

CEQ Fact Sheet:

The Stafford Act and its relation to the National Environmental Policy Act

The Statutes

The National Environmental Policy Act (NEPA) requires all Federal agencies to consider the environmental impacts of a proposed action before proceeding with it. NEPA is a procedural statute, and requires that an agency assess the environmental consequences of an action and its alternatives. An agency is not constrained by NEPA if the benefits of a proposed project outweigh the environmental costs of moving forward with an action. Rather, NEPA requires that an agency adequately identify the environmental effects of a proposed action in order to make a well informed decision.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act) provides the statutory authority for Federal disaster response activities and for FEMA's disaster assistance programs for a community's recovery. FEMA's emergency and disaster assistance programs are implemented at 44 CFR Part 206. The complete text of the Stafford Act is at <http://www.fema.gov/about/stafact.shtm>. More information on FEMA's environmental planning and historic preservation (EHP) program, including FEMA environmental planning and historic preservation review process for Stafford Act related actions is available at <http://www.fema.gov/plan/ehp/>.

The NEPA Exemptions

The Stafford Act waives NEPA procedures for certain Federal actions taken or carried out within a Presidentially declared emergency or disaster area. Specifically **Section 316 (42 U.S.C. 5159)** exempts the following Federal actions taken by FEMA¹ from required NEPA analysis:

¹ FEMA is the primary Federal agency implementing the Stafford Act. Executive Order 12148 vested this authority solely upon FEMA. FEMA is not aware of any example where another Federal agency has provided assistance under these provisions or that has used Section 316 exemption for similar activities under their jurisdiction. For FEMA, the Stafford Act provides the authority for the Public Assistance Grant Program, which provides funding for the activities exempted by Section 316. The Stafford Act provides FEMA with the ability to refund the services rendered by other Federal agencies for tasks authorized by these provisions of the Stafford Act. An example is debris removal or the provision of temporary facilities for which FEMA typically uses the USACE. In this case, the Federal agency essentially acts as FEMA's contractor and must meet FEMA's environmental planning and historic preservation requirements. In these unique situations they would be able to use the Sec. 316 exemption of NEPA.

For Federal highways, for example, FHWA has specific statutory authority outside of the Stafford Act to provide for emergency highway repairs. Same with the US EPA and Coast Guard for the response to a hazardous materials release. SBA is another example. None of these agencies use Section 316's exemption because their authorities are derived from other statutes not the Stafford Act.

- Providing general technical and logistical support (including personnel, equipment and facilities);
- Providing general Federal assistance under Section 402 for disaster declarations;
- Providing assistance under Section 502 for emergency declarations;
- Providing “essential assistance” under Section 403 for saving lives and protecting and preserving property or public health and safety including:
 - Emergency shelter;
 - Temporary facilities for essential community services;
 - Search and rescue;
 - Clearance of roads and construction of temporary bridges;
 - Demolition of unsafe structures;
 - Actions to reduce of immediate threats to life, property, and public health and safety;
- Debris removal under Sections 403 and 407; and
- Provision of assistance for the repair and replacement of damaged public facilities to their pre-disaster conditions (i.e. substantially the same location, size, and capacity) under Section 406.

These activities are carried out solely through FEMA’s Public Assistance Grant Program. The Stafford Act provisions with the list of the types of activities / actions exempted from NEPA are listed in the Appendix below.

What is not exempted from NEPA?

Section 316 **does not** exempt improvements to facilities beyond their pre-disaster condition. These **are** major Federal actions subject to NEPA. For example, if a facility is damaged and replaced with a facility with the same capacity, location and size, it would not be subject to NEPA analysis. If the facility is replaced with a facility with increased capacity or larger size or different location, this would be subject to NEPA. Under Section 406 of the Stafford Act FEMA’s Public Assistance Grant Program funds may be used for the improvement of facilities beyond “pre-disaster conditions.” In the aftermath of a disaster, communities may elect to rebuild bigger and more resilient facilities. This may result in projects that result in facilities that are larger or with increased capacity. For example, a community may choose to rebuild a school with added measures to protect it from a future disaster (e.g. elevation within the floodplain, saferooms, etc.). In addition, communities will have the option of applying funding that would otherwise be available for bringing a facility back to its pre-disaster conditions towards new or different facilities. For example, the community may have the option to apply funding that is available to repair or replace a police station towards the construction of a new community hospital. Even though these particular actions are provided under the authority of Section 406 of the Stafford Act, the Section 316 exemption of NEPA would not be available.

