new discharges of stormwater to the waters of the U.S. from individual homes or from levees will not require NPDES permits if they are not discharged through municipal separate storm sewer systems serving a population greater than 100,000. Discharges from pumping at industrial facilities will require permits only if they meet the definition of stormwater associated with industrial activity in 122.26(b).

Waiver Request: 4B. In the July 28, 1993 Report to the President, EPA states that "Under the Clean Water Act, 40 CFR 122.41(n), a permittee can establish an affirmative defense of "upset" to a charge that an effluent limitation was violated. Facilities concerned with violations of UI permits during the flood are likely to be able to use this provision." Does the upset provision apply to these types of discharges?

Response: Yes, under specified circumstances. EPA regulation at 40 C.F.R. 122.41(n) provide that an upset constitutes an affirmative defense to an action brought for unintentional and temporary noncompliance with technology-based limits in an NPDES permit for factors beyond the reasonable control of the permittee. The regulation does not provide an upset defense for noncompliance with water quality-based permit requirements. The Agency is not precluded, however, from exercising enforcement discretion under these circumstances.

5. Waiver Request: Waive Safe Drinking Water Act regulations (40 CFR pt. 141) relating to the sampling, monitoring and reporting requirements of the following subparts:

- Subpart B - Maximum Contaminant Levels
- Subpart C - Monitoring and Analytical Requirements
- Subpart D - Reporting, Public Notification and Record Keeping
- Subpart G - National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels
- Subpart H - Filtration and Disaffection
- Subpart I - Control of Lead and Copper

Response: There is no provision in the SDWA to waive regulatory requirements because of impossibility of performance or Act of God.

However, Section 1416 authorizes an exemption from the regulatory standards (MCLs) where a water system is unable to comply with requirements due to "compelling factors" and where the exemption would not cause an unreasonable risk to health. The procedural requirements associated with an exemption are burdensome. Thus, this option does not appear promising.

Water systems must install centralized treatment to meet MCLs. However, water systems can use bottled water or point-of-use devices (e.g., filters on faucets) on a "temporary basis" to avoid an unreasonable risk to health (40 C.F.R. 141.101).

There is no "permitting" of water systems under the SDWA that could provide a vehicle for waivers or deferrals of requirements or deadlines. National regulations or compliance orders would have to be used to extend compliance deadlines.

There have been very few enforcement actions under the SDWA and EPA is not aware of any citizen suits against water systems for failure to comply with the requirements of the SDWA. Such suits would seem particularly unlikely where the water system is providing bottled water to its customers in an emergency situation.

6. Waiver Request: Ensure that "individually exempt small quantity generators" retain that status under RCRA regulations (40 CFR 261.5) even if they produce a higher volume of waste due to flood conditions.

Response: Federal RCRA regulations exempt generators of up to 100 kg of hazardous waste a month from requirements applicable to generators of larger quantities of hazardous waste if these "small quantity" generators meet certain conditions. 40 C.F.R. 261.5. However, nothing in the regulations authorizes a small quantity generator to retain its conditionally exempt status if it exceeds the 100 kg limit because of an emergency situation. Under EPA's rules, this higher generation rate would simply move the generator into one of the remaining two categories of generators (100-1,000 kg a month or over 1,000 kg a month) for the month in which larger quantities are generated. (Indeed, by conditioning generator status on monthly waste production rates, the rules implicitly recognize that generators may be in different generator categories at different times).

7. Waiver Request: Allow generators of hazardous waste to accumulate flood debris hazardous waste on-site for greater time periods than prescribed by rules without having to obtain a new permit (40 CFR262.3:4)

Response: If a generator stores hazardous waste on site for more than 90 days (generators of over 1,000 kg a month), 180 days (generators of 100-1,000 kg a month), or 270 days (generators of 100-1,000 kg a month who must transport waste over 200 miles off-site for management), it must obtain a permit. 40 C.F.R. 262.34(b) and (f). The only "emergency" exemption to this rule is that the Regional Administrator may, on a case-by-case basis, grant a 30-day extension of the 90-, 180-, or 270-day time periods due to unforseen, temporary and uncontrollable circumstances. Id. It might be possible for EPA to amend this rule to allow the Regional Administrator to grant extensions for longer periods.

The Regional Administrator may issue a generator who exceeds the accumulation limits in 40 C.F.R. 262.34(b) and (f) an emergency permit for the temporary storage of hazardous waste if he finds an imminent and substantial endangerment. 40 C.F.R. 270.61. And, of course, EPA may exercise enforcement discretion to allow the continued operation of an unpermitted storage facility (e.g., under an administrative consent order) in appropriate situations.

8. Waiver Request: Allow waste transporters to accumulate flood debris hazardous waste at transfer facility for greater than 10 days (RCRA 40 CFR 263.12).

Response: Hazardous waste transporters who store hazardous wastes at a transfer facility for over 10 days must obtain a permit. 40 C.F.R. 263.12. There are no emergency exceptions to this rule. However, as in the case of the generators, the

Regional Administrator may issue a transporter who exceeds the storage limits an emergency permit for the temporary storage of hazardous waste if he finds an imminent and substantial endangerment. The Regional Administrator may also exercise enforcement discretion in appropriate cases. In addition, it might be possible for EPA to amend its rules to authorize Regional Administrators to grant emergency extensions of the 10-day period (similar to 40 C.F.R. 262.34(b) and (f), discussed above.

9. Waiver Request: Grant owners and operators of underground storage tanks located in flood areas additional time to file reports (40 CFR 280.62(b) and 280.63(b).

Response: EPA's UST regulations allow the Agency to establish reasonable alternative deadlines for submitting reports in some cases. See, e.g., 40 C.F.R. 280.50 (reporting of releases of regulated substances). Where the regulations do not authorize EPA to establish alternative requirements, the Agency could amend its rules to extend reporting deadlines.

NOTE: In many states, the State has been authorized by EPA to implement all or portions of the NPDES, hazardous waste or UST program. If any of the requirements discussed above are part of an authorized State program, it is the authorized State, not EPA, which would be primarily responsible for implementing those requirements. Since authorized States also have the lead on enforcing authorized requirements, it is also the authorized State which would generally exercise discretion not to enforce those requirements in the first instance. (EPA retains authority to enforce or overfile in appropriate cases.)

Implementation of an authorized State program in a manner inconsistent with Federal requirements, or the continuing failure of a State to enforce its program, can be grounds for withdrawal of authorization. However, it is unlikely that EPA would withdraw authorization in a situation where a State was implementing those requirements or exercising enforcement discretion in appropriate cases to deal with emergency conditions such as those in the flood-stricken areas of the Midwest.

Health Services / HHS - HCFA, ACF / USDA - FNS

1. Waiver Request: Waive the following assets limits:

- Asset limit for AFDC households.
- Equity limit for vehicles for AFDC households.
- 100 hour work rule for AFDC households.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

For AFDC, States may disregard from income and resources, cash or goods provided to overcome the effects of the disaster. This even includes items that would otherwise make the family ineligible (e.g., the family previously owned a car with an equity value of less than $1500. As disaster relief, they receive a car whose equity value is $3000. No part of the equity value of the car is counted toward the assets limit).

2. Waiver Request: Streamline the normal timeline and paperwork process for receiving waivers before waiver requests are completed and submitted.

Response: FNS -- FNS has no formal procedures for State agencies to follow prior to submitting welfare reform waivers. However, the Agency is very receptive to meeting with States while they are formulating their proposals, and has done so on many occasions. These meetings have proven valuable to the States as well as the Agency.

HCFA -- HHS and HCFA can work with States to minimize the paperwork process for waivers. Many options are already in place to assist States in submitting waiver proposals. These include streamlined waiver formats, as well as HCFA's commitment to provide technical assistance to help expedite the waiver process.

ACF -- Section 1115 of the Social Security Act authorizes the Secretary of Health and Human Services to waive compliance with certain State Plan requirements of the Social Security Act related to the Aid to Families with Dependent Children and Child Support Enforcement Programs. Because the underlying purpose of the waiver authority is to test program options which might prove productive, evaluations are required under this authority.

The general procedure and timetable within ACF for considering waiver applications already has been considerably streamlined. These include shortened waiver formats, as well as ACF's commitment to provide technical assistance to help expedite the waiver process.

3. Waiver Request: Waive the Federal Financial Participation (FFP) match requirement for AFDC emergency funds for both benefit and administration dollars.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

3A. Waiver Request: Approve an AFDC Plan amendment to allow for waiver or $96 per eligible AFDC family members max to meet specific needs as a result of the flood.

Response: ACF -- States could establish a special need for those affected by the disaster. States could start or expand an emergency assistance program limited to those families affected by the disaster.

4. Waiver Request: Increase the FFP rate for the AFDC benefit and administration to 83% for the period July 1, 1993 to June 30, 1994.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

5. Waiver Request: Waive any state match requirement for increased caseload for AFDC, Food Stamps and State Supplemental assistance including administrative costs for increased caseload.

Response: FNS -- The Administration believes that, while it is appropriate for the Federal Government to provide 100 percent of the cost of food stamp benefits regardless of the size of the program's caseload, it is also appropriate for States to share equally with the Federal Government the cost of administering the program regardless of the size of the caseload.

ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

6. Waiver Request: Waive FFP match requirements for projected increases in AFDC and JOBS.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

7. Waiver Request: Extend requirement that hours of child care must be reasonably related to employment and training for Child Care fund recipients who have lost a job due to disaster or who are doing unreimbursed disaster cleanup activities at home or at the workplace.

Response: ACF -- States could establish Community Work Experience Programs (CWEP) to which people could be assigned for disaster cleanup under typical CWEP rules. This could even include cleaning up one's own home if the State establishes reasonable duration and monitoring requirements to prevent misuse.

8. Waiver Request: Continue to pay Child Care funds for JOBS program or AFDC transition year recipients while they are unable to participate in their EDP because of flood conditions and flood related cleanup.

