



# Information Alert

*State-Federal Relations Division*

## **President Trump Declares State of Emergency for COVID-19**

March 20, 2020

To date, President Donald Trump has activated emergency powers under four separate statutes for the COVID-19 response. Trump declared a public health emergency under the Public Health Service Act on Jan. 31, issued two national emergency declarations under both [the Stafford Act](#) and the [National Emergencies Act](#) (NEA) on March 13, and invoked emergency powers via executive order under the Defense Production Act on March 18. On March 19, Trump named the Federal Emergency Management Agency (FEMA) as the lead agency in the COVID-19 emergency response efforts, a designation previously held by the Department of Health and Human Services (HHS). These actions have varying implications but collectively allow the federal government to deliver virus response funds and other assistance to state and local governments in an effort to reduce the spread of the virus and protect the economy against its mounting impact.

The declaration comes as part of a broader effort to bolster the economy and contain the virus as it continues to quarantine workers and consumers, ground flights, close factories and schools, ban public events, disrupt supply chains, impact the stock market and cause other fallout. These developments will bolster efforts already underway by governors, mayors, county officials, state legislatures and others in state and local government nationwide who have stepped up to mitigate the spread.

### ***Emergency Declarations: Stafford Act, Public Health Service Act and National Emergencies Act***

Three sources of statutory authority are available for the federal government to issue an emergency declaration, each associated with varying procedures, resources and funding. These include the Stafford Act, Public Health Service Act and National Emergencies Act. As of March 13, emergencies have been declared under all three acts. Additionally, the Defense Production Act allows the president's broad authorities to compel domestic industry production for the sake of national defense, including emergency activities under the Stafford Act.

*Stafford Act*

On March 13, the president declared an emergency for COVID-19 under Section 501(b) of the Stafford Act, pledging \$50 billion in unspecified aid in the ongoing COVID-19 response efforts. Section 501(b) of the Stafford Act allows the federal government to declare an emergency without a governor's request and makes available only certain subsets of FEMA recovery funds. This generally enables FEMA to operate as a vehicle to deliver virus response funds to state and local governments.

Declarations under the Stafford Act are typically associated with natural disasters, but they can also be used for health emergencies such as the COVID-19 outbreak. Stafford Act declarations can take several forms, each involving various procedures, types and amounts of assistance. These programs are funded by the Disaster Relief Fund (DRF) which is currently funded at \$42 billion. Emergency and catastrophic disaster declarations typically require a governor's request, based on well-documented and verified cost estimates via preliminary damage assessments. However, [Section 501\(b\)](#) of the Stafford Act allows the president to declare an emergency without a request from the governor of the affected state when the primary responsibility for the emergency rests with the federal government. Such an emergency declaration does not prevent the governor from subsequently requesting a major disaster declaration for other unmet needs caused by the event.

Emergency declarations under the Stafford Act activate the National Response Framework (NRF) which enables domestic response partners at all levels to provide a unified national response to disasters and emergencies. FEMA is likely to lead operational meetings, provide overall coordination, activate its interagency emergency operations center at FEMA headquarters in Washington, D.C., and activate all 10 FEMA regional offices to directly support states in their regions. Below are important details for states, specific to the coronavirus declaration.

### ***What assistance does the Stafford Act COVID-19 emergency declaration offer states?***

The COVID-19 declaration:

- Limits available FEMA recovery funding to emergency protective measures under [Public Assistance](#) grants—or "Category B" measures.
  - These are measures taken before, during and immediately after the incident to save lives and protect public health and safety. In this case, they must be taken at the direction or guidance of public health officials in response to this emergency. These include activation of State Emergency Operations Centers (EOC), National Guard costs, law enforcement and other measures necessary to protect public health and safety. For specific eligibility criteria, please read FEMA's March 19 guidance—the [Coronavirus \(COVID-19\) Pandemic: Eligible Emergency Protective Measures Fact Sheet](#).
- Does **not** authorize funding under [FEMA Individual Assistance](#) grants or (406) [Hazard Mitigation grants](#) under Public Assistance.
- Provides FEMA Incident Management Assistance Teams to state Emergency Operations Centers to aid in the COVID-19 response effort. These teams are made up of 10 experienced senior-level emergency management professionals with expertise in operations, logistics, planning and recovery. They are meant to:
  - Rapidly deploy to an incident or potentially threatened area.

