



Presidential Declaration of Climate Emergency: NEA and Stafford Act

July 26, 2022

This Insight provides selected considerations related to the President’s ability to declare a climate emergency under the National Emergencies Act (NEA; [50 U.S.C. §§1601 et seq.](#)) and/or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act; [42 U.S.C. §§5121 et seq.](#)). **Table 1** lists key features of each declaration.

National Climate Emergency Declaration

During the week of July 18, 2022, [media sources](#) reported that President Joseph R. Biden Jr. was contemplating declaring a “national climate emergency” to address the nationwide effects of climate change. The reports did not specify the authority the President was considering leveraging. Potential vehicles include declaration authorities provided under the NEA and/or the Stafford Act.

NEA Declaration of Emergency

President Biden likely could declare a national emergency pursuant to the NEA regarding the effects of climate change on the United States. Although no previous President has ever declared a national emergency under the NEA related to climate change or the environment, the statute does not explicitly preclude such a declaration.

When [declaring a national emergency under the NEA](#), the President generally activates one or more [emergency authorities](#) (also referred to as “standby authorities”), which may also be invoked subsequent to the declaration. Many of these emergency authorities are found in the *U.S. Code*, and they may be related to, for example, public health, asset management, or international relations. More than 100 standby authorities are available. It is possible that some could be used to address climate change, depending on legal interpretations and limitations on such authorities.

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Stafford Act Emergency Declaration

Typically, the President declares certain incidents as emergencies or major disasters under the Stafford Act in response to requests by governors or tribal chief executives. However, the President may also unilaterally declare an emergency under [Stafford Act Section 501\(b\)](#). With the exception of the nationwide emergency declaration for the [COVID-19 pandemic](#), past unilateral emergency declarations were made for rapid-onset [incidents involving federal property](#) (e.g., the Oklahoma City bombing).

While the statute does not specifically preclude the use of this authority to address climate change, such a declaration could pose numerous [challenges](#), including strain on the [federalist framework of the Stafford Act](#), as well as significant [changes to FEMA's operations](#). For example, Stafford Act declarations generally authorize limited federal support for rapid-onset events that cause measurable damage in a particular geographic area during a defined period of time. Establishing temporal and spatial limits for a climate change emergency could prove impossible. Further, Stafford Act assistance is intended to redress losses directly attributed to a discrete [declared incident](#). It is unclear how FEMA would attribute losses to climate change.

Additionally, a Stafford Act emergency declaration may not provide the [types of assistance](#) most relevant to address the consequences of climate change. For instance, [hazard mitigation assistance](#) and assistance to [rebuild public facilities](#) are only available pursuant to a [major disaster declaration](#). Thus, [emergency or major disaster declarations](#) authorized for discrete events exacerbated or intensified by climate change, like hurricanes and wildfires, may more effectively assist those affected.

Comparing the NEA and Stafford Act

NEA and Stafford Act declarations are distinct and have different implications. An NEA declaration of emergency does not invoke Stafford Act authorities, and vice versa. NEA declarations are generally considered efforts to protect the whole nation; Stafford Act declarations are generally for incidents that affect a specific state/territory/tribe. In certain cases, both may be invoked simultaneously, as with the [COVID-19 pandemic response](#). 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. | All or selected designated areas within a state/territory/tribe. |
| 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). | Generally, a tribal chief executive or governor requests an emergency declaration and specific forms of assistance. 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)). 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 standby authorities 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; and shall transmit semi-annual reports to Congress on the total expenditures incurred by the U.S. government during the preceding six months after declaring a national emergency. 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 if the assistance provided for an emergency declaration exceeds \$5 million (42 U.S.C. §5193). |
| Funding | No dedicated funding. | Disaster Relief Fund (DRF)—“Base Disaster Relief” and supplemental appropriations. |

Source: CRS.

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