W&M
VIRGINIA COASTAL RESILIENCE COLLABORATIVE

Thomas Ruppert, Esq., Director &
Asst. Provost for Coastal Resilience
262 Richmond Road
Williamsburg, VA 23185

757-221-5415
tkruppert@wm.edu
www.wm.edu/offices/vcrc/

TO: Thomas Ruppert, Assistant Provost for Coastal Resilience & Director, VCRC
FROM: Greg Fowler, Law Fellow, VCRC
DATE: February 20, 2026
RE: Legal Analysis of Executive Order 14377 and SBA's Disaster Loan Rule

EXECUTIVE SUMMARY

Executive Order (EO) 14377 and the Small Business Administration (SBA) Interim Final Rule (13 C.F.R. §§ 123.800–.808) raise several substantive legal questions. The EO directs SBA and the Federal Emergency Management Agency (FEMA) to "preempt State [and] local permitting processes" as well as "similar pre-approval processes" that "unduly hinder" recovery. The "similar pre-approval processes" language implicates zoning, land use, floodplain management, as well as environmental review requirements such as the California Environmental Quality Act (CEQA).

The SBA rule declares "[a]ny State or Local Requirement shall be preempted where it is the but-for cause of a delay in conducting Disaster-Related Activities that lasts more than sixty (60) days" after submitting a complete application for approval while disabling local enforcement tools like stop-work orders based on lacking the required permit or other requirement.[1] The rule does not preempt "substantive underlying requirements that would form the basis of the permit or approval."[2] The builder must self-certify that, "the builder has so far, and will in the future, comply with and adhere to any applicable state and local rules and regulations not preempted. . .

[1] 13 C.F.R. § 123.803.

[2] 13 C.F.R. § 123.801.

."[3] "Building codes, health and safety requirements, inspection requirements, and processes for obtaining a certificate of occupancy are explicitly stated as not preempted.[4] Pre-construction permitting is the primary way states and localities evaluate compliance with their laws and regulations, meaning this EO and the SBA rule have the potential to significantly impact the ability of state and local governments to be as effective as possible in enforcing their land use, zoning, and environmental regulations.

1. Executive Orders do not have independent preemptive force, and neither EO 14377 nor the SBA rule rests on clear statutory authorization to displace core state police-power functions. Section 7(b) of the Small Business Act (15 U.S.C. § 636(b)) authorizes disaster loans and section 5(b)(6) of the act (15 U.S.C § 634(b)(6)) authorizes SBA to make "necessary" regulations but neither section clearly empowers SBA to declare permitting and related processes, like the California Environmental Quality Act (CEQA), "preempted" and to bar state and local enforcement if such enforcement is based on the lack of a permit. Any FEMA implementation would raise distinct questions under the Stafford Act, which is structured around a cooperative federalism model whereby federal assistance supports—rather than overrides—state and local control of land use, permitting, and environmental review.

2. The rule appears contrary to federalism clear-statement principles and the major questions doctrine. Land use, building regulation, floodplain management, and environmental review are historic powers of the states, and the Supreme Court has required unmistakable congressional authorization before allowing federal law to intrude into these areas or to confer "unheralded" regulatory power of major political and economic significance. Nothing in the Small Business Act or the Stafford Act provides the kind of clear-statement that would justify nationwide federal preemption of post-disaster permitting and enforcement.

3. The rule potentially violates the Administrative Procedure Act (APA) and the National Environmental Policy Act (NEPA). SBA invokes the "good cause" exception to skip notice-and-comment more than a year after the triggering disaster, adopts a one-size-fits-all

[3] 13 C.F.R. § 123.805.

[4] *Id.*

60-day cutoff across different permitting regimes, fails to consider obvious, less intrusive alternatives that states like California are currently implementing, and, to the extent SBA's disaster loan program triggers NEPA, creates a risk that environmental consequences and alternatives in high-risk disaster areas will not be adequately evaluated.

The rule undermines the role of floodplain permits and other health and public safety permits by allowing covered projects to proceed without permits after 60 days, potentially forcing officials to rely on more burdensome mid- or post-construction enforcement instead. A parallel FEMA rule implementing EO 14377 would have similar practical consequences, raising the same statutory, federalism, APA, and NEPA concerns by sidelining local floodplain and environmental review in FEMA-funded projects. California and Los Angeles, along with other states and localities engaged in disaster recovery, likely have sovereign standing based on loss of regulatory control and heightened safety and environmental risks.

I. BACKGROUND

On January 23, 2026, President Trump issued Executive Order 14377, titled "Addressing State and Local Failures to Rebuild Los Angeles After Wildfire Disasters."[5] The EO directs the Administrator of the Small Business Administration and the Administrator of FEMA to consider promulgating regulations that preempt state and local permitting processes that the agencies determine unduly delay disaster recovery.[6] The EO characterizes state and local permitting processes as obstacles to rebuilding and instructs federal agencies to develop regulations allowing those engaged in rebuilding a method of bypassing or overriding such requirements when agencies conclude that the permitting process is taking too long.[7] The EO further directs agencies to streamline environmental review under NEPA and similar laws and instructs agencies to consider using emergency authorities to expedite federal approvals.[8] Although

[5] Exec. Order No. 14,377, 91 Fed. Reg. 3989 (Jan. 23, 2026).

[6] *Id.*

[7] *Id.*

[8] *Id.*

framed as a response to the Los Angeles wildfires, the EO applies nationwide to all disaster declarations and all federal disaster assistance programs administered by SBA and FEMA.[9]

It is unclear that such federal actions are necessary or useful ways to speed up rebuilding efforts in California by sidestepping local permitting or California Environmental Quality Act (CEQA) approvals. Other avenues to address potential rebuilding or repair delays due to permitting are available. For example, California suspended the California Environmental Quality Act (CEQA) for like-for-like wildfire reconstruction and established expedited permit centers, showing both the willingness and ability to act quickly at the state level.[10] Despite requests from California for supplemental disaster appropriations, Congress has not enacted disaster-specific legislation for the Los Angeles wildfires comparable to supplemental funding packages enacted under prior administrations for major wildfire events.[11] The administration's lack of support for such congressional funding, despite requests from California officials, undercuts the administration's claim that it is necessary to preempt local and state law.

