



Presidential Declarations of Emergency for COVID-19: NEA and Stafford Act

L. Elaine Halchin

Specialist in American National Government

Elizabeth M. Webster

Analyst in Emergency Management and Disaster Recovery

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This Insight provides an overview of the presidential declarations of emergency made under the National Emergencies Act (NEA; [50 U.S.C. §§1601 et seq.](#)) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; [42 U.S.C. §§5121 et seq.](#)) in response to the novel coronavirus 2019 (COVID-19). **Table 1** describes select differences between these types of declarations and their authorities. This Insight does not discuss other actions mentioned by the President, or federal agencies (other than the Department of Health and Human Services (HHS)) that have been, or may be, tasked to respond.

Two Emergency Declarations for COVID-19

On March 13, 2020, President Donald J. Trump issued [Proclamation 9994](#) under the NEA and [declared an emergency under the Stafford Act](#). The act of simultaneously declaring an emergency pursuant to the NEA and the Stafford Act nationally for the same threat or hazard appears to be unprecedented.

NEA Proclamation 9994

In [Proclamation 9994](#), President Donald J. Trump “proclaim[ed] that the COVID-19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020.” The proclamation also permits the Secretary of HHS to [exercise the authority under section 1135](#) of the Social Security Act “to

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temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children’s Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule....”

Previously, there was one instance where a President declared a national emergency pursuant to the NEA related to a health issue. President Barack Obama issued [Proclamation 8443](#) in which he declared a national emergency regarding the 2009 H1N1 influenza pandemic in the United States.

Stafford Act Emergency Declaration

The President’s [emergency declaration](#), pursuant to Stafford Act Section 501(b), 42 U.S.C. §5191(b), authorized assistance for COVID-19 response efforts for [all U.S. states, territories, and the District of Columbia](#). This is the first time the President has unilaterally declared a nationwide Stafford Act emergency; unilateral presidential declarations, however, have been made for [incidents on a limited scale](#). There is also limited precedent for Stafford Act emergency declarations in response to [public health incidents](#).

The Stafford Act emergency declaration for COVID-19 authorized one form of Federal Emergency Management Agency (FEMA) assistance: [Public Assistance emergency protective measures](#) (authorized under Stafford Act Section 502). An amended emergency declaration or a major disaster declaration could authorize additional forms of assistance.

Distinguishing Between the NEA and Stafford Act

Declarations of emergency under the NEA and Stafford Act are distinct and have different implications. Additionally, the declaration of emergency under the NEA does not invoke Stafford Act authorities, and vice versa. Declarations made pursuant to the NEA generally are considered efforts to protect the nation as a whole. When the President has declared an emergency under the Stafford Act in the past, it has been for a specific, disaster-affected state/territory or Indian tribal government. Although this most recent Stafford Act declaration is the first instance in which the President has declared an emergency that covers the entire nation, each disaster-affected state/territory and the District of Columbia received a distinct emergency declaration (i.e., [57 total declarations](#)).

Another key difference involves the authorities invoked by each type of emergency declaration. The President may invoke one or more so-called standby authorities in a national emergency declaration under the NEA, or the President may do so in a subsequent presidential directive (e.g., an executive order), which may reference the prior declaration. The Stafford Act includes specific programs and authorities available pursuant to an emergency declaration. In addition, some external statutory and regulatory structures use [Stafford Act declarations as triggering events](#).

Table I. Comparison of Selected Features of the National Emergencies Act and the Stafford Act

	National Emergencies Act	Stafford Act Emergency
Statutory Authority	50 U.S.C. §§1601 et seq.	42 U.S.C. §§5121 et seq.
Definition of emergency	No definition of national emergency or emergency.	“... any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect ... public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States” (42 U.S.C. §5122(1)).
Scope	Nation as a whole.	State/Territory or Indian Tribal Government.
Process	A proclamation (or executive order) declaring a national emergency shall immediately be transmitted to Congress and published in the <i>Federal Register</i> (50 U.S.C. §1621).	42 U.S.C. §5191(b) allows the President to unilaterally declare an emergency for certain emergencies involving federal primary responsibility.
Timing/Termination	The President may terminate an emergency by issuing a proclamation, or by not publishing a continuation notice (which must meet certain conditions). Congress and the President may terminate an emergency by passing and enacting a joint resolution into law (50 U.S.C. §1622(a) and (d)).	FEMA determines the <i>incident period</i> —“time interval during which the disaster-causing incident occurs” (44 C.F.R. §206.32(f)). Extensions of the incident period, and program extensions and end dates may be announced via FEMA news releases on FEMA’s website. Amendments to the emergency declaration are published in the <i>Federal Register</i> (44 C.F.R. §206.40).
Additional Authorities	The President may invoke one or more so-called <i>standby authorities</i> in the initial declaration or in a subsequent presidential directive, such as an executive order (50 U.S.C. §1621(b)).	42 U.S.C. §5192 specifies the federal emergency assistance that may be provided. Designated areas and forms of assistance are published in the <i>Federal Register</i> (44 C.F.R. §206.40).
Reporting Requirements	The President shall transmit promptly significant presidential orders, rules, and regulations to Congress. After a President has declared a national emergency, the President shall transmit semi-annual reports to Congress on the total expenditures incurred by the U.S. Government during the preceding six months. No later than 90 days after termination of an emergency, the President shall transmit a final report on all such expenditures (50 U.S.C. §1641).	The President must notify Congress when assistance provided for an emergency declaration will exceed \$5 million (42 U.S.C. §5193).
Funding	No dedicated funding.	Disaster Relief Fund (DRF) —“Base Disaster Relief” and supplemental appropriations.

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