Response: ACF -- States may establish reasonable rules in their State Plans describing "good cause" or other rules for "unable to participate" because of floods or the resulting closing of businesses. Again, there must be a reasonable duration (e.g., some businesses may never reopen, while new businesses may be started so that JOBS participants or transitional child care users could be reasonably expected to find work elsewhere).

9. Waiver Request: Allow temporary inclusion of flood related job loss as "good cause" for Transition Year families.

Response: ACF -- States may establish reasonable rules in their State Plans describing "good cause" or other rules for "unable to participate" because of floods or the resulting closing of businesses. Again, there must be a reasonable duration (e.g., some businesses may never reopen, while new businesses may be started so that JOBS participants or transitional child care users could be reasonably expected to find work elsewhere).

10. Waiver Request: Waive income guidelines for families who receive day care assistance.

Response: ACF -- States may already set income guidelines for use in their States. We would not declare a State to be improperly implementing Federal law for determining that the special costs associated with a disaster established at an appropriate higher income level for those affected by the disaster, geographically.

Health Services

11. **Waiver Request:** Waive state match for ICF/MR, case management, day treatment, and partial hospitalization.

Response: HCFA -- HCFA has no authority to waive the statutory matching requirements. This proposal appears to be an appeal for Federal financial aid, which is better handled as a direct request for disaster assistance.

12. **Waiver Request:** Waive state match for control groups for family investment program and food stamp welfare reform waivers.

Response: FNS -- The Administration is supportive of States' efforts to reform their welfare systems; however, the Administration also believes that the Federal Government and, thus, the Federal taxpayer must be protected from the potential excessive costs of experimentation. Therefore, the Administration believes that States' welfare reform proposals must be cost neutral. Cost neutrality dictates that States will have to share equally in the costs of administering the Food Stamp Program to control groups.

ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

13. **Waiver Request:** Waive state match for child and family services programs.

Response: ACF -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.

14. **Waiver Request:** Delay and/or relax error rate auditing and penalties for AFDC, Title XIX, and Food Stamp programs.

Response: FNS -- The Food Stamp error rate sanction system has just been modified by the Omnibus Budget Reconciliation Act of 1993. It will substantially reduce sanction amounts for many States. Recently, error rates have risen. We are open to re-examining the system and would support changes that will enhance payment accuracy.

HCFA -- If the states are ultimately found to be penalty liable, based on the results of Federal and State sampling, they can request a penalty waiver on the grounds of natural disaster.

This proposal most likely reflects States' desire for relief from having to do their own sampling at all, for some period of time. The likelihood that these States would be penalty liable is negligible, the way the MEQC process now operates. However, we are bound by statue [section 1903 (u)] to compute a Federal error rate, based on State and Federal samples. In addition, 42 CFR 431.865 (c)(6) requires States to complete a valid MEQC sample in a timely and appropriate fashion. Precedent exists for giving State added time to complete their samples. But, if the State fails to sample at all, we must compute the error rate and bill the State for our costs.

ACF -- In quality control, procedures are already in place to deal with natural disasters:
- regulations allow for an alternate sample completion to be approved based on unforseen events (such as a flood).
- regulations allow the exclusion of payment errors which result from natural disasters, although the State must document how specific error payments meet the criteria.

It is premature to consider granting relief from fiscal sanctions. A State may find that it was not liable for a disallowance even without the waivers. It should maintain records so that it can respond if a disallowance is taken.

15. Waiver Request: Release federal JOBS allocation dollars that states have not been able to match.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

16. Waiver Request: Provide flexibility under state Medicaid Plan as the state responds to needs in federal disaster counties. HCFA should consider the following:

- Allowing states to exceed the limit on in-home services for the elderly in disaster counties.

Response: HCFA -- HCFA can work with States to deal with issues which may arise on the issue. Also, HCFA will develop procedures to allow State flexibility for dealing with State-specified needs.

Under the Medicaid HCBS waiver program, this may be allowed as long as the State submits an amendment to the waiver to reflect actual practice by the end of the waiver year.

HCFA has a precedent for this: After Hurricane Andrew last year we provided immediate relief through an existing waiver. Florida subsequently submitted a waiver amendment to include those persons (plus others) in the waivers.

HCFA can work with the States to provide as much flexibility as possible, provided that reasonable estimates are available to meet certain statutory and regulatory requirements.

Under the Medicaid State Plan. In general, limitations on Medicaid benefits have been set by States. As such, States may choose to amend or modify their State plan limits to allow for exceptions to the limits. States may offer additional services as long as those services are medically necessary. These are the only acceptable ways States may offer additional services. States may not allow a specific group of recipients (e.g., the elderly of what is in the approved State plan because such an exception violates the Medicaid statutory and regulatory provisions which require that certain groups of individuals be treated comparably; i.e., one group cannot be advantaged over another. Amendments to the State Plan must be submitted by the end of the quarter in which the changes are proposed.

- Allowing the state to increase the limit on hours per person through an amendment to the state Medicaid Elderly Waiver.

Response:

HCFA -- HCFA can work with States to address this issue. Also, HCFA will develop procedures to allow State flexibility for dealing with State-specific needs.

Under the Medicaid HCBS waiver program, this may be allowed as long as the State submits an amendment to an existing waiver to reflect actual practice by the end of the waiver year. However, as outlined, above, certain statutory and regulatory requirements must be met.

- Allowing coverage for hospitalization above the normal length of stay.

Response:

HCFA -- Under the Medicaid State Plan States currently have the flexibility to set their own limits on services but they cannot allow the amounts of services available to families in disaster areas to exceed those available to other recipients. The State plan could be amended to allow greater coverage for hospitalization (e.g., more days than it currently permits), but the same scope of services must then be available to all recipients who need them; i.e. one group cannot be advantaged over another. Amendments to the State Plan must be submitted by the end of the quarter in which the changes are proposed.

17. Waiver Request:

Request relief from the non-federal share in social services programs.

Response: ACF -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.

18. Waiver Request: Request relief from potential fiscal sanctions for both AFDC and Food Stamps.

Response: FNS -- The Food Stamp Quality Control sanction system has recently been modified. States have access to a comprehensive appeal process. We believe it is unwise to unilaterally dismiss fiscal sanctions, without cause, for States that have high error rates.

ACF -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.

19. Waiver Request: Request 100% reimbursement for nursing home costs for elderly or disabled persons who go to a nursing home because of damage to or loss of their home due to storms or flooding.

Response: HCFA -- HCFA has no authority to waive the statutory matching requirements. This proposal appears to be an appeal for Federal financial aid, which is better handed as a direct request for financial assistance.

20. Waiver Request: Waive verification requirements for farmers who lost their records due to storm of flood damage.

Response: ACF -- Quality control will not call an error solely because records were lost in a natural disaster. For farmers (and other self-employed individuals) whose records were destroyed by the flood, States must make reasonable efforts to establish income from other sources and from the best information the farmer (or other individual) can provide. Tax returns from recent years can be retrieved from IRS, some of the vendors, lenders, suppliers, and customers could be contacted if a large change in income were claimed that was not readily verifiable. Copies of claims of loss filed with other agencies -- as often as possible supplied by that agency -- could also be used as evidence.

21. **Waiver Request:** Waive farm income from eligibility determinations.

Response: ACF -- Quality control will not call an error solely because records were lost in a natural disaster. For farmers (and other self-employed individuals) whose records were destroyed by the flood, States must make reasonable efforts to establish income from other sources and from the best information the farmer (or other individual) can provide. Tax returns from recent years can be retrieved from IRS, some of the vendors, lenders, suppliers, and customers could be contacted if a large change in income were claimed that was not readily verifiable. Copies of claims of loss filed with other agencies -- as often as possible supplied by that agency -- could also be used as evidence.

22. **Waiver Request:** Release Low-Income Home Energy Assistance (LIHEAP) funds designated for emergency use.

Response: ACF -- Release of funds under consideration.