Such preemption does not remove state and local enforcement authority altogether—compliance is still required with substantive health and safety standards[12]—but the rule shifts permitting from an *ex-ante*, pre-construction gatekeeping system into a largely *ex-post* enforcement regime. Under the SBA rule, localities would have to police compliance mid- or post-construction through inspections and enforcement actions rather than through front-end permit review.[13] Permitting allows state and local officials to identify noncompliant siting, elevation, or design before the project begins and, if necessary, to require modifications or deny approval for projects that would increase risk or violate substantive standards.[14] Once construction is underway, many conditions become effectively irreversible or prohibitively

---

[9] *Id.*

[10] Exec. Order No. N-4-25 (Cal. 2025); LA COUNTY RECOVERS, *One-Stop Permit Centers*, (2025, March 2), https://recovery.lacounty.gov/rebuilding/one-stop-permit-centers/.

[11] *See* Cassie Semyon, SPECTRUM NEWS 1, *3 Months After the Wildfires, California Still Waits to See Action on Federal Disaster Aid Request* (Apr. 21, 2025), https://spectrumlocalnews.com/nys/central-ny/politics/2025/04/09/three-months-later--california-still-waits-for-wildfire-aid-supplemental; CONG. RSCH. SERV., IF12932, WILDFIRE AND THE BUDGET IN THE 119TH CONGRESS (Feb. 27, 2025), **https://www.congress.gov/crs-product/IF12932.**

[12] 13 C.F.R. § 123.805 (specifying that "non-preempted rules and regulations include, but are not limited to, building codes, health and safety requirements, [and] inspection requirements").

[13] *See* FED. EMERGENCY MGMT. AGENCY, P-2422, BUILDING CODES ENFORCEMENT PLAYBOOK 4–5 (2025) (outlining distinct roles for plan review, permitting, and field inspections in code enforcement).

[14] *See id.* at 18-20 (describing permitting as the "backbone of code compliance.")

expensive to correct.[15] For state and local governments, enforcing standards primarily through mid-construction inspections is far more resource intensive than enforcing them through permitting.[16] To meaningfully replace *ex-ante* review, localities would need to conduct earlier and more frequent inspections across their SBA-funded projects. Many building and planning departments lack the staffing and budget to provide that level of proactive field enforcement—especially so in the wake of a natural disaster.[17] When violations are discovered mid-construction, the available remedies—partial demolition, redesign, or stop work orders—are more disruptive and often more legally contentious than denying a permit up front, increasing litigation risk and political pressure on local officials.

Formally, the rule preserves enforcement of state and local substantive standards, including building codes, health and safety requirements, and inspection requirements, while preempting only permit and approval requirements after 60 days. In practice, however, shifting compliance from permit review to self-certification and mid-construction enforcement makes those substantive standards much harder to implement. Local governments must either accept increased risk of noncompliant rebuilding in high hazard areas or divert limited staff and resources into more intensive inspection and enforcement efforts. By dictating that States may not insist on permits as a precondition to starting work on covered projects after 60 days, SBA reorders state enforcement architecture in a historical state police power domain without a clear congressional command.

II. EXECUTIVE ORDERS AND CONGRESSIONAL AUTHORITY

Executive orders are directives from the President to executive branch officials about how to administer existing law. They do not themselves create new statutory authority, appropriate funds, or independently preempt state law as lawmaking is a core Congressional function.[18] Any displacement of state and local requirements must ultimately rest on valid

[15] *See id.* at 18.

[16] *See id.* at 15-16.

[17] *See* FED. EMERGENCY MGMT. AGENCY, P-2422, BUILDING CODES ENFORCEMENT PLAYBOOK 15–16 (2025).

[18] *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 587–89 (1952) (holding Truman's seizure order invalid because "[t]he President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker"); Medellín v. Texas, 552 U.S. 491, 523–32 (2008) (holding that a presidential memorandum could not, by itself, create domestically enforceable federal law

federal statutes and properly promulgated regulations, not on presidential directives alone.[19] When an Executive Order appears to alter private rights or to preempt state and local law, courts will look through the EO to ask 1) whether clear congressional delegation supports the asserted power and 2) whether implementing agency action complies with structural constitutional limits and the Administrative Procedure Act.[20]

Justice Jackson's *Youngstown Sheet & Tube Co. v. Sawyer* framework provides the lens for evaluating presidential power.[21] When the President acts pursuant to express or implied authorization from Congress (Category One), presidential authority is at its maximum, combining the executive's inherent Article II powers along with authority that Congress has delegated.[22] When Congress has not spoken on the matter (Category Two), presidential power resides in a "zone of twilight" and its validity depends on historical practice and practical consequences.[23] When the President's action is incompatible with the expressed or implied will of Congress (Category Three), his power is at its "lowest ebb," and courts will uphold the action only if it rests on the President's Article II authority alone.[24] In domestic regulatory settings, including disputes over preemption of state law, an Executive Order will be sustainable only to the extent it fits within Category One or, potentially, Category Two. Where the EO conflicts with statutory structure or assumptions, it risks falling into Category Three.[25]

---

binding the states, absent implementing legislation or self-executing treaty authority); City & Cnty. of San Francisco v. Trump, 897 F.3d 1225, 1233–37 (9th Cir. 2018) (invalidating EO 13,768's attempt to withhold federal funds from "sanctuary" jurisdictions because Congress had not delegated such spending-condition authority to the President)**;** Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin, 418 U.S. 264, 273 n.5 (1974) (treating an executive order as capable of preempting inconsistent state law only because the order was valid under federal authority); Loving v. United States, 517 U.S. 748, 758 (1996) ("The fundamental precept of the delegation doctrine, a strand of this Court's separation-of-powers jurisprudence, is that the lawmaking function belongs to Congress, U.S. Const., Art. I, § 1, and may not be conveyed to another branch or entity.").

[19] *See* Loving v. United States, 517 U.S. 748, 758 (1996); Medellín v. Texas, 552 U.S. 491, 525–32 (2008) (holding that neither an ICJ judgment nor the President's memorandum "constitutes directly enforceable federal law" capable of preempting state procedural limits); Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585–89 (1952).

[20] *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585–89 (1952.