The Stafford Act provides authority for other FEMA programs such as FEMA's Individuals and Households Program (better known as Individual Assistance authorized under Sec. 408), FEMA's Hazard Mitigation Grant Program (Sec. 404), FEMA's Fire Management Assistance (Sec. 420), FEMA's Emergency Operation Center Construction Grants (Sec. 614), and FEMA's Pre-Disaster Mitigation Grant Program (Sec. 230). The Stafford Act also provides authority for other FEMA-led actions such as the activation and deployment of Federal emergency support teams (Sec. 303), provision of community disaster loans (Sec. 417), provision and distribution of services such as unemployment assistance (Sec. 410), food commodities (Sec. 413), legal services (Sec. 415), crisis counseling (Sec. 416), emergency public transportation (Sec. 419), and emergency communications (Sec. 418). It also provides specific authority for actions undertaken by other Federal agencies such as distribution of food coupons in the aftermath of disasters (Sec. 412), restoration, repair, and replacement of Federal facilities (Sec. 405), authorities for the Secretary of Agriculture or Secretary of Interior to amend timber sale contracts and grants to individuals or local governments for removal of timber (Sec. 421), and actions under the Emergency Drought Relief Act administered by the Department of Commerce. **None of these actions are exempt from NEPA.**

Exemption from other laws

Section 316 of the Stafford Act does not exempt Federal actions from laws or requirements other than NEPA. Statutory and regulatory provisions may be available in other environmental planning and historic preservation requirements for emergency and disaster related actions. Examples of these include Section 7(p) of the Endangered Species Act (actions to restore facilities to pre-disaster conditions in Presidentially declared disaster areas), Section 8 of the Executive Order 11988 (exemption for Federal actions taken under Sec. 402 and 403 of the Stafford Act), Part 93.153(d) and (e) of the Clean Air Act General Conformity Rules (at 40 CFR), and Part 93.932(b) of the Coastal Zone Management Act implementing regulations (at 15 CFR).

FEMA's Procedures

FEMA's NEPA procedures, found in 44 CFR 10, establish categorical exclusions that apply to those FEMA actions not exempted by Section 316. FEMA also uses concise environmental assessments (EAs) combined with collaborative decision making among all Federal, State, Tribal, local and public stakeholders to facilitate the shortened timeline needed to rebuild disaster damaged facilities. FEMA also develops tools to take into account the unique nature of the agency's mission as well as the need to consider other environmental planning and historic preservation requirements that are not addressed by Section 316 of the Stafford Act. Examples of tools developed by FEMA include Statewide Programmatic Agreements under Section 106 of NHPA, Programmatic Environmental Assessments under NEPA, Programmatic Biological Assessments under ESA, protocols with resource agencies on disaster consultation and coordination, etc.

NEPA Alternative Arrangements and Other Procedures

It should be noted that in addition to the limited statutory exclusion of NEPA under Section 316, CEQ regulations allow for “alternative arrangements” in the event of emergencies. FEMA has reiterated and expanded upon this process in its NEPA regulations at 44 CFR 10.13. It is expanded because it allows FEMA Regional Administrators to move forward with an emergency action that is necessary for the preservation of human life without observing this process. These protocols are only available for actions with significant impacts to the human environment.

In addition, FEMA and CEQ have established a protocol for the consideration of environmental impacts and approval of emergency actions taken to reduce immediate threats to life and property without following the normal NEPA process. This protocol has been captured in a FEMA policy called “Environmental Memorandum # 3 and was approved by CEQ in 1995. This protocol is available for emergency actions that do not fit a categorical exclusion but do not trigger significant impacts to the human environment.