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
General Assistance/FEMA	Waive the 25% match for the Individual and Family Grant Program.	Requires a change in the Stafford Act.
	Waive the 50% state and local match for the Hazard Mitigation Program .	Requires a change in the Stafford Act.
	Waive the 25% state and local match for the Public Assistance Program	After Hurricane Andrew, Florida received waiver of matching funds after $32.5 million. This "threshold" figure was determined based on a population formula.
	Waive Section 414 of the Stafford Act so that Uniform Relocation Act provisions do not apply when a family is displaced by the disaster.	July 28, Report to the President on the 1993 Inter-Agency Long Range Flood Recovery Assistance states "Section 14 of the Stafford Act will be waived, so that Uniform Relocation Act provisions do not apply when a family is displaced by the disaster."
Housing/HUD	Waiver of environmental review requirements, particularly for historic preservation buildings. EPA agreed to provide [illegible] of the fast review	In July 16, 1993 letter to Gov. Thompson, Sec. Cisneros states that this is a statutory requirement and cannot be waived.
	Reduce environmental review comment period for the HOME program from a 30 day to a 15 day period.	Waiver was verbally granted during the Aug. 26-27 HUD conference in Des Moines.
	Waiver of Section 203(b) property valuation limits.	HUD's June 23, 1993 interim rule eliminates the 203(b) limits. HUD will waive the statutory requirement that property values cannot exceed 95% of median area purchase price. (July 16 letter)
	Waiver of Housing Quality Standards.	Waiver granted (July 16 letter)
	Waive definition of first time buyer.	HUD will waive the statutory requirement that persons assisted to purchase homes must be first-time buyers (July 16 letter)
	Clarify procedure regarding use of funds for relocation and buyouts.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Housing/HUD	Waive Davis Bacon wage rate.	Statutory requirement which cannot be waived (July 16 letter)
	Waive relocation requirements, particularly notification.	Statutory requirement which cannot be waivers (July 16 letter).
	Waive match on 1993 and 1994 HOME funds spent.	Match on 1993 funds will be waiived (July 16 letter).
	Waive rental period of affordibility period.	Statutory requirement which cannot be waived (July 16 letter)
	Waive owner period of affordibility period.	Statutory requirement which cannot be waived. However, it applies only to assistance to a first-time home buyer. It does not apply to assistance to an existing homeowner to rehabilitate his property or assist an owner of a mobile home to move his home, rehabilitate or build a permanent foundation for it, or rent/purchase a site (July 16 letter).
	Waive use of mobile homes where owner does not own the site.	No waiver is necessary (July 16 letter).
	Waive HOME tenant based rental assistance for home owners.	No waiver is necessary (July 16 letter).
	Eliminate the 15% set-aside for funding for Community Housing Development Organizations.	July 28, 1993 Report to the President states that "set aside of 15 percent of fund .... be eliminated."
	Simplify income targeting for rental housing to allow eligibility for any family below 80% of median income.	July 28, 1993 Report to the President states that "income targeting for rental housing will be simplified to eliminate deeper targeting below 80 prevent (currently 90 percent of funds must assist families below 60 percent of median and 30 percent of the families in each project must be below 50 percent of median."
	Waive bid process and procurement standards.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Housing/HUD	Allow funds already allocated to be redirected to meet flood needs.	
	Waive citizen participation process requirements.	
	Under the Mortgage Bond Program, allow the following: ■ Rebuilding or rehabilitation ■ Refinancing ■ Waiver of federal income limits, house price limits, and first time home buyer requirements.	States officials were told that a statutory change is necessary.
	Under the Small Cities Development Block Grant program, allow the following: ■ Waiver of environmental review process required for housing rehabilitation ■ Provision of housing assistance based on financial need rather than federal income levels.	
	Expand the definition of "Targeted Areas" currently defined in Section 143(j) of the Federal Tax Code to include any geographical areas that have been declared a Federal or State Disaster Area. Individuals residing in these areas need not be first-time home buyers for the purpose of becoming a "qualified home buyer." if they wish to relocate away from the declared area.	
	Amend law to approve permanent extension of the Mortgage Revenue Bond Program to allow for a long term commitment to the flood affected areas.	
	Allow Community Service Block Grant Act funds to be used for construction.	
	Provide additional funds for weatherization.	
Transportation/DOT	Waive Emergency Relief program requirement that "heavy maintenance activities" are not eligible for reimbursement.	
	Waive the 15% state by state distribution requirement for the Light Rail Freight Assistance Program prior to October 1 as stated in the Supplemental budget.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Transportation/DOT	Waive some penalties and requirements for motor carriers affected by flooding.	
	Waive some fuel tax interest and penalties as well as audit penalties for affected carriers.	
Labor/DOL	Reimbursement for the benefit charges for employers covered by UC law who incurred unemployment compensation costs.	Sec. 410(a) of the Stafford Act provides for Disaster Unemployment Assistance (DUA) when an individual is not entitled to Unemployment Insurance (UI). The funding source and statute prohibit reimbursement for UI costs. States can enact legislation to non-charge employers for disaster related UI payments.
	Waive the 30 day deadline to apply for Disaster Unemployment Assistance.	20 CFR 625.8(a) provides for a "good cause" waiver on a case-by-case basis after 30 days. DOL has approved "blanket" waivers under the good cause provision for late filling based on state requests and justification.
	Funding to raise the Disaster Unemployment Assistance benefit amount for all those whose weekly benefit rate is below the average $176.	Regulatory change to 20 CFR 625 is needed. Will be considered for future disasters.
	Clarify the starting date of the 26 week Disaster Unemployment Assistance period.	
	Add another 20 weeks to the 26 week Disaster Unemployment Assistance period.	Statutory change is needed. The Disaster Assistance Period (DAP) is established by Sec. 410(a). of the Stafford Act.
	Change the interpretation of the Disaster Unemployment Assistance to allow payments to all family members who work, regardless of marital or student status.	DUA is an unemployment program only covering those not eligible for UI. It is not a needs based program, therefore, not all individuals are eligible.

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Labor/DOL	Suspend work search requirements for Disaster Unemployment Assistance claimants.	DUA is an unemployment program like state unemployment insurance and UI must be paid if individuals are eligible. Therefore, if a state suspends work search for UI, it is suspended for DUA by 20 CFR Part 625.
	Permit the use of disaster dislocated workers in supervised clean-up and repair of private property.	Not allowed. JTPA funded workers may only perform activities that states or local public employees may perform.
	Funds for those ineligible for Unemployment because of lack of base earnings.	For UI or DUA?
	Waive prohibition of JTPA expenditures beyond September 30, 1993 so that Title II-B monies may be used through the end of the year.	Waiver was granted in July 16 letter to Missouri Dept. of Economic Development.
	Waive federal procurement requirements, under the conditions of a national exigency, so that JTPA funds can be used as soon as possible.	Current regulations provide the Governor flexibility to waive federal procurement requirements in an emergency.
	Waive JTPA Title IIA and Title IIC requirements to restore funding to year-round employment and training programs.	DOL does not understand the question.
	Transfer funding for the Youth Service Corps directly to states, bypassing normal agency procedures.	This is typically state funded. But, if federal Title II-B funds are used, DOL cannot waive the JTPA legislative requirements.
Natural Resources/Interior	Waive match requirements for reforestation and plantation and technical assistance.	
	Waive matching requirements for levee rebuilding and repair.	
	Waive cost share requirement (for one year) of the Land and Water Conservation Fund administered by the National Park Service.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Establish grace period for private levees to meet the eligibility for Soil Conservation Service and Corps of Engineers funding and allow participation in emergency funding.	
Environment/EPA	Waive state and local matching costs for emergency water and sewer system repair and rehabilitation.	
	Provide direct grants for the repair or replacement of water and wastewater treatment facilities (rather than use the Revolving Loan Fund).	
	Waive Clean Water Act regulations (40 CFR. pt. 122) for sewage treatment works affected by the flood. Waiver of requirements would include a suspension of monitoring and reporting of effluents, and bypassing of raw or partly treated sewage.	EPA Regional offices have verbally agreed to waiver.
	Waive Clean Water Act regulations (40 .CFR. 122.21) requiring a NPDES permit for the pumping of flood waters from behind levees or in homes or from industrial or commercial plant sites.	In the July 28, 1993 Report to the President, EPA states that "Under the Clean Water Act, 40CFR 122 41(n), a permittee can establish an affirmative defense of "upset" to a charge that an effluent limitation was violated. Facilities concerned with violations of DI permits during the flood are likely to be able to use this provision."

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Environment/EPA	Waive Safe Drinking Water Act regulations (40 CFR. pt. 141) relating to the sampling, monitoring and reporting requirements of the following subparts: ■ Subpart B- Maximum Contaminant Levels ■ Subpart C - Monitoring and Analytical Requirements ■ Subpart D - Reporting, Public Notification and Record keeping ■ Subpart G- National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels ■ Subpart H - Filtration and Disinfection ■ Subpart I - Control of Lead and Copper.	In the July 28, 1993 Report to the President, EPA states that it has "No general authority to waive or suspend statutory or regulatory requirements during a major natural disaster." However, the report also states that "EPA may exercise its discretion under statutes where there are various provisions for emergency permits, deadline extensions, and compliance orders that would protect against citizen suits."
	Ensure that "individually exempt small quantity generators" retain that status under RCRA regulations (40 CFR. 261.5) even if they produce a higher volume of waste due to flood conditions.	
	Allow generators of hazardous waste to accumulate flood debris hazardous waste on-site for greater time periods than prescribed by rules without having to obtain a new permit (40 CFR. 262.34).	
	Allow waste transporters to accumulate flood debris hazardous waste at transfer facility for greater than 10 days (RCRA 40 CFR 263.12).	
	Grant owners and operators of underground storage tanks located in flood area additional time to file reports (40 CFR 280.62(b) and 280.63(b).	
Agriculture/USDA	Waive asset limits for Food Stamp (FS) households; fair market value of vehicle for FS households; and replacement of food lost in flooding for FS households.	
	Waive state match for Food Stamp Employment and Training program.	
	Amend the TEFAP plan to provide additional funding for state administration, required match, transfer, warehouse and local agency costs.	
	Waive the payment of advance deficiency payments.	Waiver granted in Supplemental.