[21] *See* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 634-55 (1952) (Jackson, J., concurring).

[22] *Id.* at 635-37.

[23] *Id.* at 637.

[24] *Id.* at 637-38.

[25] Dames & Moore v. Regan, 453 U.S. 654, 668–74, 678–79 (1981) (applying Justice Jackson's *Youngstown* framework to uphold executive orders implementing the Iran claims-settlement regime based on a

Congress can support executive and agency action either expressly or through implied grants of authority.[26] Express authorization appears where statutes clearly empower an agency to issue rules with specified legal effects or to displace state law in defined circumstances.[27] By contrast, open-ended program administration clauses—like authorizing an agency to make loans and issue any attendant regulations—may support routine implementation details but are inadequate to support transformative reallocations of regulatory authority from states to the federal government.[28] In areas of traditional state concern, clear-statement rules further limit how far implied authorization can be stretched. In *Gregory v. Ashcroft*, the Court held that "if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute," and that "Congress should make its intention 'clear and manifest' if it intends to pre-empt the historic powers of the States."[29] This clear-statement requirement applies with particular force where the asserted federal authority would displace core state police-power functions such as land use, building regulation, and environmental review.[30]

Since SBA's Interim Final Rule fundamentally alters the balance of federal versus state authority in an area of law historically left to the states and not allocated to the federal government, 15 U.S.C. Code Sections 634(b)(6) and 636(b) do not provide a sufficiently clear

---

"narrow" inference of congressional approval from related statutes and longstanding practice, while emphasizing that the decision did not sanction broad, free-standing presidential lawmaking authority); Medellín v. Texas, 552 U.S. 491, 524–26 (2008) (relying on *Youngstown* to reject the President's claim of authority to unilaterally enforce an ICJ judgment in the face of a contrary statutory and constitutional framework, treating such action as beyond any implied authorization).

[26] Implied or Inherent Powers, U.S. CONST. ANNOTATED, **https://www.law.cornell.edu/constitution-conan/article-2/section-1/clause-1/implied-or-inherent-powers** (last updated July 24, 2016) (summarizing Justice Jackson's Youngstown concurrence and explaining that presidential power is "at its maximum" when he acts pursuant to "an express or implied authorization of Congress").

[27] *See* Gade v. Nat'l Solid Wastes Mgmt. *Assn.*, 505 U.S. 88, 98 (1992) (discussion of express and implied preemption).

[28] West Virginia v. EPA, 597 U.S. 697, 723–24 (2022) (rejecting EPA's attempt to derive "unheralded" transformative regulatory power over the national electricity generation mix from a "cryptic" and "ancillary" provision, and holding that such major reallocations require clear congressional authorization);

Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991) (explaining that "[i]f Congress intends to alter the 'usual constitutional balance between the States and the Federal Government,' it must make that intention "unmistakably clear in the language of the statute").

[29] Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991).

[30] *See id.*

statement showing Congress's intent to "alter the usual constitutional balance between the States and the Federal Government."

III. STATUTORY LIMITS, FEDERALISM, AND MAJOR QUESTIONS

A. Lack of Clear Statutory Authorization and Executive Order Limits

Viewed against this framework, EO 14377 and the SBA Interim Final Rule appear to lack the necessary statutory support. Congress has not enacted any statute expressly preempting state or local permitting processes for land use, zoning, floodplain management, or environmental review due to permitting or approval delays during post-disaster rebuilding.[31] The Robert T. Stafford Disaster Relief and Emergency Assistance Act structures FEMA and the federal government's role as supporting, rather than supplanting, state and local governments in disaster response and recovery.[32] The Stafford Act frames federal disaster assistance as support for state efforts, conditioning aid on state requests and channeling funds through state "recipients" and local "subrecipients" that retain primary responsibility for project management and permitting.[33] Likewise, 15 U.S.C. § 636(b) authorizes SBA to make disaster loans, but it contains no clear-statement empowering SBA to declare state permitting or CEQA processes preempted after 60 days or to bar state and local enforcement tools such as stop-work orders due to failure to secure required permits.[34] The interim final rule also cites 15 U.S.C. § 634(b)(6), which authorizes the Administrator to "make such rules and regulations as may be necessary to carry out the authority vested in him."[35] These kind of general rulemaking provisions are understood as implementing

[31] 42 U.S.C. § 5121 et seq. (Robert T. Stafford Disaster Relief and Emergency Assistance Act) (providing authority for disaster declarations, assistance, and mitigation, but containing no provision expressly preempting state or local land-use, zoning, floodplain, or environmental review authority in post-disaster rebuilding).

[32] *Id.*; *See generally* Thomas Birkland & Sarah Waterman, *Is Federalism the Reason for Policy Failure in Hurricane Katrina*? 38 PUBLIUS 692, 700–02 (2008) (describing the Stafford Act framework as "shared governance" and explaining that its history "suggests that federal law was moving toward a more cooperative model involving disaster professionals at all levels and was not solely a federal initiative").

[33] 42 U.S.C. § 5170(a); 42 U.S.C. § 5174(a), (b)(1)(A), (b)(3); 44 C.F.R. § 206.201(m)–(o).

[34] *See* 15 U.S.C. § 636(b).

[35] 15 U.S.C. § 634(b)(6)

the specific powers granted elsewhere in the agency's enabling act.[36] These general rulemaking provisions do not confer independent, unmistakably clear authorization for the agency to preempt state law.[37] SBA's own guidance confirms the agency is treating state permit timing and local enforcement tools as preempted, including stop-work orders, and is authorizing rebuilding on a self-certification alone—even after full disbursement.[38]

EO 14377 attempts to fill this gap in statutory support by directing agencies to preempt state and local requirements that "unduly impeded" rebuilding efforts and by instructing agencies to override non-substantive state requirements in post-disaster permitting.[39] In doing so, it effectively reads broad program administration provisions as if they contained a specific delegation to displace state permitting, environmental review, and enforcement authority. Under *Youngstown*, this is not Category One action grounded in clear statutory authorization. At best it occupies a contested Category Two, and to the extent it conflicts with statutory structure that presupposes state primacy in these domains, it risks falling into Category Three.[40] Because executive orders lack independent preemptive force, EO 14377 is insufficient to cure the absence of a clear congressional mandate alone. To the extent it is construed to authorize agencies to nullify permitting processes or disable enforcement without unmistakable statutory support, it likely exceeds lawful executive power and renders the SBA rule beyond the agency's statutory authority.[41] In short, the EO and any implementing rules cannot reasonably be characterized as

---

[36] *See* Loper Bright Enters. v. Raimondo, 603 U.S. 369, 391–93 (2024) (emphasizing that agency power must be grounded in "the statute's text" and rejecting deference that would allow agencies to "discover in a long-extant statute an unheralded power" of major significance)

[37] *See* West Virginia v. EPA, 597 U.S. 697, 719–23 (2022) (holding that EPA could not rely on broadly worded provisions as a basis for transformative regulatory power and stressing that agencies may not use capacious grants to claim authority of "vast economic and political significance" absent a clear statement).