Appendix:

Title III -- Major Disaster and Emergency Assistance Administration

Section 301. Waiver of Administrative Conditions (42 U.S.C. 5141)²

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 the major disaster.

Section 316. Protection of Environment (42 U.S.C. 5159)

An action which is taken or assistance which is provided pursuant to section 5170a, 5170b, 5172, 5173, or 5192 of this title, including such assistance provided pursuant to the procedures provided for in section 5189 of this title, which has the effect of restoring a facility substantially to its condition prior to the disaster or emergency, shall not be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (83 Stat. 852) [42 U.S.C. §4321 et seq.]. Nothing in this section shall alter or affect the applicability of the National Environmental Policy Act of 1969 [42 U.S.C. §4321 et seq.] to other Federal actions taken under this Act or under any other provisions of law.

Title IV -- Major Disaster Assistance Programs

Section 401. Procedure for Declaration (42 U.S.C. 5170)

All requests for a declaration by the President that a major disaster exists shall be made by the Governor of the affected State. Such a request shall be based on a finding that the disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and the affected local governments and that Federal assistance is necessary. As part of such request, and as a prerequisite to major disaster assistance under this Act, the Governor shall take appropriate response action under State law and direct execution of the State's emergency plan. The Governor shall furnish information on the nature and amount of State and local resources which have been or will be committed to alleviating the results of the disaster, and shall certify that, for the current disaster, State and local government obligations and expenditures (of which State commitments must be a significant proportion) will comply with all applicable cost-sharing requirements of this Act. Based on the request of a Governor under this section, the President may declare under this Act that a major disaster or emergency exists.

² FEMA does not interpret Section 301 of the Stafford Act as broadly as suggested previously. Our practice is that it applies to administrative requirements but not substantive requirements. Even in this limited context, it is only applied when the event itself makes it impossible to comply with those administrative requirements. Examples include extending grant application deadlines when the community or State agency has been severely impacted in a manner that does not allow for them to develop the grant applications and for individuals under our Individual Assistance program eliminating the documentation requirement for demonstrating that they are residents when the event has destroyed such documentation.

Section 402. General Federal Assistance (42 U.S.C. 5170a)*

In any major disaster, the President may -

- (1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) in support of State and local assistance response and recovery efforts, including precautionary evacuations;
- (2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments, including precautionary evacuations and recovery;
- (3) provide technical and advisory assistance to affected State and local governments for -
 - (A) the performance of essential community services;
 - (B) issuance of warnings of risks and hazards;
 - (C) public health and safety information, including dissemination of such information;
 - (D) provision of health and safety measures;
 - (E) management, control, and reduction of immediate threats to public health and safety; and
 - (F) recovery activities, including disaster impact assessments and planning;
- (4) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and
- (5) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President
 - (A) shall, to the fullest extent practicable, promptly notify and coordinate with officials in a State in which such assistance or support is provided; and
 - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of a major disaster.

Section 403. Essential Assistance (42 U.S.C. 5170b)*

(a) In general - Federal agencies may on the direction of the President, provide assistance essential to meeting immediate threats to life and property resulting from a major disaster, as follows:

- (1) Federal resources, generally - Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act.
- (2) Medicine, durable medical equipment, food, and other consumables - Distributing or rendering through State and local governments, the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other relief and disaster assistance organizations medicine, durable medical equipment, food, and other consumable supplies, and other services and assistance to disaster victims.
- (3) Work and services to save lives and protect property - Performing on public or private lands or waters any work or services essential to saving lives and protecting and preserving property or public health and safety, including -
 - (A) debris removal;
 - (B) search and rescue, emergency medical care, emergency mass care, emergency shelter, and provision of food, water, medicine, durable medical equipment, and other essential needs, including movement of supplies or persons;