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Agriculture/USDA	Extend authorization of federal funds for loan mediation beyond the 1995 sunset.	
	Raise the Commodity Credit Corporation (CCC) loan rates to affect commodity prices.	Addressed in Supplemental.
	Change the Federal Crop Insurance program in the following manners: ■ reform the yield coverage provisions to more clearly reflect actual production. ■ extend the late planting period to twenty-five days after the final planting date. ■ reform Prevented Planting Coverage by guaranteeing fifty percent of coverage for crop if farmers are unable to plant.	
	Provide authority to tap CCC funds as necessary to meet the demand for disaster relief.	Waiver granted in Supplemental.
	Extend loan sign up for feed grains and soybeans.	
	Provide earlier refunds of dairy assessments for dairy farmers who will not increase milk production this year.	
	Extend discretionary authority to FmHA County Supervisors regarding feed loans to farmers.	
	Provide funds and waive matching requirements for the restoration of conservation structures.	Funds provided in Supplemental.
	Extend loan availability at least 60 days from May 31.	
	Eliminate 50.04% pro-rate in formula for crop-loss disaster assistance.	Granted in Supplemental.
	Release conservation cost-share funds.	
	The Commodity Credit Corporation should assume responsibility for grain under loan on the farm, identical to warehouse-stored grain.	
	Use discretionary authority to raise allowable plantings of 1994 wheat to at least 105% of base, as was done in 1990.	
	Open Conservation Reserve Program (CRP) land for grazing and haying without reducing CRP payments	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Release set-aside acres for haying and grazing, and in severely affected counties, activate the emergency feed program.	
Health Services/HHS	Waive the following assets limits: • asset limit for AFDC households • equity limit for vehicles for AFDC households • 100 hour work rule for AFDC households.	
	Streamline the normal timeline and paperwork process for receiving waivers before waiver requests are completed and submitted.	
	Waive the Federal Financial Participation (FFP) match requirement for AFDC emergency funds for both benefit and administration dollars. Approve an AFDC Plan amendment to allow for waiver or $96 per eligible AFDC family members max to meet specific needs as a result of the flood.	
	Increase the FFP rate for the AFDC benefit and administration to 83% for the period July 1, 1993 to June 30, 1994.	
	Waive any state match requirement for increased caseload for AFDC, Food Stamps and State Supplemental assistance including administrative costs for increased caseload .	
	Waive FFP match requirements for projected increases in AFDC and JOBS.	
	Extend requirement that hours of child care must be reasonably related to employment and training for Child Care fund recipients who have lost a job due to disaster or who are doing unreimbursed disaster cleanup activities at home or at the workplace.	
	Continue to pay Child Care funds for JOBS program or AFDC transition year recipients while they are unable to participate in their EDP because of flood conditions and flood related cleanup.	
	Allow temporary inclusion of flood related job loss as "good cause" for Transition Year families.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
Health Services/HHS	Waive income guidelines for families who receive day care assistance	
	Waive state match for ICF/MR, case management, day treatment, and partial hospitalization.	
	Waive state match for control groups for family investment program and food stamp welfare reform waivers.	
	Waive state match for child and family services programs.	
	Delay and/or relax error rate auditing and penalties for AFDC, Title XIX, and Food Stamp programs.	
	Release federal JOBS allocation dollars that states have not been able to match.	
	Provide flexibility under state Medicaid Plan as the state responds to needs in federal disaster counties. HCFA should consider the following: ■ allowing states to exceed the limit on in-home services for the elderly in disaster counties ■ allowing the state to increase the limit on hours per person through an amendment to the state Medicaid Elderly Waiver ■ allowing coverage for hospitalization above the normal length of stay.	
	Request relief from the non-federal share in social services programs.	
	Request relief from potential fiscal sanctions for both AFDC and Food Stamps.	
	Request 100% reimbursement for nursing home costs for elderly or disabled persons who go to a nursing home because of damage to or loss of their home due to storms or flooding.	
	Waive verification requirements for farmers who lost their records due to storm of flood damage.	
	Waive farm income from eligibility determinations.	

SUBJECT/AGENCY	WAIVER REQUEST	RESPONSE
	Release Low-Income Home Energy Assistance (LIHEAP) funds designated for emergency use.	Funds released in Supplemental.
Energy/DOE	Request funding from Contingency Funds through the Energy Assistance Program	

Kathie Way

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250

Memorandum

To: Margaret A. Siegel

From: Oleta Garrett Fitzgerald Oleta Fitzgerald

Date: September 15, 1993

Re: Waiver Request Information

Attached is the waiver information you requested for the National Governor's Association. We are missing some program information from the Environmental Protection Agency and Health and Human Services. We expect this material to arrive tomorrow. However, I wanted to get this to you now.

Attachments

Status of Waivers as of September 15, 1993

General Assistance / FEMA

1.	Waiver Request:	Waive the 25% match for the Individual and Family Grant Program.
	Response:	Requires a change in the Stafford Act.
2.	Waiver Request:	Waive the 50% state and local match for the Hazard Mitigation Program.
	Response:	Requires a change in the Stafford Act.
3.	Waiver Request:	Waive the 25% state and local match for the Public Assistance Program.
	Response:	After Hurricane Andrew, Florida received waiver of matching funds after $32.5 million. This "threshold" figure was determined based on a population formula.

Agriculture / USDA

1. Waiver Request: Waive asset limits for Food Stamp (FS) households; fair market value for vehicle for FS households; and replacement of food lost in flooding for FS households.

Response: Usually when disasters strike a State, the State requests a Disaster Food Stamp Program (DFSP) be approved rather than requesting waivers of the regular Food Stamp Program's rules. Under the DFSP, the eligibility and processing requirements are quite different than those of the regular program. The eligibility focus is on whether and how the applicant has been affected by the disaster. For example, the DFSP does not have a resource test--applicants are merely asked what cash they have on hand, what income they expect to receive, and what moneys are easily and immediately accessible. The DFSP assumes that applicants have an immediate need for food, which is recognized by the fact that the DFSP benefit is the maximum food stamp allotment for each household size. Further, when the DFSP is no longer needed, the Department can approve waivers of the regular FSP under the disaster authority; in the past, such waivers have included the asset test as it related to house insurance payments.

2. Waiver Request: Waive state match for Food Stamp Employment and Training program.

Response: The Federal Government currently provides $75 million annually to States for administering their Employment and Training (E&T) Programs. The Administration believes that E&T costs that exceed that amount should generally be shared equally between the Federal Government and the States. That is why the Administration proposed this Spring to reduce most instances of enhanced Federal funding to 50 percent. P.L. 103-66, the Omnibus Budget Reconciliation Act of 1993, reduced Federal funding for nearly all food stamp administrative costs to 50 percent as of April 1, 1994.

3.	Waiver Request:	Amend the TEFAP plan to provide additional funding for state administration, required match, transfer, warehouse, and local agency costs.
	Response:	Congress appropriates funds specifically for State and local administration of the Emergency Food Assistance Program (TEFAP). For a number of years, it had appropriated $50 million for this purpose. However, this amount was reduced to $45 million for Fiscal Years 1992 and 1993. Although the President proposed an increase to $46,215,000 for Fiscal Year 1995, the appropriations conference report lists only $40 million. TEFAP State agencies contend that more administrative funds are needed, and program administration at the local level depends to a great extent on volunteer services and organizations which are willing to sustain unreimbursed administrative expenses. It should be noted, on the other hand, that the volume of commodities distributed through TEFAP has very significantly decreased in recent years due to the depletion of surplus inventories of commodities such as cheese. To a certain extent, administrative costs bear a direct relationship to the amount of commodities distributed.
4.	Waiver Request:	Waive the payment of advance deficiency payments.
	Response:	Payment has been deferred; producers have until January 1 to repay advance deficiency payments.
5.	Waiver Request:	Extend authorization of federal funds for loan mediation beyond the 1995 sunset.
	Response:	Requires statutory change.
6.	Waiver Request:	Raise the Commodity Credit Corporation (CCC) loan rates to affect commodity prices.
	Response:	For the 1993 crop, it is too late in the crop year. Some crops have been harvested, others underway. For the 1994 crop year, Secretary Espy has stated that he is considering higher loan rates.

7. Waiver Request: Change the Federal Crop Insurance program in the following manners:

- Reform the yield coverage provisions to more clearly reflect actual production.

  Response: The current program uses actual yields where possible and transitional yields when farmer's records are not available.

- Extend the late planting period to twenty-five days after the final planting date.

  Response: Current policy extends the planting period to 20 days at no additional charge to the farmer. We are currently trying to extend it to 25 days.

- Reform Prevented Planting Coverage by guaranteeing fifty percent of coverage for crop if farmers are unable to plant.

  Response: The Prevented Planting Coverage is currently at 35% at no cost. For 50% coverage there is an additional cost but FCIC is currently trying to incorporate a 50% coverage as part of the Prevented Planting Basic Coverage.

8. Waiver Request: Provide authority to tap CCC funds as necessary to meet the demand for disaster relief.

   Response: Waiver granted in Supplemental, which provided for CCC borrowing authority.

9. Waiver Request: Extend loan sign up for feed grains and soybeans.

   Response: Loan availability dates are published in the <u>Federal Regulations.</u> In most areas, producers have at least 6 months after harvest to decide whether to pledge their commodity for loan. The loan availability dates are widely publicized locally, to ensure that farmers are well informed of their opportunity to place their commodities under loan. Therefore, we could not justify extending the loan availability dates. In addition, such action would have been unfair to producers who did not obtain a loan before the end of the established loan availability date and had already disposed of the crop.

10. Waiver Request: Provide earlier refunds of dairy assessments for dairy farmers who will not increase milk production this year.

Response: A producer's milk production for the 1993 refund year must be compared to the producer's milk production for the previous year in order to make a determination that the producer has, in fact, not increased milk production and is eligible for refund of dairy assessments collected in 1993. This cannot be accomplished until after the end of 1993 calendar year and the producer is able to provide documentation of his or her total 1993 milk production. County ASCS offices make Dairy Refund Program Payments as soon as a producer provides all documentation required to determine eligibility, but no later than March 15 of the year following the refund year, which in this case is March 15, 1994.

11. Waiver Request: Extend discretionary authority to County Supervisors regarding feed loans to farmers.

Response: This request requires clarification from the Governor's offices.

12. Waiver Request: Provide funds and waive matching requirements for the restoration of conservation structures.

Response: Funds provided in Supplemental.

13. Waiver Request: Extend loan availability at least 60 days from May 31.

Response: Loan availability dates are discussed above. It should also be noted that producers with existing 1992-crop wheat or feedgrain loans were allowed an extension to September 30. Producers with soybean loans can request to delay settlement until September 30.

14. Waiver Request: Eliminate 50.04% pro-rate in formula for crop-loss disaster assistance.

	Response:	These payments are being made on the entire eligible amount. They are not being factored.
15.	Waiver Request:	Release conservation cost-share funds.
	Response:	$30 million was authorized in the Supplemental appropriation and released by OMB for Emergency Conservation Program (ECP) cost-sharing to rehabilitate croplands. State allocation of ECP funds to Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota is being made on September 13.
16.	Waiver Request:	The Commodity Credit Corporation should assume responsibility for grain under loan on the farm, identical to warehouse-stored grain.
	Response:	Representatives of the insurance industry have indicated to USDA that the private insurance industry is well equipped to provide coverage for loss of, or damage to, commodities pledged as collateral for farm-stored CCC price support loans. Such coverage has been available. CCC assumption of losses would likely have a negative impact on the insurance industry.
17.	Waiver Request:	Use discretionary authority to raise allowable plantings of 1994 wheat to at least 105% of base, as was done in 1990.
	Response:	The 1990 action followed the 1988-89 drought years, when we were facing a short wheat supply. In 1989, the projected ending stocks were under 500 million bushels of wheat. The current projected ending stocks for 1993 wheat are over 700 million bushels. Also, the law has changed: current statute allows contract modification only if there is a significant change in estimated stocks. For the 1994 wheat crop, a zero-percent acreage reduction has been announced. Flexible planting authority allows producers to increase wheat plantings on the base acres of other program crops.
18.	Waiver Request:	Open Conservation Reserve Program (CRP) land for grazing and haying without reducing CRP payments.
	Response:	Originally the reduction in CRP rental payments for haying or grazing CRP acreage was 50 percent. On Aug. 4 the

Secretary provided relief by reducing the rental payment reduction to 25%.