[38] U.S. SMALL BUS. ADMIN., *Optional Streamlined Disaster Recovery Process – Builder's Certification: Frequently Asked Questions* (Jan. 30, 2026)

[39] Exec. Order No. 14,377, 91 Fed. Reg. 3989 (Jan. 23, 2026).

[40] *See* Implied or Inherent Powers, U.S. CONST. ANNOTATED, **https://www.law.cornell.edu/constitution-conan/article-2/section-1/clause-1/implied-or-inherent-powers** (last updated July 24, 2016); Stracener, Jozefov & Carrillo, *Applying the Youngstown Three-Scenario Model to Federalism Conflicts*, SCOCABLOG (Mar. 30, 2025) https://scocablog.com/applying-the-youngstown-three-scenario-model-to-federalism-conflicts/; David M. Driesen & William C. Banks, *Implied Presidential and Congressional Powers*, 41 CARDOZO L. REV. 1309, 1320–22, 1334–36 (2018).

[41] La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986) (stating "an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.'"); John C. Duncan, Jr., *A Critical Consideration of Executive Orders*, 35 VT. L. REV. 333, 337–38 (2010) (observing that courts generally uphold executive orders "only so long as

Category One; at best they fall in a disputed Category Two, and where they undermine statutes presupposing state primacy, they move toward Category Three.

SBA grounds the interim rule's preemptive effect in the Supremacy Clause and cites *Arizona v. United States*.[42] The Supremacy Clause establishes that valid federal statutes and regulations may override conflicting state law, but *Arizona* involved specific congressional immigration provisions and their implementing regulations, not executive action resting on general program-administration language.[43] In *Arizona*, the Court emphasized that the scope of preemption follows from the text and structure of the underlying federal statute; it did not suggest that agencies may derive preemptive authority directly from the Supremacy Clause absent a clear congressional delegation.[44]

SBA may further argue that the EO merely sets executive branch priorities without creating new law by directing agencies to exercise their existing statutory authority more assertively. However, the EO's language goes beyond intra-branch priority setting. It instructs agencies to develop regulations that "preempt" state requirements which eschews the traditional approach of treating states as partners to be supported and instead treats state permitting as an obstacle to be overridden.[45] Additionally, SBA's resulting rule goes beyond program structure by declaring an impeding state or local requirement preempted after 60 days and prohibiting the use of some enforcement tools on covered projects. This asserted preemptive power significantly alters the legal effect of state law in core police power domains and cannot be attributed to the routine implementation of Congressionally delegated power.[46]

---

it is possible to trace the order to a grant of power arising from the Constitution or congressional mandate," and that no executive order issued without such authority can validly alter legal rights or obligations).

[42] *See* Improving SBA Disaster Loan Ability To Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816, 3818 (Jan. 29, 2026) ("The Supremacy Clause of the United States Constitution provides that valid Federal regulations preempt State and local laws when the latter stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress," citing Arizona v. United States, 567 U.S. 387 (2012)).

[43] *See* U.S. Const. art. VI, cl. 2; Arizona v. United States, 567 U.S. 387, 401–07 (2012) (evaluating state law against detailed federal immigration provisions and implementing regulations).

[44] *See Arizona*, 567 U.S. at 399–400, 406–07 (deriving preemption analysis from "the text, structure, and history" of the Immigration and Nationality Act and related provisions and treating regulations as implementing those statutory commands).

[45] *See* Exec. Order No. 14,377, 91 Fed. Reg. 3989 (Jan. 23, 2026).

[46] *See* 15 U.S.C. § 636(b).

B. Federalism Clear-Statement Constraints

Federalism principles sharpen these statutory concerns. Land use, zoning, building regulation, floodplain management, and environmental review are historic exercises of state police power traditionally reserved under the Tenth Amendment.[47] Courts recognize controlling private land use as a core state prerogative and apply a presumption against preemption, demanding a clear-statement from Congress before interpreting federal law to intrude into such fields.[48] The Stafford Act itself embodies a cooperative federalism model. It adopts a limited intervention framework in which states retain primary responsibility for mitigation and land use decisions, and the federal government provides financial and logistical support rather than displacing state regulatory systems.[49]

EO 14377 and the SBA rule invert this allocation by federalizing permitting decisions and neutralizing local enforcement whenever permits remain unresolved for more than 60 days after a complete application is received by the permitting authority.[50] Under clear-statement principles articulated in *Gregory v. Ashcroft*, general authorization to make loans and issue "necessary" regulations is insufficient to support this kind of displacement of state authority over core police power functions.[51] *Gregory* makes clear that "if Congress intends to alter the usual constitutional balance between the States and the Federal Government, it must make its intention

---

[47] *See* Hillsborough City. v. Automated Med. Labs., Inc., 471 U.S. 707, 719 (1985) ("regulation of health and safety matters is primarily, and historically, a matter of local concern"); FERC v. Mississippi, 456 U.S. 742, 768 n.30 (1982) ("regulation of land use is perhaps the quintessential state activity"); Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng'rs, 531 U.S. 159, 174 (2001) (warning against construing federal statutes to "alter the federal state framework by permitting federal encroachment upon a traditional state power" absent a clear statement); Sackett v. EPA, 598 U.S. 651, 679 (2023) (explaining that "regulation of land and water use lies at the core of traditional state authority" and applying a clear statement rule to avoid upsetting "the balance between federal and state power"); *see also* Village of Belle Terre v. Boraas, 416 U.S. 1, 13 (1973) (Marshall, J., dissenting) (stating that the federal judiciary should not "sit as a zoning board of appeals).