- (C) clearance of roads and construction of temporary bridges necessary to the performance of emergency tasks and essential community services;
- (D) provision of temporary facilities for schools and other essential community services;
- (E) demolition of unsafe structures which endanger the public;
- (F) warning of further risks and hazards;
- (G) dissemination of public information and assistance regarding health and safety measures;
- (H) provision of technical advice to State and local governments on disaster management and control;
- (I) reduction of immediate threats to life, property, and public health and safety; and
- (J) provision of rescue, care, shelter, and essential needs -
 - (i) to individuals with household pets and service animals; and
 - (ii) to such pets and animals.
- (4) Contributions - Making contributions to State or local governments or owners or operators of private nonprofit facilities for the purpose of carrying out the provisions of this subsection.
 - (b) Federal share - The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of such assistance.
 - (c) Utilization of DOD resources -
 - (1) General rule - During the immediate aftermath of an incident which may ultimately qualify for assistance under this title or title V of this Act, the Governor of the State in which such incident occurred may request the President to direct the Secretary of Defense to utilize the resources of the Department of Defense for the purpose of performing on public and private lands any emergency work which is made necessary by such incident and which is essential for the preservation of life and property. If the President determines that such work is essential for the preservation of life and property, the President shall grant such request to the extent the President determines practicable. Such emergency work may only be carried out for a period not to exceed 10 days.
 - (2) Rules applicable to debris removal - Any removal of debris and wreckage carried out under this subsection shall be subject to section 5173(b) of this title, relating to unconditional authorization and indemnification for debris removal.
 - (3) Expenditures out of disaster relief funds - The cost of any assistance provided pursuant to this subsection shall be reimbursed out of funds made available to carry out this Act.
 - (4) Federal share - The Federal share of assistance under this subsection shall be not less than 75 percent.
 - (5) Guidelines - Not later than 180 days after the date of the enactment of the Disaster Relief and Emergency Assistance Amendments of 1988 [enacted Nov. 23, 1988], the President shall issue guidelines for carrying out this subsection. Such guidelines shall consider any likely effect assistance under this subsection will have on the availability of other forms of assistance under this Act.
 - (6) Definitions - For purposes of this section
 - (A) Department of Defense - The term "Department of Defense" has the meaning the term "department" has under section 101 of title 10.
 - (B) Emergency work - The term "emergency work" includes clearance and removal of debris and wreckage and temporary restoration of essential public facilities and services.

Section 406. Repair, Restoration, and Replacement of Damaged Facilities (42 U.S.C. 5172)*

(a) Contributions -

(1) In general -The President may make contributions -

(A) to a State or local government for the repair, restoration, reconstruction, or replacement of a public facility damaged or destroyed by a major disaster and for associated expenses incurred by the government; and

(B) subject to paragraph (3), to a person that owns or operates a private nonprofit facility damaged or destroyed by a major disaster for the repair, restoration, reconstruction, or replacement of the facility and for associated expenses incurred by the person.

(2) Associated expenses - For the purposes of this section, associated expenses shall include -

(A) the costs of mobilizing and employing the National Guard for performance of eligible work;

(B) the costs of using prison labor to perform eligible work, including wages actually paid, transportation to a worksite, and extraordinary costs of guards, food, and lodging; and

(C) base and overtime wages for the employees and extra hires of a State, local government, or person described in paragraph (1) that perform eligible work, plus fringe benefits on such wages to the extent that such benefits were being paid before the major disaster.

(3) Conditions for assistance to private nonprofit facilities -

(A) In general - The President may make contributions to a private nonprofit facility under paragraph (1)(B) only if -

(i) the facility provides critical services (as defined by the President) in the event of a major disaster; or

(ii) the owner or operator of the facility -

(I) has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)); and

(II) (aa) has been determined to be ineligible for such a loan; or

(bb) has obtained such a loan in the maximum amount for which the Small Business Administration determines the facility is eligible.

(B) Definition of critical services - In this paragraph, the term “critical services” includes power, water (including water provided by an irrigation organization or facility), sewer, wastewater treatment, communications, education, and emergency medical care.

(4) Notification to Congress - Before making any contribution under this section in an amount greater than \$20,000,000, the President shall notify

(A) the Committee on Environment and Public Works of the Senate;

(B) the Committee on Transportation and Infrastructure of the House of Representatives;

(C) the Committee on Appropriations of the Senate; and

(D) the Committee on Appropriations of the House of Representatives.