19. Waiver Request: Release set-aside acres for haying and grazing, and in severely affected counties, activate the emergency feed program.

Response: Emergency haying and grazing of acreage conservation reserve (ACR) and conserving use (CU) for payment acreage requires a determination that the occurrence of a natural disaster is causing a shortage of hay and pasture production. Implementation of the livestock feed programs (LFP) also takes into consideration shortage of feed grains. Determinations for both programs are normally made on a county-by-county basis by the Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, based on requests submitted by county Agricultural Stabilization and Conservation (ASC) committees and concurrence by the State ASC committee. Requests for these types of assistance are now handled in a most expeditious manner, with a response normally being provided within 24 hours of receiving a documented request. Nine States in the flood area (Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, Wisconsin) were granted special authority to request emergency haying and grazing of ACR and CU for all counties within the State, as need dictated, without submitting the documentation normally required. For the Livestock Feed Program, at this time there has been limited interest from the nine States in implementing the program.

Energy / Department of Energy

1. Waiver Request: Request funding from Contingency Funds through the Energy Assistance Program.

Response: The "energy assistance program" is made up of three grant programs that are administered by the Office of the Assistant Secretary for Energy Efficiency and Renewable Energy in the Department of Energy. These programs are:

Institutional Conservation Program -- This program provides technical assistance and energy efficiency funding to schools and hospitals. We have announced that we will give priority processing to applications involving schools and hospitals damaged by flooding.

Weatherization Assistance Program (WAP) -- We have notified flood-affected States that the estimated $9 million of weatherization grants operating in flood-affected areas can be partially reprogrammed at the discretion of state weatherization offices to assist with flood relief, while promoting energy efficiency. We have authorized DOE regional Support Office Directors to interpret WAP rules and grant conditions to implement the most appropriate responses to ameliorate the effects of the flood and to serve the public interest.

State Energy Conservation Program -- This program provides funds to States for various energy efficiency and renewable energy programs, set forth in annual plans. We have told flood-affected States that we will give priority processing to any modifications in their plans leading to utilization of energy efficiency and renewable energy technologies in the reconstruction effort.

No new funds are available for flood relief efforts, but reprogramming of current funding is encouraged. Jeanne Van Vlandren, Director of the Weatherization Assistance Program Division, can be reached at (2020 586-2204. Bill Becker (202) 586-8252 is the point of contact for the other programs.

Environment / EPA

1. Waiver Request: Waive state and local matching costs for emergency water and sewer system repair and rehabilitation.

Response: The EPA cannot waive or reduce statutory match requirements, such as those in SDWA Section 1443 and CWA Sections 202 and 602. Statutory changes would be necessary to change those requirements. The Agency can waive or deviate from regulatory match requirements, under 40 C.F.R. 31.6(d).

2. Waiver Request: Provide direct grants for the repair or replacement of water and wastewater treatment facilities (rather than use the Revolving Loan Fund).

Response: The question seems to be asking about using funds appropriated to carry out the State Revolving Fund (SRF) program established in CWA Title VI. That program authorizes grants to States to capitalize SRFs from which States make loans and provide other assistance (but not grants) for construction of POTWs, implementing a nonpoint source management plan, and developing or implementing an estuary conservation and management plan. Without statutory changes, EPA cannot use Title VI funds for other "substitute" purposes. We cannot provide assistance for the repair or replacement of drinking water facilities or for grants to repair or replace wastewater facilities.

3. Waiver Request: Suspend Clean Water Act regulations (40 CFR, pt. 122) for sewage treatment works affected by the flood, including:

- suspending the monitoring and reporting of effluents;

Response: The bypass and upset regulations discussed below identify circumstances under which noncompliance with permit limitations may be permissible. Absent these circumstances, the NPDES regulations do not currently provide for temporary suspension of permit requirements. The Agency or authorized state may, however, exercise its enforcement discretion by not enforcing the limits or other requirements in the NPDES permit, or by issuing an administrative or judicial consent order that allows a specified time to come into compliance with the permit terms and specifies alternative interim effluent limitations or monitoring requirements.

- and bypassing of raw or partly treated sewage.

Response:

Under CWA regulations, this is possible. Bypasses are defined in 40 C.F.R. 122.41(m) as the intentional diversion of waste streams from any portion of the treatment facility. Bypasses are generally prohibited unless:

1. bypass was unavoidable to prevent loss of life, personal injury, or severe property damage [EPA has interpreted this to include the potential washing out of a treatment system because of high water volumes];
2. there was no feasible alternative to the bypass; and
3. the permittee submitted required notices to the permitting authority.

A demonstration of these factors is a defense to any enforcement action. Additionally, 122.41(m) allows EPA or an approved state to authorize anticipated bypasses of all or a portion of the treatment facility under specified circumstances, including the demonstration of the above factors.

An NPDES permit covering the specified discharge is a prerequisite to the ability to use the bypass provision. EPA has interpreted this provision to preclude authorization for discharge of waste streams that are not specified in an NPDES permit or discharges to outfall locations not specified in an NPDES permit. Additionally, the bypass provision can not be used to authorize discharges from a combined sewer overflow.

4. Waiver Request:

4A. Waive Clean Water Act regulations (40 CFR. 122.21) requiring a NPDES permit for the pumping of flood waters from behind levees or in homes or from industrial or commercial sites.

Response:

Discharges of stormwater runoff from anything other than a municipal separate storm sewer system serving a population greater than 100,000, or stormwater discharges associated with industrial activity are not generally required to obtain an NPDES permit under the CWA at the present time. Accordingly, new discharges of stormwater to the waters of the U.S. from individual homes or from levees will not require NPDES permits if they are not discharged through municipal separate storm sewer systems serving a population greater than 100,000. Discharges from pumping at industrial facilities will require permits only if they meet the definition of stormwater associated with industrial activity in 122.26(b).

Waiver Request: 4B. In the July 28, 1993 Report to the President, EPA states that "Under the Clean Water Act, 40 CFR 122.41(n), a permittee can establish an affirmative defense of "upset" to a charge that an effluent limitation was violated. Facilities concerned with violations of UI permits during the flood are likely to be able to use this provision."
Does the upset provision apply to these types of discharges?

Response: Yes, under specified circumstances. EPA regulation at 40 C.F.R. 122.41(n) provide that an upset constitutes an affirmative defense to an action brought for unintentional and temporary noncompliance with technology-based limits in an NPDES permit for factors beyond the reasonable control of the permittee. The regulation does not provide an upset defense for noncompliance with water quality-based permit requirements. The Agency is not precluded, however, from exercising enforcement discretion under these circumstances.

5. Waiver Request: Waive Safe Drinking Water Act regulations (40 CFR pt. 141) relating to the sampling, monitoring and reporting requirements of the following subparts:

- Subpart B - Maximum Contaminant Levels
- Subpart C - Monitoring and Analytical Requirements
- Subpart D - Reporting, Public Notification and Record Keeping
- Subpart G - National Revised Primary Drinking Water Regulations: Maximum Contaminant Levels
- Subpart H - Filtration and Disaffection
- Subpart I - Control of Lead and Copper

Response: There is no provision in the SDWA to waive regulatory requirements because of impossibility of performance or Act of God.

However, Section 1416 authorizes an exemption from the regulatory standards (MCLs) where a water system is unable to comply with requirements due to "compelling factors" and where the exemption would not cause an unreasonable risk to health. The procedural requirements associated with an exemption are burdensome. Thus, this option does not appear promising.

Water systems must install centralized treatment to meet MCLs. However, water systems can use bottled water or point-of-use devices (e.g., filters on faucets) on a "temporary basis" to avoid an unreasonable risk to health (40 C.F.R. 141.101).

There is no "permitting" of water systems under the SDWA that could provide a vehicle for waivers or deferrals of requirements or deadlines. National regulations or compliance orders would have to be used to extend compliance deadlines.

There have been very few enforcement actions under the SDWA and EPA is not aware of any citizen suits against water systems for failure to comply with the requirements of the SDWA. Such suits would seem particularly unlikely where the water system is providing bottled water to its customers in an emergency situation.

6. Waiver Request: Ensure that "individually exempt small quantity generators" retain that status under RCRA regulations (40 CFR 261.5) even if they produce a higher volume of waste due to flood conditions.

Response: Federal RCRA regulations exempt generators of up to 100 kg of hazardous waste a month from requirements applicable to generators of larger quantities of hazardous waste if these "small quantity" generators meet certain conditions. 40 C.F.R. 261.5. However, nothing in the regulations authorizes a small quantity generator to retain its conditionally exempt status if it exceeds the 100 kg limit because of an emergency situation. Under EPA's rules, this higher generation rate would simply move the generator into one of the remaining two categories of generators (100-1,000 kg a month or over 1,000 kg a month) for the month in which larger quantities are generated. (Indeed, by conditioning generator status on monthly waste production rates, the rules implicitly recognize that generators may be in different generator categories at different times).

7. Waiver Request: Allow generators of hazardous waste to accumulate flood debris hazardous waste on-site for greater time periods than prescribed by rules without having to obtain a new permit (40 CFR262.3:4)

Response: If a generator stores hazardous waste on site for more than 90 days (generators of over 1,000 kg a month), 180 days (generators of 100-1,000 kg a month), or 270 days (generators of 100-1,000 kg a month who must transport waste over 200 miles off-site for management), it must obtain a permit. 40 C.F.R. 262.34(b) and (f). The only "emergency" exemption to this rule is that the Regional Administrator may, on a case-by-case basis, grant a 30-day extension of the 90-, 180-, or 270-day time periods due to unforseen, temporary and uncontrollable circumstances. Id. It might be possible for EPA to amend this rule to allow the Regional Administrator to grant extensions for longer periods.