[48] "When considering preemption, 'we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress.'" *Wisconsin Public Intervenor*, 501 U.S. at 605 (quoting Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947)).

[49] *See* 42 U.S.C. § 5121.

[50] *See* Exec. Order No. 14,377, 91 Fed. Reg. 3989 (Jan. 23, 2026); 15 U.S.C. § 636(b).

[51] *See* Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991); *see also* Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1947).

to do so unmistakably clear in the language of the statute."[52] SBA's disaster loan statute contains no such clear-statement. This tension with federalism is heightened by the administration's own prior Executive Order 14,239 (March 2025) emphasizing that disaster preparedness "is most effectively managed at State, local, and individual levels," which underscored state primacy in this sphere. EO 14377 and the SBA rule represent an unlegislated departure from that framework.[53]

The Interim Final Rule's preamble in the Federal Register states that the rule "meets the standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform," including that SBA has "specified in clear language the preemptive effect … to be given to the law."[54] Executive Order 12988 is an internal directive instructing agencies, where appropriate, to draft regulations clearly, minimize ambiguity, and state any intended preemptive effect; it does not itself expand the substantive scope of agency authority or modify APA or statutory requirements.[55] Although the interim rule uses explicit preemption language, clarity about preemptive effect cannot substitute for the clear congressional authorization that *Gregory* and the major questions doctrine require, or for a reasoned explanation under the APA of why displacing state permitting and enforcement is justified in light of safety, flood-risk, and environmental interests.[56] The preamble further certifies SBA's compliance with Executive Orders 12866, 12988, 13132, 13563, and 14192, as well as the Regulatory Flexibility Act, the

---

[52] *Gregory*, 501 U.S. 452 at 460-61.

[53] Exec. Order No. 14,239, *Achieving Efficiency Through State and Local Preparedness*, 90 Fed. Reg. 13267 (Mar. 18, 2025) ("Federal policy must rightly recognize that preparedness is most effectively owned and managed at the State, local, and even individual levels, supported by a competent, accessible, and efficient Federal Government.").

[54] Improving SBA Disaster Loan Ability To Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816, 3824 (Jan. 29, 2026) (stating that the rule "meets the standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform," and that SBA has specified in clear language the preemptive effect of the rule).

[55] Exec. Order No. 12,988, §§ 3(a), 3(b)(2)(A), 61 Fed. Reg. 4729, 4732 (Feb. 7, 1996) (directing agencies, when formulating regulations, to "specif[y] in clear language the preemptive effect, if any, to be given to the regulation" and to provide clear legal standards for affected conduct).

[56] *See* Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991) (requiring an "unmistakably clear" statement before interpreting federal law to alter the usual federal–state balance in areas of traditional state authority); West Virginia v. EPA, 597 U.S. 697, 719–23 (2022) (major questions doctrine requiring clear congressional authorization for agency actions of vast economic and political significance); 5 U.S.C. § 706(2)(A) (courts shall set aside agency action that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law").

Congressional Review Act, and the Paperwork Reduction Act.[57] Those requirements focus on internal executive-branch review, federalism and small-entity consultation, and paperwork and drafting clarity; they do not alter the substantive standards that govern SBA's statutory authority, the APA's procedural and reasoned decision making requirements, or NEPA's hard look obligation.[58]

SBA may present a related argument that this is not commandeering—states are not compelled to administer federal programs—and that spending power conditions are permissible tools for influencing state policy. While technically correct that this does not fit classic commandeering patterns, this characterization does not resolve the clear-statement problem. Even spending conditions must respect federalism limits. Spending conditions must be clearly stated, relate to the federal interest in the program, and not be so coercive as to pass the point at which pressure turns into compulsion.[59] Here, the rule goes beyond setting conditions on federal funds. It purports to preempt state law and bar state enforcement tools in certain circumstances. This effectively displaces state regulatory authority in core police power domains.[60] The subject matter lies squarely in state police power territory, the relevant statutes lack explicit preemptive language, and the structure of the Stafford Act presupposes rather than displaces state primacy in disaster recovery contexts.

C. Major Questions Doctrine

[57] 91 Fed. Reg. at 3823–24 (listing compliance with Exec. Orders 12,866, 12,988, 13,132, 13,563, and 14,192, and with the Regulatory Flexibility Act, the Congressional Review Act, and the Paperwork Reduction Act).

[58] *See* Exec. Order No. 12,866, 58 Fed. Reg. 51,735 (Oct. 4, 1993) (regulatory planning and OIRA review); Exec. Order No. 13,563, 76 Fed. Reg. 3821 (Jan. 21, 2011) (regulatory review and improvement); Exec. Order No. 13,132, 64 Fed. Reg. 43,255 (Aug. 10, 1999) (federalism); 5 U.S.C. §§ 601–612 (Regulatory Flexibility Act); 5 U.S.C. §§ 801–808 (Congressional Review Act); 44 U.S.C. §§ 3501–3521 (Paperwork Reduction Act) (all addressing review, consultation, and paperwork burdens rather than expanding underlying statutory powers or displacing APA/NEPA standards).

[59] *See* South Dakota v. Dole, 483 U.S. 203, 207–08, 211 (1987); Victoria L. Killian, *Constitutional Limits on Congress's Spending Power,* CRS (R46827) (Jan. 6, 2021).

[60] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816 (Interim Final Rule, to be codified at 13 CFR § 123.800 et seq.); *see Hillsborough County v. Automated Med. Labs., Inc.*, 471 U.S. 707 (1985) (stating the presumption that state or local regulation of matters related to health and safety is not invalidated under the Supremacy Clause).

The major questions doctrine provides an additional constraint on the asserted authority of the EO. That doctrine, articulated in *West Virginia v. EPA*, requires a clear-statement from Congress before an agency may exercise powers of "vast economic and political significance" or derive from old, broadly worded statutes an "unheralded" power to effect a transformative regulatory change.[61] Here, the SBA rule claims authority, under general disaster loan provisions, to: 1) declare state and local permitting and similar processes preempted after 60 days, and when those processes are preempted, to 2) bar core enforcement tools such as stop-work orders in what is a historical domain of state and local police power.[62] In practical terms, the rule has the potential to substantially impact how localities decide where and how people rebuild in high-risk areas across thousands of projects nationwide each year.