..... continued (see complete code)

Section 407. Debris Removal (42 U.S.C. 5173)*

(a) Presidential Authority - The President, whenever he determines it to be in the public interest, is authorized -

(1) through the use of Federal departments, agencies, and instrumentalities, to clear debris and wreckage resulting from a major disaster from publicly and privately owned lands and waters; and

(2) to make grants to any State or local government or owner or operator of a private non-profit facility for the purpose of removing debris or wreckage resulting from a major disaster from publicly or privately owned lands and waters.

(b) Authorization by State or local government; indemnification agreement – No authority under this section shall be exercised unless the affected State or local government shall first arrange an unconditional authorization for removal of such debris or wreckage from public and private property, and, in the case of removal of debris or wreckage from private property, shall first agree to indemnify the Federal Government against any claim arising from such removal.

(c) Rules relating to large lots - The President shall issue rules which provide for recognition of differences existing among urban, suburban, and rural lands in implementation of this section so as to facilitate adequate removal of debris and wreckage from large lots.

(d) Federal share - The Federal share of assistance under this section shall be not less than 75 percent of the eligible cost of debris and wreckage removal carried out under this section.

(e) Expedited Payments -

(1) Grant Assistance – In making a grant under subsection (a)(2), the President shall provide not less than 50 percent of the President’s initial estimate of the Federal share of assistance as an initial payment in accordance with paragraph (2).

(2) Date of Payment – Not later than 60 days after the date of the estimate described in paragraph (1) and not later than 90 days after the date on which the State or local government or owner or operator of a private nonprofit facility applies for assistance under this section, an initial payment described in paragraph (1) shall be paid.

Section 422. Simplified Procedures (42 U.S.C. 5189)

If the Federal estimate of the cost of -

(1) repairing, restoring, reconstructing, or replacing under section 5172 of this title any damaged or destroyed public facility or private nonprofit facility,

(2) emergency assistance under section 5170b or 5192 of this title, or

(3) debris removed under section 5173 of this title, is less than \$35,000, the President (on application of the State or local government or the owner or operator of the private nonprofit facility) may make the contribution to such State or local government or owner or operator under section 5170b, 5172, 5173, or 5192 of this title, as the case may be, on the basis of such Federal estimate. Such \$35,000 amount shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

Title V -- Emergency Assistance Programs

Section 502. Federal emergency assistance (42 U.S.C. 5192)*

(a) Specified - In any emergency, the President may -

(1) direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations;

(2) coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(3) provide technical and advisory assistance to affected State and local governments for -

(A) the performance of essential community services;

(B) issuance of warnings of risks or hazards;

(C) public health and safety information, including dissemination of such information;

- (D) provision of health and safety measures; and
- (E) management, control, and reduction of immediate threats to public health and safety;
- (4) provide emergency assistance through Federal agencies;
- (5) remove debris in accordance with the terms and conditions of section 407;
- (6) provide assistance in accordance with section 408;
- (7) assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance; and
- (8) provide accelerated Federal assistance and Federal support where necessary to save lives, prevent human suffering, or mitigate severe damage, which may be provided in the absence of a specific request and in which case the President -
 - (A) shall, to the fullest extent practicable, promptly notify and coordinate with a State in which such assistance or support is provided; and
 - (B) shall not, in notifying and coordinating with a State under subparagraph (A), delay or impede the rapid deployment, use, and distribution of critical resources to victims of an emergency.
- (b) General - Whenever the Federal assistance provided under subsection (a) with respect to an emergency is inadequate, the President may also provide assistance with respect to efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe, including precautionary evacuations.
- (c) Guidelines - The President shall promulgate and maintain guidelines to assist Governors in requesting the declaration of an emergency in advance of a natural or man-made disaster (including for the purpose of seeking assistance with special needs and other evacuation efforts) under this section by defining the types of assistance available to affected States and the circumstances under which such requests are likely to be approved.

(* Section of the Act that have been amended