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Regulatory Waivers and Extensions Pursuant to Hurricane Katrina

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Summary

Federal agencies have waived a number of regulatory requirements and extended the deadlines for certain reports and applications to assist victims of Hurricane Katrina and to ease the economic effects of the storm. Most of the actions were permitted by agency or program-specific authorizing statutes. More generally, though, Section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act permits agencies to modify or waive administrative conditions for federal assistance in the wake of a major disaster upon the request of state or local authorities. This report identifies some (but not all) of those Katrina-related waivers and extensions, and will not be updated.

In the wake of Hurricane Katrina, a number of federal agencies waived certain regulatory requirements or extended the deadlines for certain reports or applications. The purposes of these actions varied, but they often centered on making it easier to assist victims of Hurricane Katrina or to ease the economic effects of the storm. In most cases, agency or program-specific federal statutes gave the agencies the authority to take those actions on their own with regard to specific regulatory issues. In other cases, though, waivers required actions by the President or Congress. For example, on September 8, 2005, President Bush issued a proclamation suspending application of the Davis-Bacon Act wage requirements on federal reconstruction projects in areas of Alabama, Florida, Mississippi, and Louisiana that had been adversely affected by the hurricane.¹ The Department of Labor could not, on its own, have taken that action.

One statutory provision is particularly notable in this circumstance because it is not focused on a specific agency or program. Section 301 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, codified at 42 U.S.C. 5141), says the following:

¹ The Davis-Bacon Act sets certain minimum labor standards for workers employed in federal contract construction. For more on the act, see CRS Report 94-408, *The Davis-Bacon Act: Institutional Evolution and Public Policy*, by William G. Whittaker. For a copy of the proclamation, see [<http://www.whitehouse.gov/news/releases/2005/09/20050908-5.html>].

Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of a major disaster.

It is unclear how many of the agencies' regulatory waivers in the wake of Hurricane Katrina were prompted by this provision, because agencies do not always cite the impetus for or statutory authority underlying their actions.²

Regulatory Waivers and Extensions

The regulatory waivers and extensions listed below were identified by searching the *Federal Register*, agencies' websites, and published news accounts, but should not be considered a compendium of all such waivers. No comprehensive, governmentwide listing of such actions is currently available, and new waivers are being developed daily.³ The waivers are generally presented in chronological order, and citations to either the formal waiver actions or press statements are provided for each.

- On August 30, the Internal Revenue Service (IRS) announced that taxpayers in the Presidential Disaster Areas struck by Hurricane Katrina will have until October 31, 2005, to file late tax returns and submit tax payments without penalties or interest.⁴
- On August 30, the Environmental Protection Agency (EPA) granted an emergency fuel waiver for Florida, Louisiana, Alabama, and Mississippi. Specifically, EPA allowed, until September 15, all parties in the fuel distribution system to supply gasoline meeting a less stringent, higher vapor-pressure standard than is usually allowed, and to supply diesel fuel to the states with a sulfur content greater than previously allowed.⁵
- On August 31, the Secretary of the Department of Health and Human Services (HHS) declared a federal public health emergency for Louisiana, Alabama, Mississippi, and Florida, allowing the Centers for Medicare and Medicaid Services (CMS) to waive certain requirements under Medicare, Medicaid, and other federal statutes. Texas was added to the list on September 4. The Secretary issued a waiver under Section 1135 of the Social Security Act on September 1, 2005. According to press reports, health care providers providing medical services but unable to

² For more information on this statute, see CRS Report RL33053, *Federal Stafford Act Disaster Assistance: Presidential Declarations, Eligible Activities, and Funding*, by Keith Bea.

³ The Department of Homeland Security compiled a listing of waivers authorized for Hurricane Katrina response as of September 12, but the listing does not include all such actions. See [http://www.dhs.gov/dhspublic/interapp/editorial/editorial_0718.xml].

⁴ For a copy of this waiver, see [<http://www.irs.gov/newsroom/article/0,,id=147055,00.html>].