SBA may contend that this is not a "major question" because the rule would affect very few local governments in any given year, applies only to projects voluntarily accepting SBA loans, preserves substantive state standards, and merely adjusts timing and sequencing. This would then characterize the rule as program-level implementation, not wholesale industry regulation like *West Virginia v. EPA*. However, the nature of the power claimed matters more than its formal scope.[63] The rule asserts unilateral federal authority to declare state and local procedures preempted and to bar local enforcement in core police power areas across thousands of projects if those state and local procedures are deemed not substantive.[64] Even if framed as merely loan program administration, displacing state environmental review and land use control represents precisely the sort of intrusion into state authority courts treat as requiring clear congressional authorization.[65] Nothing in the Small Business Act or the Stafford Act clearly

---

[61] West Virginia v. EPA, 597 U.S. 697, 721–23 (2022) (explaining that in "extraordinary cases" involving questions of "vast economic and political significance," agencies must point to "clear congressional authorization" and rejecting EPA's attempt to locate an "unheralded power" to restructure the electricity generation mix in a "backwater" provision of the statute).

[62] *See* Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816 (Interim Final Rule, to be codified at 13 CFR § 123.800 et seq.).

[63] West Virginia v. EPA, 597 U.S. 697, 721–23 (2022) (applying the major questions doctrine because EPA's reading would confer an "unheralded" and "transformative" power to reorder the electricity sector, focusing on the nature of the authority claimed rather than only the particulars of the rule).

[64] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816 (Interim Final Rule, to be codified at 13 CFR §§ 123.800 et seq.) (authorizing federal officials to preempt any state or local requirement that delays SBA disaster-loan projects beyond 60 days, thereby preventing local enforcement of those provisions).

[65] *See* Sackett v. EPA, 598 U.S. 651, 671–73 (2023) ("Regulation of land and water use lies at the core of traditional state authority," and "the Court has thus required a clear-statement from Congress

signals congressional intent to authorize SBA or FEMA to federalize permitting decisions or nullify state enforcement based solely on permit timing.[66] In the absence of such clearly stated text, the major questions doctrine strongly counsels against deference to the agencies' expansive reading and provides an independent basis for invalidating the rule, even if narrower programmatic adjustments might be permissible.

IV. APA RULEMAKING

A. Interim Final Rules and "Good Cause."

The APA's default rule is that agencies must provide public notice of a proposed rule and an opportunity for comment before issuing a binding regulation, and that new rules take effect only after this process is complete.[67] Interim final rules are an exception: an agency may issue a rule that becomes effective immediately, while taking post promulgation comments, only if it has "good cause" to find that the usual notice and comment procedure would be impracticable, unnecessary, or contrary to the public interest.[68] Courts read this "good cause" exception narrowly and require a concrete, contemporaneous explanation tied to specific circumstances. Generalized invocations of urgency, administrative convenience, or policy disagreement with the status quo are ordinarily insufficient.[69]

The rule skipped notice and comment rulemaking by invoking good cause, but the claimed urgency is inadequate given that: 1) the rule was issued more than a year after the triggering disaster, 2) applies nationwide to all future disasters, and 3) promotes a significant policy change

---

when determining the scope of 'the waters of the United States'" to ensure it does not "significantly alter the balance between federal and state power and the power of the Government over private property").

[66] *See* 15 U.S.C. § 631 et seq.; 42 U.S.C. § 5121 et seq.

[67] 5 U.S.C. § 553(a), (b), (d).

[68] 5 U.S.C. § 553(b)(3)(B).

[69] Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 754 (D.C. Cir. 2001) (The exception exempts an agency from following notice and comment procedures only in the rare circumstance when those procedures are truly impracticable, or when the delay inherent in following them would defeat the purpose of the proposed action.); Jifry v. FAA, 370 F.3d 1174, 1179 (D.C. Cir. 2004) (stating that the good cause exception is "narrowly construed and only reluctantly countenanced").

by substantially altering federal-state regulatory relationships.[70] SBA may argue that disaster response inherently requires speed and that the Los Angeles fires created immediate urgency. However, the rule was issued January 29, 2026—more than a year after the January 2025 fires—undercutting any claim that public comment was impracticable.[71] Moreover, the rule applies nationwide to all disasters and to loans approved as early as January 1, 2025, demonstrating it is not a targeted emergency response but a permanent, sweeping policy change for which notice and comment is both practicable and required.[72] The good cause exception is narrow and should not be used to avoid public input on fundamental changes to federal-state regulatory relationships.[73] Agencies have some leeway in emergencies, but the timing and scope here push beyond reasonable limits.

B. 5 U.S.C. § 706(2)(A): Arbitrary and Capricious Agency Actions

The rule could be found to be arbitrary and capricious under 5 U.S.C. § 706(2)(A) for multiple reasons. It 1) rests on an unexplained 60-day cutoff and 2) fails to adequately consider obvious, less intrusive alternatives.

1. 60-day Threshold.

The rule adopts a rigid 60-day deadline triggering preemption but offers no reasoned explanation for why 60 days applies uniformly across permits ranging from simple building approvals to complex floodplain, coastal, and CEQA reviews.[74] Different permits have different processing timelines reflecting their complexity and the interests at stake; a one-size-fits-all deadline ignoring these variations appears arbitrary.

---

[70] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. at 3816; 5 U.S.C. § 553(b)(3)(B).

[71] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. at 3816.

[72] *Id.*; 13 C.F.R. § 123.800 (interim final rule applies to all disaster loans approved on or after January 1, 2025).

[73] Util. Solid Waste Activities Grp. v. EPA, 236 F.3d 749, 754 (D.C. Cir. 2001).

[74] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. 3816, 3817 (Jan. 29, 2026) (to be codified at 13 C.F.R. § 123.802(a)).