The Regional Administrator may issue a generator who exceeds the accumulation limits in 40 C.F.R. 262.34(b) and (f) an emergency permit for the temporary storage of hazardous waste if he finds an imminent and substantial endangerment. 40 C.F.R. 270.61. And, of course, EPA may exercise enforcement discretion to allow the continued operation of an unpermitted storage facility (e.g., under an administrative consent order) in appropriate situations.

8. Waiver Request: Allow waste transporters to accumulate flood debris hazardous waste at transfer facility for greater than 10 days (RCRA 40 CFR 263.12).

Response: Hazardous waste transporters who store hazardous wastes at a transfer facility for over 10 days must obtain a permit. 40 C.F.R. 263.12. There are no emergency exceptions to this rule. However, as in the case of the generators, the

Regional Administrator may issue a transporter who exceeds the storage limits an emergency permit for the temporary storage of hazardous waste if he finds an imminent and substantial endangerment. The Regional Administrator may also exercise enforcement discretion in appropriate cases. In addition, it might be possible for EPA to amend its rules to authorize Regional Administrators to grant emergency extensions of the 10-day period (similar to 40 C.F.R. 262.34(b) and (f), discussed above.

9. Waiver Request: Grant owners and operators of underground storage tanks located in flood areas additional time to file reports (40 CFR 280.62(b) and 280.63(b).

Response: EPA's UST regulations allow the Agency to establish reasonable alternative deadlines for submitting reports in some cases. See, e.g., 40 C.F.R. 280.50 (reporting of releases of regulated substances). Where the regulations do not authorize EPA to establish alternative requirements, the Agency could amend its rules to extend reporting deadlines.

NOTE: In many states, the State has been authorized by EPA to implement all or portions of the NPDES, hazardous waste or UST program. If any of the requirements discussed above are part of an authorized State program, it is the authorized State, not EPA, which would be primarily responsible for implementing those requirements. Since authorized States also have the lead on enforcing authorized requirements, it is also the authorized State which would generally exercise discretion not to enforce those requirements in the first instance. (EPA retains authority to enforce or overfile in appropriate cases.)

Implementation of an authorized State program in a manner inconsistent with Federal requirements, or the continuing failure of a State to enforce its program, can be grounds for withdrawal of authorization. However, it is unlikely that EPA would withdraw authorization in a situation where a State was implementing those requirements or exercising enforcement discretion in appropriate cases to deal with emergency conditions such as those in the flood-stricken areas of the Midwest.

Health Services / HHS - HCFA, ACF / USDA - FNS

1. Waiver Request: Waive the following assets limits:

- Asset limit for AFDC households.
- Equity limit for vehicles for AFDC households.
- 100 hour work rule for AFDC households.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

For AFDC, States may disregard from income and resources, cash or goods provided to overcome the effects of the disaster. This even includes items that would otherwise make the family ineligible (e.g., the family previously owned a car with an equity value of less than $1500. As disaster relief, they receive a car whose equity value is $3000. No part of the equity value of the car is counted toward the assets limit).

2. Waiver Request: Streamline the normal timeline and paperwork process for receiving waivers before waiver requests are completed and submitted.

Response: FNS -- FNS has no formal procedures for State agencies to follow prior to submitting welfare reform waivers. However, the Agency is very receptive to meeting with States while they are formulating their proposals, and has done so on many occasions. These meetings have proven valuable to the States as well as the Agency.

HCFA -- HHS and HCFA can work with States to minimize the paperwork process for waivers. Many options are already in place to assist States in submitting waiver proposals. These include streamlined waiver formats, as well as HCFA's commitment to provide technical assistance to help expedite the waiver process.

ACF -- Section 1115 of the Social Security Act authorizes the Secretary of Health and Human Services to waive compliance with certain State Plan requirements of the Social Security Act related to the Aid to Families with Dependent Children and Child Support Enforcement Programs. Because the underlying purpose of the waiver authority is to test program options which might prove productive, evaluations are required under this authority.

The general procedure and timetable within ACF for considering waiver applications already has been considerably streamlined. These include shortened waiver formats, as well as ACF's commitment to provide technical assistance to help expedite the waiver process.

3. Waiver Request: Waive the Federal Financial Participation (FFP) match requirement for AFDC emergency funds for both benefit and administration dollars.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

3A. Waiver Request: Approve an AFDC Plan amendment to allow for waiver or $96 per eligible AFDC family members max to meet specific needs as a result of the flood.

Response: ACF -- States could establish a special need for those affected by the disaster. States could start or expand an emergency assistance program limited to those families affected by the disaster.

4. Waiver Request: Increase the FFP rate for the AFDC benefit and administration to 83% for the period July 1, 1993 to June 30, 1994.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

5. Waiver Request: Waive any state match requirement for increased caseload for AFDC, Food Stamps and State Supplemental assistance including administrative costs for increased caseload.

Response: **FNS** -- The Administration believes that, while it is appropriate for the Federal Government to provide 100 percent of the cost of food stamp benefits regardless of the size of the program's caseload, it is also appropriate for States to share equally with the Federal Government the cost of administering the program regardless of the size of the caseload.

ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

6. Waiver Request: Waive FFP match requirements for projected increases in AFDC and JOBS.

Response: **ACF** -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

7. Waiver Request: Extend requirement that hours of child care must be reasonably related to employment and training for Child Care fund recipients who have lost a job due to disaster or who are doing unreimbursed disaster cleanup activities at home or at the workplace.

Response: ACF -- States could establish Community Work Experience Programs (CWEP) to which people could be assigned for disaster cleanup under typical CWEP rules. This could even include cleaning up one's own home if the State establishes reasonable duration and monitoring requirements to prevent misuse.

8. Waiver Request: Continue to pay Child Care funds for JOBS program or AFDC transition year recipients while they are unable to participate in their EDP because of flood conditions and flood related cleanup.

Response: ACF -- States may establish reasonable rules in their State Plans describing "good cause" or other rules for "unable to participate" because of floods or the resulting closing of businesses. Again, there must be a reasonable duration (e.g., some businesses may never reopen, while new businesses may be started so that JOBS participants or transitional child care users could be reasonably expected to find work elsewhere).

9. Waiver Request: Allow temporary inclusion of flood related job loss as "good cause" for Transition Year families.

Response: ACF -- States may establish reasonable rules in their State Plans describing "good cause" or other rules for "unable to participate" because of floods or the resulting closing of businesses. Again, there must be a reasonable duration (e.g., some businesses may never reopen, while new businesses may be started so that JOBS participants or transitional child care users could be reasonably expected to find work elsewhere).

10. Waiver Request: Waive income guidelines for families who receive day care assistance.

Response: ACF -- States may already set income guidelines for use in their States. We would not declare a State to be improperly implementing Federal law for determining that the special costs associated with a disaster established at an appropriate higher income level for those affected by the disaster, geographically.

11.	Waiver Request:	Waive state match for ICF/MR, case management, day treatment, and partial hospitalization.
	Response:	**HCFA** -- HCFA has no authority to waive the statutory matching requirements. This proposal appears to be an appeal for Federal financial aid, which is better handled as a direct request for disaster assistance.
12.	Waiver Request:	Waive state match for control groups for family investment program and food stamp welfare reform waivers.
	Response:	**FNS** -- The Administration is supportive of States' efforts to reform their welfare systems; however, the Administration also believes that the Federal Government and, thus, the Federal taxpayer must be protected from the potential excessive costs of experimentation. Therefore, the Administration believes that States' welfare reform proposals <u>must</u> be cost neutral. Cost neutrality dictates that States will have to share equally in the costs of administering the Food Stamp Program to control groups. **ACF** -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.
13.	Waiver Request:	Waive state match for child and family services programs.
	Response:	**ACF** -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.
14.	Waiver Request:	Delay and/or relax error rate auditing and penalties for AFDC, Title XIX, and Food Stamp programs.

Response: **FNS** -- The Food Stamp error rate sanction system has just been modified by the Omnibus Budget Reconciliation Act of 1993. It will substantially reduce sanction amounts for many States. Recently, error rates have risen. We are open to re-examining the system and would support changes that will enhance payment accuracy.

HCFA -- If the states are ultimately found to be penalty liable, based on the results of Federal and State sampling, they can request a penalty waiver on the grounds of natural disaster.

This proposal most likely reflects States' desire for relief from having to do their own sampling at all, for some period of time. The likelihood that these States would be penalty liable is negligible, the way the MEQC process now operates. However, we are bound by statue [section 1903 (u)] to compute a Federal error rate, based on State and Federal samples. In addition, 42 CFR 431.865 (c)(6) requires States to complete a valid MEQC sample in a timely and appropriate fashion. Precedent exists for giving State added time to complete their samples. But, if the State fails to sample at all, we must compute the error rate and bill the State for our costs.

ACF -- In quality control, procedures are already in place to deal with natural disasters:
- regulations allow for an alternate sample completion to be approved based on unforseen events (such as a flood).
- regulations allow the exclusion of payment errors which result from natural disasters, although the State must document how specific error payments meet the criteria.

It is premature to consider granting relief from fiscal sanctions. A State may find that it was not liable for a disallowance even without the waivers. It should maintain records so that it can respond if a disallowance is taken.

15. Waiver Request: Release federal JOBS allocation dollars that states have not been able to match.

Response: ACF -- The law provides no authority to waive AFDC, JOBS or Supportive Services State Plan requirements because of natural disasters or emergencies. Thus assets limits, definitions of eligibility, participation rates and other items covered in the State Plans must remain in force. The law also makes no provision for changing the fiscal funding formulas provided in the statutes, nor to release money under circumstances other than those in the law.