- Identify ways available federal assistance could be used to best support virus response and recovery efforts.
- Work with partners across jurisdictions to support the affected state or territory.
- Provides access to \$7 billion in low-interest, long-term [loans](#) to qualifying small businesses to assist economic recovery under the Small Business Administration (SBA).
- Authorizes the Treasury Department and the IRS to grant filing and payment extensions for income taxes and other taxes administered to any taxpayer determined to be affected, for up to one year.
- Requires states to request an amendment to the emergency declaration in order access any [additional forms of funding](#) under the Stafford Act.

### ***How can states access this assistance?***

In order to access assistance:

- Governors must work with the applicable FEMA regional administrators within their FEMA region to create and execute a [FEMA-State Agreement](#)—a document that:
  - Imposes binding obligations on FEMA, state or territory, local governments and private nonprofits.
  - States the understandings, commitments and conditions under which assistance will be provided.
  - Describes the event and the incident period for which assistance will be made available, and the type and extent of the assistance.
- States must activate their EOC.
- States must cover 25% of the costs in matching funds.
- FEMA assistance will not duplicate other assistance provided or available under the authority of other federal agencies, including HHS.
- For SBA disaster assistance loans, small businesses must apply online with [FEMA or SBA](#). The program allows businesses of all sizes as well as private nonprofit organizations to borrow up to \$2 million to replace inventory and other business assets lost as a result of the outbreak.

Despite what we know so far, details for use of the DRF for COVID-19 are not immediately familiar to public health and emergency management officials, given the infrequency of pandemics. The Department of Homeland Security (DHS) and FEMA are releasing new guidance and resources frequently, such as DHS’s March 19 resource on [Identifying Critical Infrastructure During COVID-19](#). The details of these processes may well continue to develop over time.

### *National Emergencies Act*

On March 13, the president also declared an emergency for COVID-19 under Section 201 and 301 of the [National Emergencies Act](#). The [National Emergencies Act \(NEA\)](#) generally authorizes the president nearly unlimited discretion to declare a national emergency. These sections allow the secretary of HHS to exercise the authority under section 1135 of the Social Security Act to 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 throughout the duration of the pandemic. The secretary of HHS must provide certification and advance written notice to the Congress. These waivers can loosen

restrictions on the use of telehealth and certain requirements for hospitals and healthcare providers to improve their response efforts.

The NEA was enacted by Congress in 1976 to formalize presidential and congressional power—and related checks and balances—surrounding national states of emergency. However, this formalization does not include definitions for or requirements of the national emergency itself. The law does not itself provide authorities associated with a state of national emergency, though it does allow activation of powers provided the president in other statutes. A national emergency under NEA was also activated by President George W. Bush for the Sept. 11 terrorist attacks in [2001](#). For more information on the NEA, see NCSL's [blog](#).

#### *Public Health Service Act*

Section 319 of the Public Health Service (PHS) Act allows the secretary of the Department of Health and Human Services to declare a public health emergency (PHE) for significant outbreaks of infectious diseases. HHS Secretary Alex Azar declared a public health emergency on Jan. 31 in response to the COVID-19 outbreak, as did President Barak Obama for the [H1N1 influenza virus outbreak](#) in 2009. The administration established the Coronavirus Task Force to lead the response effort shortly thereafter and HHS has since issued multiple policy modifications and waivers to support response efforts of the health care community. For more information on the Public Health Services Act, visit the HHS [webpage](#).

#### *Defense Production Act*

The president issued the [Executive Order on Prioritizing and Allocating Health and Medical Resources to Respond to the Spread of Covid-19](#) but had not immediately taken extensive action under the act. Section 101 of this act allows the president to require that private companies prioritize and execute government contracts—to allocate materials, services, and facilities—that promote the national defense over any other contracts or orders. For COVID-19, he plans to use the act to ensure that the U.S. healthcare system is able to surge capacity and capability for outbreak response by requiring that all such health and medical resources—including ventilators as well as personal protective equipment such as masks, gloves, and other medical supplies—are properly distributed to health workers on the front lines of the response.

The order delegates the authority to HHS Secretary Alex Azar, in consultation with other agencies as necessary, to determine proper allocation of these resources, controlling the general distribution of such materials in the civilian market. This authority has not been previously used by HHS.

The order also invokes Title 3 of the U.S. Code, which provides loans or purchases to bolster critical domestic production capabilities. This authority was also delegated to Azar.

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