The SBA may argue that 60 days tracks the period in 13 C.F.R. § 123.9(a), which treats non-use of disbursed loan proceeds for 60 days as a "wrongful misapplication."[75] The 60-day cutoff therefore prevents an absurd result: a borrower would be in violation of federal due to compliance with state or local law. However, § 123.9(a) governs borrower use of funds; it does not authorize SBA to resolve any tension with local permitting timelines by preempting state permitting and disabling permit-based enforcement. SBA did not consider less intrusive alternatives—such as adjusting disbursement timing, tolling the use-of-funds expectation where permits are pending, or supporting local capacity—that would avoid any potential conflict without reordering state enforcement architecture. In areas of traditional state concern, Congress must speak unmistakably with a clear-statement before displacing state police powers.[76] Potential friction between an internal SBA 60-day rule and state permitting timelines does not supply the necessary clear statement.

The SBA may argue that 60 days represents a reasonable balance between allowing adequate state review and preventing indefinite delay, and agencies receive some deference in setting program timelines.[77] However, even granting deference, SBA must explain why this particular threshold is rational across vastly different permit types and the record contains no such analysis.[78] A building permit and a CEQA environmental review are fundamentally different processes and applying the same 60-day cutoff to both without explanation fails the Supreme Court's stated requirement to examine relevant factors and articulate a rational connection between facts found and choice made.[79] California's CEQA suspensions and Los Angeles expedited permit centers demonstrate that targeted state action can address delay without federal preemption, yet SBA never engaged with these less intrusive alternatives.[80] This

---

[75] 13 C.F.R. § 123.9(a).

[76] *See* Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991).

[77] *See* Telecomms. Research & Action Ctr. v. FCC (TRAC), 750 F.2d 70, 79–80 (D.C. Cir. 1984) (articulating factors for evaluating agency delay and recognizing that courts must consider the agency's competing priorities and resource constraints when reviewing timing decisions).

[78] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) ("an agency rule would be arbitrary and capricious if the agency has... entirely failed to consider an important aspect of the problem").

[79] *Id.* at 43 (agency must "examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made").

[80] Exec. Order No. N-4-25 (Cal. 2025); LA County Recovers, *One-Stop Permit Centers* (Mar. 2, 2025), **https://recovery.lacounty.gov/rebuilding/one-stop-permit-centers/**.

uniform threshold applied to drastically different permitting and review regimes could lead to a court finding the interim final rule arbitrary and capricious defect.[81]

2. Inadequate Consideration of Alternatives.

The rule gives only cursory treatment to the public safety, flood risk, and environmental interests that permitting regimes serve and never seriously addresses how disabling these regimes affects compliance with substantive standards.[82] State and local governments have developed permitting systems over decades integrating environmental protection, public safety, and risk reduction for flood and wildfire hazards. These permits provide the states and localities an efficient way to evaluate compliance with the law before construction begins on a project. Floodplain permits prevent construction in high-risk zones where floods may cause deaths, injuries, and displacement. CEQA review, for example, identifies significant environmental impacts including increased flood risk, wildfire exposure, and habitat destruction.[83] By treating these processes as mere impediments without seriously analyzing the consequences of bypassing them, SBA failed its statutory obligation under the APA to "examine the relevant data and articulate a satisfactory explanation" for its choice.[84]

SBA provided no analysis of less intrusive alternatives such as federal funding for additional state permit reviewers, model streamlined procedures, federal technical assistance, or targeted preemption for low-risk projects.[85] California's targeted CEQA suspensions and Los Angeles expedited permit centers demonstrate that cooperative, state-led approaches can meaningfully accelerate permitting while preserving local control.[86] SBA could have: provided

---

[81] Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co., 463 U.S. 29, 43 (1983) ("We may not supply a reasoned basis for the agency's action that the agency itself has not given.").

[82] Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. at 3817–18.

[83] Cal. Pub. Res. Code §§ 21000–21189.3; 14 Cal. Code Regs. §§ 15000–15387.

[84] *State Farm*, 463 U.S. at 43, 52 52 (agency action is arbitrary when it "entirely failed to consider an important aspect of the problem" or "offered an explanation for its decision that runs counter to the evidence").

[85] *See State Farm*, 463 U.S. at 51 ("An agency must... consider... alternatives.").

[86] Exec. Order No. N-4-25 (Cal. 2025); Governor of California, *Governor Newsom signs executive order to help Los Angeles rebuild faster and stronger* (Jan. 12, 2025), **https://www.gov.ca.gov/2025/01/12/governor-newsom-signs-executive-order-to-**

federal funding for additional state reviewers to reduce backlogs, developed model streamlined procedures for states to adopt voluntarily, offered technical assistance and best practices, or limited any preemption to genuinely low-risk, like-for-like reconstruction.[87] Each alternative respects state sovereignty while addressing delay, yet SBA's rulemaking record contains no serious engagement with any of them.[88] The failure to consider these alternatives—particularly given that California already implemented some of them—undermines the rule's reasonableness and suggests SBA prioritized federal control over effective problem solving.[89] The absence in the record of any consideration of obvious alternatives, combined with evidence those alternatives exist and work, supports invalidating the rule on the grounds that it is arbitrary and capricious.

V. NEPA AND ENVIRONMENTAL REVIEW

A. NEPA Framework in Disaster Programs

The National Environmental Policy Act requires federal agencies to take a "hard look" at the environmental consequences of major federal actions, including projects receiving federal funding or requiring federal permits.[90] NEPA mandates that agencies identify environmental impacts and reasonable alternatives before committing resources, often through an Environmental Assessment (EA) or, where impacts may be significant, an Environmental Impact Statement (EIS).[91] In FEMA and SBA disaster programs, NEPA review functions as a gatekeeping step: agencies are supposed to evaluate flood risk, wildfire exposure, habitat

---

help-los-angeles-rebuild-faster-and-stronger/; LA County Recovers, *One-Stop Permit Centers* (Mar. 2, 2025), **https://recovery.lacounty.gov/rebuilding/one-stop-permit-centers/**.

[87] *See State Farm*, 463 U.S. at 51.

[88] *Id.* at 43, 51.

[89] Exec. Order No. N-4-25 (Cal. 2025); LA County Recovers, *One-Stop Permit Centers* (Mar. 2, 2025), **https://recovery.lacounty.gov/rebuilding/one-stop-permit-centers/**; *State Farm*, 463 U.S. at 43, 51.