16. Waiver Request: Provide flexibility under state Medicaid Plan as the state responds to needs in federal disaster counties. HCFA should consider the following:

- Allowing states to exceed the limit on in-home services for the elderly in disaster counties.

Response: **HCFA** -- HCFA can work with States to deal with issues which may arise on the issue. Also, HCFA will develop procedures to allow State flexibility for dealing with State-specified needs.

Under the Medicaid HCBS waiver program, this may be allowed as long as the State submits an amendment to the waiver to reflect actual practice by the end of the waiver year.

HCFA has a precedent for this: After Hurricane Andrew last year we provided immediate relief through an existing waiver. Florida subsequently submitted a waiver amendment to include those persons (plus others) in the waivers.

HCFA can work with the States to provide as much flexibility as possible, provided that reasonable estimates are available to meet certain statutory and regulatory requirements.

Under the Medicaid State Plan. In general, limitations on Medicaid benefits have been set by States. As such, States may choose to amend or modify their State plan limits to allow for exceptions to the limits. States may offer additional services as long as those services are medically necessary. These are the only acceptable ways States may offer additional services. States may not allow a specific group of recipients (e.g., the elderly of what is in the approved State plan because such an exception violates the Medicaid statutory and regulatory provisions which require that certain groups of individuals be treated comparably; i.e., one group cannot be advantaged over another. Amendments to the State Plan must be submitted by the end of the quarter in which the changes are proposed.

- Allowing the state to increase the limit on hours per person through an amendment to the state Medicaid Elderly Waiver.

Response: **HCFA** -- HCFA can work with States to address this issue. Also, HCFA will develop procedures to allow State flexibility for dealing with State-specific needs.

Under the Medicaid HCBS waiver program, this may be allowed as long as the State submits an amendment to an existing waiver to reflect actual practice by the end of the waiver year. However, as outlined, above, certain statutory and regulatory requirements must be met.

- Allowing coverage for hospitalization above the normal length of stay.

Response: **HCFA** -- Under the Medicaid State Plan States currently have the flexibility to set their own limits on services but they cannot allow the amounts of services available to families in disaster areas to exceed those available to other recipients. The State plan could be amended to allow greater coverage for hospitalization (e.g., more days than it currently permits), but the same scope of services must then be available to all recipients who need them; i.e. one group cannot be advantaged over another. Amendments to the State Plan must be submitted by the end of the quarter in which the changes are proposed.

17. Waiver Request: Request relief from the non-federal share in social services programs.

Response: ACF -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.

18. Waiver Request: Request relief from potential fiscal sanctions for both AFDC and Food Stamps.

Response: FNS -- The Food Stamp Quality Control sanction system has recently been modified. States have access to a comprehensive appeal process. We believe it is unwise to unilaterally dismiss fiscal sanctions, without cause, for States that have high error rates.

ACF -- Among Children and Families programs administered by ACF, only Head Start and some programs under the Administration for Native Programs (ANA), have authority to waive the match. Without such authority, no release of funds or greater than authorized match is possible.

19. Waiver Request: Request 100% reimbursement for nursing home costs for elderly or disabled persons who go to a nursing home because of damage to or loss of their home due to storms or flooding.

Response: HCFA -- HCFA has no authority to waive the statutory matching requirements. This proposal appears to be an appeal for Federal financial aid, which is better handed as a direct request for financial assistance.

20. Waiver Request: Waive verification requirements for farmers who lost their records due to storm of flood damage.

Response: ACF -- Quality control will not call an error solely because records were lost in a natural disaster. For farmers (and other self-employed individuals) whose records were destroyed by the flood, States must make reasonable efforts to establish income from other sources and from the best information the farmer (or other individual) can provide. Tax returns from recent years can be retrieved from IRS, some of the vendors, lenders, suppliers, and customers could be contacted if a large change in income were claimed that was not readily verifiable. Copies of claims of loss filed with other agencies -- as often as possible supplied by that agency -- could also be used as evidence.

21. Waiver Request: Waive farm income from eligibility determinations.

Response: **ACF** -- Quality control will not call an error solely because records were lost in a natural disaster. For farmers (and other self-employed individuals) whose records were destroyed by the flood, States must make reasonable efforts to establish income from other sources and from the best information the farmer (or other individual) can provide. Tax returns from recent years can be retrieved from IRS, some of the vendors, lenders, suppliers, and customers could be contacted if a large change in income were claimed that was not readily verifiable. Copies of claims of loss filed with other agencies -- as often as possible supplied by that agency -- could also be used as evidence.

22. Waiver Request: Release Low-Income Home Energy Assistance (LIHEAP) funds designated for emergency use.

Response: **ACF** -- Release of funds under consideration.

Housing / HUD

1.	Waiver Request:	Waiver of environmental review requirements, particularly for historic preservation buildings. *EPA Agreement to provide w/after the fact review.*
	Response:	In July 16, 1993 letter to Gov. Thompson, Sec. Cisneros states that this is a statutory requirement and cannot be waived.
2.	Waiver Request:	Reduce environmental review comment period for the HOME program from a 30 day to a 15 day waiting period.
	Response:	Where existing public notice requirements of the environmental procedures at 24 CFR Part 58 would prevent the giving of recovery assistance needed on an immediate emergency basis as a result of a disaster, HUD will permit a modified procedure. The HUD/State 15-day waiting period and the local comment period will be allowed to run simultaneously, thereby saving over two weeks. The process for using this modified procedure will be published in the Federal Register.
3.	Waiver Request:	Waiver of Section 203(b) property valuation limits.
	Response:	HUD will waive the statutory requirement that property values cannot exceed 95% of median area purchase price. Waiver of property valuation limits applies ONLY to the HOME program, not to FHA insurance programs.
4.	Waiver Request:	Waiver of Housing Quality Standards.
	Response:	Waiver granted.
5.	Waiver Request:	Waive definition of first time buyer.
	Response:	HUD will waive the statutory requirement that persons assisted to purchase homes must be first time buyers for funding available under supplemental legislation (July 16 letter).

6. Waiver Request: Clarify procedure regarding use of funds for relocation and buyouts.

Response: Under the CDBG program, the statute requires that these funds be used for repair, replacement, or restoration of facilities damaged by the disasters. A grantee can use CDBG disaster funds to "buy out" damaged properties from affected families. Cash payments to these families for the cost of the acquired properties qualify as "replacement" or "facilities" under the statute. However, the grantee must require each recipient to sign a certifications, subject to verification by HUD, stating that the funds will be used expressly for the purpose of replacement housing.

Under the HOME program funds may not be used to directly buy a property that will not be used for affordable housing, they may be used as a component of a "buy-out" program. First, HOME funds may be used to move a damaged unit (whether manufactured or stick-built housing) to another site and to improve the new site and/or rehabilitate the unit. Secondly, HOME funds may be used for to acquire replacement property and/or rehabilitate an existing unit on the property or construct a new home. Finally, HOME funds may be used to finance the purchase of a replacement unit for the family whose damaged property was bought out with other funds, including down-payment assistance, closing costs, interest subsidies, purchased price reductions, mortgage financing (e.g., "soft" second mortgages), etc.

7. Waiver Request: Waive Davis Bacon wage rate.

Response: Statutory requirement which cannot be waived.

8. Waiver Request: Waive relocation requirements, particularly notification.

Response: Statutory requirement which cannot be waived for regular program funds. Uniform Relocation Act provisions do not apply when a family displaced by a disaster is assisted using HOME funding available under the Supplemental Legislation.

9.	Waiver Request:	Waive match on 1993 and 1994 HOME funds spent.
	Response:	Matching requirements under the HOME program have been waived.
10.	Waiver Request:	Waive rental period of affordibility period.
	Response:	Statutory requirement which cannot be waived for regular program funds. Affordibility periods for both rental and home ownership housing have been dropped for HOME funding available under the Supplemental legislation.
11.	Waiver Request:	Waive owner period of affordibility period.
	Response:	Statutory requirement which cannot be waived for regular program funds. However, it applies only to assistance to a first-time home buyer. It does not apply to assistance to an existing homeowner to rehabilitate his property or assist an owner of a mobile home to move his home, rehabilitate or build a permanent foundation for it, or rent/purchase a site. (July 16 letter). Affordibility periods for both rental and home ownership housing have been dropped for HOME funding available under the Supplemental legislation.
12.	Waiver Request:	Waive use of mobile homes where owner does not own the site.
	Response:	No waiver is necessary (July 16 letter).
13.	Waiver Request:	Waive HOME tenant based rental assistance for home owners.
	Response:	No waiver is necessary (July 16 letter).
14.	Waiver Request:	Eliminate the 15% set-aside funding for Community Housing Development Organizations.
	Response:	The HOME program 15% set-aside for funding Community Housing and Development Organizations has been eliminated for HOME funds available under the Supplemental legislation.

15. Waiver Request: Simplify income targeting for rental housing to allow eligibility for any family below 80% of median income.

Response: HOME funds available under the supplemental legislation must be invested in units occupied by households which qualify as low-income families (incomes not exceeding 80% of the median family income for the area) at the time of occupancy or at the time funds are invested, whichever is later.

16. Waiver Request: Waive bid process and procurement standards.

Response: Currently under review; may involve statutory change.

17. Waiver Request: Allow funds already allocated to be redirected to meet flood needs.

Response: Grantees may reprogram funds from grants already made under the regular CDBG program to be used for disaster recovery, if they so desire. When such funds would be proposed to be used for responding to emergency situations arising from the floods, grantees would still be required to amend the applicable final statement, but could do so by employing an expedited process for citizen review and comment. This means that grantees need only notify affected citizens of the change of fund use and may immediately thereafter initiate work on the new activity, even before HUD is officially notified. Grantees can notify HUD of this change either by letter or by submitting a copy of the amended statement.

18. Waiver Request: Waive citizen participation process requirements.

Response: Citizen participation requirements under the Home program are generally in-place as part of the CHAS process. Requirements under CDBG have been expedited.