⁵ For a copy of this waiver, see [<http://www.epa.gov/katrina/activities.html#aug30waiver>].

comply with certain program requirements will still be paid for their good-faith services and will be exempt from sanctions for noncompliance. For example, the waiver suspended the requirement that doctors and other health care professionals hold licenses in the state in which they provide services. CMS also reportedly said it will relax requirements under the State Children's Health Insurance Programs, the Health Insurance Portability and Accountability Act, and the Emergency Medical Treatment and Active Labor Act.⁶

- On August 31, the Department of Transportation's (DOT) Federal Motor Carrier Safety Administration (FMCSA) temporarily eased hours of service regulations until September 14 for certain carriers to allow fuel transportation services to continue. As a result, covered drivers may drive longer hours than would otherwise be permitted. Drivers must have a copy of the Declaration of Regional Emergency in their possession.⁷
- EPA said on August 31 that it will waive until September 15 volatility and sulfur standards for gasoline and diesel fuels nationwide to ensure that fuel is available throughout the country, to address public health issues, and to ensure emergency vehicle supply needs are met.⁸
- On September 1 and 2, the Federal Communications Commission (FCC) issued several notices and orders providing telecommunications carriers, wireless, and satellite operators in Katrina-affected areas more time to file their regular reports and providing assistance in restoring operations. For example, FCC granted a 90-day waiver of its rules, through November 27, to allow carriers and their numbering administrators to "port" telephone numbers geographically outside of their rate centers. It also suspended rules (until November 1) that prohibit noncommercial educational radio and television stations in and around New Orleans from airing commercial programming.⁹
- IRS announced on September 2 that it will not impose a tax penalty when dyed diesel fuel (normally used for purposes exempt from excise tax, such as distribution to farmers for farming and to local governments for busses) is sold for use or used on the highway during the period of

⁶ See [<http://www.cms.hhs.gov/media/press/release.asp?Counter=1546>]. For a copy of the Sept. 1, 2005, waiver, see [<http://www.cms.hhs.gov/katrina/1135ssa.pdf>].

⁷ See [<http://www.fmcsa.dot.gov/about/news/news-releases/2005/083105.htm>].

⁸ EPA also granted gasoline waivers for particular areas (e.g., Richmond, VA, and Atlanta, GA). For more information on these and the nationwide waiver, see [<http://www.epa.gov/katrina/waivers.html>].

⁹ For a copy of the Sept. 1 waiver, see [http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-05-161A1.pdf]. For the Sept. 2 action, see [http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-05-2410A1.pdf].

expected shortages of clear diesel fuel caused by Hurricane Katrina. The relief applies until September 15, 2005.¹⁰

- The same day, the Department of the Treasury and IRS said they would waive rules that prohibit owners of low-income housing from providing housing to victims of the hurricane who do not qualify as low-income. The waiver suspends income limitation and non-transient requirements nationwide.¹¹
- On September 2, the Department of Agriculture's Food and Nutrition Service (FNS) announced a series of Katrina-related waivers in effect through September 30, 2005. For example, the agency said state agencies may waive institution application requirements and designate any appropriate facility as an emergency shelter where significant numbers of persons are being temporarily housed. Also, households certified for emergency food stamps are automatically eligible for free meals in centers or family day care homes.¹²
- On September 2, DOT allowed foreign air carriers to participate in evacuation and relief processes. Specifically, DOT granted exemptions under 49 U.S.C. 40109 to permit certain air carriers to engage in foreign air transportation of persons and property (for compensation) between any point not in the U.S. and any point in the U.S., for the evacuation of persons from affected areas, and to carry personnel relief supplies in support of the relief efforts. DOT also granted special authorization under 14 C.F.R. 375.70 to permit foreign air carriers to carry evacuees and other persons and relief supplies without charge.¹³
- On September 2, the Transportation Security Administration granted a temporary exemption from the requirements for the issuance of a hazardous materials endorsement in 49 C.F.R. 1572.13(b)(1) in support of disaster recovery efforts from the effects of Hurricane Katrina. The exemption is valid through December 1, 2005, and applies only to the issuance of new endorsements.¹⁴
- On September 2, the Securities and Exchange Commission (SEC) announced that it would soon publish a notice extending the filing deadlines for those affected by the disaster, and said it was working to

¹⁰ See [<http://www.irs.gov/newsroom/article/0,,id=147221,00.html>].

¹¹ See [<http://www.irs.gov/newsroom/article/0,,id=147239,00.html>].

¹² See [<http://www.fns.usda.gov/cnd/Care/Regs-Policy/PolicyMemos/2005-09-02.pdf>].

¹³ See [<http://www.dot.gov/katrina/order200591.pdf>].