19. Waiver Request: Under the Mortgage Bond Program, allow the following:
- Rebuilding or rehabilitation
- Refinancing
- Waiver of federal income limits, housing price limits, and first time home buyer requirements.

Response: Program is administered by the Department of the Treasury.

20. Waiver Request: Under the Small Cities Development Block Grant program, allow the following:
- Waiver of environmental review process required for housing rehabilitation.
- Provision of housing assistance based on financial need rather than federal income levels.

Response: Both actions would require a statutory change; for both regular and supplemental funds.

21. Waiver Request: Expand the definition of "Targeted Areas" currently defined in Section 143(j) of the Federal Tax Code to include any geographical areas that have been declared a Federal or State Disaster Area. Individuals residing in those areas need not be first-time home buyers for the purpose of becoming a "qualified home buyer" if they wish to relocate away from the declared area.

Response: The action would require statutory change.

22. Waiver Request: Amend law to approve permanent extension of the Mortgage Revenue Bond Program to allow for a long term commitment to the flood affected areas.

Response: This program is be administered by the Department of Treasury.

23. Waiver Request: Allow Community Service Block Grant Act funds to be used for construction.

Response: The Community Service Block Grant is administered by the Department of Health and Human Service (HHS).

24.	Waiver Request:	Provide additional funds for weatherization.
	Response:	Home funding may be used for weatherization efforts which bring properties up to housing quality standards. CDBG funding may be used for weatherization improvements.
25.	Waiver Request:	Waive Section 414 of the Stafford Act so that Uniform Relocation Act provisions do not apply when a family is displaced by the disaster.
	Response:	From question 8 above: Uniform Relocation Act provisions do not apply when a family displaced by a disaster is assisted using HOME funding available under the Supplemental Legislation.

Labor / Dept. of Labor

1.	Waiver Request:	Reimbursement for the benefit charges for employers covered by UC law who incurred unemployment compensation costs.
	Response:	Sec. 410(a) of the Stafford Act provides for Disaster Unemployment Assistance (DUA) when an individual is not entitled to Unemployment Insurance (UI). The funding source and statue prohibit reimbursement for UI costs. States can enact legislation to non-charge employers for disaster related UI payments.
2.	Waiver Request:	Waive the 30 day deadline to apply for Disaster Unemployment Assistance.
	Response:	20 CFR 625.8(a) provides for a "good cause" waiver on a case-by-case basis after 30 days. DOL has approved "blanket" waivers under the good cause clause provision for late filing based on state requests and justification.
3.	Waiver Request:	Funding to raise the Disaster Unemployment Assistance benefit amount for all those whose weekly benefit rate is below the average $176.
	Response:	Regulatory change to 20 CFR 625 is needed. Will be considered for future disasters.
4.	Waiver Request:	Clarify the starting date of the 26 week Disaster Unemployment Assistance period.
	Response:	DUA is only payable for weeks of unemployment during the disaster assistance period with the applicable major disaster. The disaster assistance period begins with the first week following the date the major disaster began, and it ends with the 26th week following the first week beginning after the date the major disaster was declared. The term "week" is a defined term in the applicable State's unemployment insurance law, and, in most States, it is a 7 consecutive day period beginning on a Sunday and ending on a Saturday. Therefore, it is possible that a disaster assistance period may last longer than 26 weeks if the disaster began more than one week prior to the date it was declared.

5.	Waiver Request:	Add another 20 weeks to the 26 week Disaster Unemployment Assistance period.
	Response:	Statutory change is needed. The Disaster Assistance Period (DAP) is established by Sec. 410(a) of the Stafford Act.
6.	Waiver Request:	Change the interpretation of the Disaster Unemployment Assistance to allow payments to all family members who work, regardless of marital or student status.
	Response:	DUA is an unemployment program only covering those not eligible for UI. It is not a needs based program, therefore, not all individuals are eligible.
7.	Waiver Request:	Suspend work search requirements for Disaster Unemployment Assistance claimants.
	Response:	DUA is an unemployment program like state unemployment insurance and UI must be paid if individuals are eligible. Therefore, if a state suspends work search for UI, it is suspended for DUA by 20 CFR Part 625.
8.	Waiver Request:	Permit the use of disaster dislocated workers in supervised clean-up and repair of private property.
	Response:	Not allowed. JTPA funded workers may only perform activities that states or local public employees may perform.
9.	Waiver Request:	Funds for those ineligible for Unemployment because of lack of base earnings.
	Response:	DUA is payable to individuals not entitled to UI because of insufficient base period earnings; provided their job loss was a direct result of the major disaster, and they meet other DUA qualifying requirements.
10.	Waiver Request:	Waive prohibitions of JTPA expenditures beyond September 30, 1993 so that Title II-B monies may be used through the end of the year.
	Response:	Waiver was granted in July 16 letter to Missouri Dept. of Economic Development.

11.	Waiver Request:	Waive federal procurement requirements, under the conditions of a national exigency, so that JTPA funds can be used as soon as possible.
	Response:	Current regulations provide the governor flexibility to waive federal procurement requirements in an emergency.
12.	Waiver Request:	Waive JTPA Title II-A and Title II-C requirements to restore funding to year-round employment and training programs.
	Response:	The question needs clarification from the Governors' offices.
13.	Waiver Request:	Transfer funding for the Youth Service Corps directly to states, bypassing normal agency procedures.
	Response:	This is typically state funded. But, if federal Title II-B funds are used, DoL cannot waive the JTPA legislative requirements.

Natural Resources / Dept. of Interior / USDA

1. Waiver Request: Waive match requirements for reforestation and plantation and technical assistance.

   Response: Our policy concerning nonconsolidated transactions under the Cooperative Forestry Assistance Act requires matching funds as outlined in FSM 1581.01c. However, because these are supplemental emergency funds to assist the States in recovery from 1993 flood damage, it was not intended that matching funds be required. Therefore, any matching funds required by policy can be waived provided the transaction is handled as nonconsolidated grant.

2. Waiver Request: Waive matching requirements for levee rebuilding and repair.

   Response: **SCS** -- Eligible assistance in an exigency federal emergency funds may bear up to 100 percent of the construction costs of emergency measures. In a nonexigency, federal funds may bear up to 80 percent of the construction costs for emergency measures.

   Federal funds may bear up to 75 percent of the construction costs of emergency measures. In an exigency situation, this requirement may be waived by the director of the Watershed Protection Division (WPD). In the case of immediate need or extreme hardship on the part of the sponsors, federal funds may provide up to 100 percent of the costs. Sponsors are responsible for obtaining any needed real property rights.

   Interior -- The Department of the Interior supports such waivers for matching requirements for levee rebuilding and repair on the condition that the waiver is used as an incentive for alternative flood control measures, such as floodway creation through levee setbacks.

3. Waiver Request: Waive cost share requirement (for one year) of the Land and Water Conservation Fund administered by the National Park Service.

   Response: The Department of the Interior supports waiving the matching requirement for the Land and Water Conservation Fund for one year so long as the lands acquired through the Fund are used in accordance with the purposes of the LWCF Act.

4. Waiver Request: Establish grace period for private levees to meet the eligibility for SCS and ACE funding and allow participation in emergency funding.

   Response: SCS recommends that sponsors be provided the same time frame set by FEMA, which has been extended to November 15. At that time, as determined by circumstances, another extension may be considered.

Transportation / DOT

1. Waiver Request: Waive Emergency Relief program requirement that "heavy maintenance activities" are not eligible for reimbursement.

Response: In accordance with ER regulations serious damage for purposes of ER applicability is heavy, major or unusual damage to the highway which severely impairs the safety or usefulness of the highway, or results in road closure. For a State's application for ER funds in the range of $500,000 or less, it must be shown why the repair is considered to be beyond the scope of heavy maintenance or routine emergency repair. As a general rule, expenditures below this level would not be considered to be of significant nature justifying approval by the FHWA Administrator for ER funding for a disaster. In addition, long standing guidelines have utilized a threshold of $3000 per site to identify whether or not damage at individual sites is considered to be "heavy maintenance." The $500,000 threshold per disaster per state is a regulatory requirement although the FHWA Administrator can consider requests less than this on a case by case basis. All nine midwest States affected by the flooding should easily satisfy the $500,000 threshold. The FHWA Division Administrator may negotiate with the State regarding the per site level, however, to maintain some degree of program consistency this approach is not encouraged.

2. Waiver Request: Waive the 15% state by state distribution requirement for the Light Rail Freight Assistance Program prior to October 1 as stated in the Supplemental budget.

Response: Section 5(o) of the DOT Act limits a state to no more than 15 percent of the LRFA funding provided. FRA included language in the supplemental appropriation legislation to eliminate this limitation based on the total requests submitted. This legislation was enacted. The preliminary repair estimates from the states far exceed the $21 million available. The deadline for submission of flood repair applications is October 1. Until October 1, in order to ensure the availability of funds to all applicants, FRA will fund projects as requests are submitted according to the priority assigned by the state, but within the 15 percent limitation. This will ensure the availability of funding for states which may need until October 1 to complete repair estimates. After October 1, FRA will reevaluate the funding situation.

3. Waiver Request: Waive some penalties and requirements for motor carriers affected by the flooding.

Response: The Federal Motor Carrier Safety Regulations (FMCSRs), are waived for a limited period of time when the President, a governor, or local official issues an emergency proclamation. The President and the governors did make these declarations for the states in regions 5 and 7 involved in the floods this summer. The initial 30-day periods during which motor carriers are exempted from complying with the Federal Motor Carrier Safety Regulations have expired. As the flood devastation continued, the Office of Motor Carriers Regional offices in Regions 5 and 7 again extended relief to those motor carriers which are directly assisting victims in those areas declared a disaster.

Press releases have been issued by the Regions notifying the trucking industry and the affected motor carriers of their operating rights during this time period.

4. Waiver Request: Waive some fuel tax interest and penalties as well as audit penalties for affected carriers.

Response: This waiver request needs greater clarification from the Governor's offices so that the Department of Transportation or the Internal Revenue Service could provide a response.