¹⁴ Copy available from the author on request.

ensure that individuals have access to representatives of securities firms that hold their assets.¹⁵

- On September 3, the Forest Service temporarily rescinded the fee requirement and the 14-day stay limit for 106 campgrounds in certain forests to assist survivors of Hurricane Katrina.¹⁶
- On September 5, the Department of Housing and Urban Development's (HUD) Assistant Secretary for Community Planning and Development suspended the requirements of the Housing and Community Development Act of 1974 that limit expenditures to 15% of the grantee's most recent CDBG allocation plus program income. The suspension was available only to grantees for purposes related to Hurricane Katrina assistance efforts, and communities exercising the waiver were asked to notify HUD in writing as soon as possible.¹⁷
- On September 6, DOT granted carriers licensed under 14 C.F.R. Part 125 emergency exemption authority from the provisions of 14 U.S.C. 4110. The exemption will allow those carriers to provide assistance in the carriage of freight and people affected by Katrina, and the transport into the affected areas of relief and personnel supplies.¹⁸
- On September 7, the Secretary of the Department of Homeland Security waived "coastwise laws" under the Merchant Marine Act of 1920 (the "Jones Act") that (among other things) provide that only vessels built and owned by citizens of the U.S. and flagged in the U.S. can carry merchandise between U.S. ports. The waiver applies for the transportation of petroleum and refined petroleum products until September 19, 2005. The Secretary also waived the coastwise laws generally for the transportation of petroleum released from the Strategic Petroleum Reserve.¹⁹
- On September 8, the Federal Energy Regulatory Commission (FERC) announced that it was allowing Katrina-affected transmission providers to delay compliance with certain reporting requirements until September 30. (Normally, providers are required to report any deviation from standards of conduct within 24 hours.) FERC also extended until

¹⁵ See [<http://www.sec.gov/news/press/2005-125.htm>].

¹⁶ For a copy of the news release accompanying this action, see [http://www.usda.gov/wps/portal/!ut/p/_s.7_0_A/7_0_1RD?printable=true&contentidonly=true&contentid=2005/09/0348.xml].

¹⁷ See [<http://www.hud.gov/offices/cpd/library/katrina/revkatpswaive.pdf>].

¹⁸ See [<http://www.dot.gov/katrina/order200592.pdf>].

¹⁹ For a copy of this notice, see [<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-17829.pdf>].

September 30 any non-statutory deadlines occurring before that date if participants need those extensions because of the hurricane.²⁰

- On September 8, DOT's Federal Railroad Administration (FRA) established a temporary emergency relief docket and procedures for handling petitions for relief from regulatory requirements. FRA said its existing procedures "do not lend themselves to quick and immediate decisions" by the agency, and said the emergency procedures (e.g., a 72-hour comment period on waiver petitions) would be in place for the next nine months.²¹
- On September 9, the Department of Education announced an extension of the deadline dates for specific filing and reporting activities by educational institutions, applicants, and other parties under certain assistance programs (e.g., Federal Pell Grants, William D. Ford Federal Direct Loan program). The new dates (often moving from September 30 to December 1) apply only to institutions or other parties located in federally declared disaster areas affected by Hurricane Katrina, and applicants adversely affected by the hurricane.²²
- On September 9, HUD's Assistant Secretary for Public and Indian Housing extended the September 2 submission deadline date for the Fiscal Year 2004 HOPE VI Main Street Grants for applicants in Katrina-affected areas, but only until September 7. (The extension was limited because funding for this program expires on September 30.)²³
- The same day, HUD's Assistant Secretary for Community Planning and Development waived a number of requirements in connection with the Department's HOME program (e.g., citizen participation requirements for consolidated plan amendment, source documentation requirements for income determination, and rent and property standards for tenant-based rental assistance).²⁴

²⁰ For a copy of this notice, see [<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/E5-4871.pdf>].

²¹ For a copy of this notice, see [<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-17840.pdf>].

²² For a copy of this notice, see [<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-18034.pdf>].

²³ For a copy of this notice, see [<http://a257.g.akamaitech.net/7/257/2422/01jan20051800/edocket.access.gpo.gov/2005/pdf/05-17728.pdf>].

²⁴ See [<http://www.hud.gov/offices/cpd/library/katrina/HOMEwaiver.pdf>]. The Assistant Secretary waived the citizen participation requirements earlier, on Sept. 5, 2005.