[90] 42 U.S.C. § 4332(2)(C); *see also* Dep't of Transp. v. Pub. Citizen, 541 U.S. 752, 756–57 (2004); Kleppe v. Sierra Club, 427 U. S. 390, n. 21 (1976).

[91] 42 U.S.C. § 4332(2)(C); 40 C.F.R. §§ 1501.3, 1501.5 (2019) (pre-2020 CEQ regs describing EA/EIS framework); Robertson v. Methow Valley Citizens Council, 490 U.S. 332, 349–50 (1989).

impacts, and cumulative effects of rebuilding before obligating funds for specific projects.[92] NEPA review is one of the principal mechanisms for identifying how proposed projects will affect flood and wildfire risk, environmental conditions, and related safety concerns before federal funds are committed.[93] Categorical exclusions and emergency arrangements can streamline that review in genuine emergencies, but they do not eliminate the statutory obligation to consider environmental consequences and alternatives in a reasoned way.[94]

Recent changes to the NEPA framework have shifted the focus from government-wide Council on Environmental Quality (CEQ) regulations to agency-specific procedures.[95] CEQ has rescinded its prior implementing regulations at 40 C.F.R. Parts 1500–1508, leaving the NEPA statute and each agency's own NEPA procedures as the primary sources governing how environmental review is conducted.[96]

B. Agency NEPA Implementation

SBA implements NEPA through its National Environmental Policy Act SOP 90-57, which applies NEPA to SBA programs and loans, identifies categories of actions normally requiring an EA or EIS, and treats certain routine or low impact actions as categorically excluded.[97] FEMA incorporates NEPA into its Environmental and Historic Preservation (EHP) review process for Public Assistance and Hazard Mitigation grants, using standardized screening, categorical exclusions, EAs, and EISs to evaluate environmental and

---

[92] *See* CONG. RSCH. SERV., RL34650, *Implementing the National Environmental Policy Act (NEPA) for Disaster Response, Recovery, and Mitigation Projects* 4–8 (2011) (describing NEPA's role in FEMA hazard-mitigation and recovery grants).

[93] *See* 42 U.S.C. § 4332(2)(C) (requiring detailed statements on environmental impacts and alternatives for major federal actions); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349–50 (1989) (describing NEPA's "hard look" requirement and its role in ensuring agencies consider environmental consequences before acting).

[94] 42 U.S.C. § 4332(2)(C); COUNCIL ON ENV'T QUALITY, *Emergencies and the National Environmental Policy Act* 1–3 (Sept. 14, 1980) (as updated) (explaining that emergency procedures do not waive NEPA's requirements).

[95] *See* COUNCIL ON ENV'T QUALITY, *Removal of National Environmental Policy Act Implementing Regulations*, 91 Fed. Reg. 1,234 (Jan. 8, 2026).

[96] *Id.*; *see* U.S. GOV'T ACCOUNTABILITY OFF., GAO-14-369, *Federal Environmental Review and Permitting* 10–15 (2014) (discussing agency-specific NEPA procedures); *see also* 42 U.S.C. § 4332(2)(A)–(C).

[97] U.S. Small Bus. Admin., SOP 90-57, *National Environmental Policy Act (NEPA)* §§ 1–3 (Oct. 1, 2017).

historic-preservation effects before funding projects.[98] In practice, both agencies rely heavily on categorical exclusions and programmatic analyses to move disaster projects quickly, but their procedures still assume some front-end review of how funded work affects floodplains, wetlands, wildfire risk, and related environmental values.[99]

Executive Order 14377 directs agencies to "streamline environmental review under the National Environmental Protection [sic] Act"[100] and to "consider using emergency authorities to expedite federal approvals," in parallel with its instruction to treat state and local permitting and environmental review as sources of "undue delay."[101] Against this backdrop—including rescission of CEQ's government-wide NEPA regulations, agency efforts to expand categorical exclusions, and new tools to accelerate environmental review—EO 14377 continues a shift that lessens NEPA's impact in disaster programs.[102] Applied to FEMA and SBA, this approach creates pressure to fit more rebuilding work into categorical exclusions, to rely more on "emergency" framing even for long-lasting policies, and to give less weight to long-term flood and wildfire risk in project-level review.[103] The SBA rule's approach to state and local environmental processes heightens these concerns. By declaring CEQA and local floodplain permits preempted after 60 days, the rule removes much of the environmental review that state and local governments ordinarily provide at the front end of reconstruction.[104]

---

[98] *See* FEMA, *EHP Directive: Environmental Planning and Historic Preservation Responsibilities and Program Requirements* 1–5 (Aug. 7, 2025).

[99] *See* CONG. RSCH. SERV., RL34650, *Implementing NEPA for Disaster Response, Recovery, and Mitigation Projects* 9–15 (2017) (describing FEMA's reliance on CEs and programmatic analyses while still requiring some project-level review).

[100] Exec. Order No. 14,377, *Addressing State and Local Failures to Rebuild Los Angeles After Wildfire Disasters* § 3(b), 91 Fed. Reg. 3,989 (Jan. 23, 2026) (NEPA is the acronym for the National Environmental *Policy* Act. The executive order mistakenly refers to NEPA as the National Environmental *Protection* Act.)

[101] *Id*. § 3(b)–(c).

[102] *See Removal of National Environmental Policy Act Implementing Regulations*, 91 Fed. Reg. 1,234 (Jan. 8, 2026); COUNCIL ON ENV'T QUALITY, *Fact Sheet: NEPA Deregulation and Permitting Reform* (Jan. 6, 2026); WHITE HOUSE, *CE Works: A Digital Platform for Environmental Review* (Jan. 28, 2026).

[103] *See* CONG. RSCH. SERV., R48717, Judicial Review and the National Environmental Policy Act (NEPA) 2–4, 22–24 (Sept. 18, 2025) (summarizing recent Supreme Court decisions and CEQ's 2025 rescission of NEPA regulations and guidance); COUNCIL ON ENV'T QUALITY, *Removal of National Environmental Policy Act Implementing Regulations*, 91 Fed. Reg. 1,234 (Jan. 8, 2026); CEQ Fixes Decades-Long Permitting Failure Through Deregulation, White House (Jan. 6, 2026.

[104] 13 C.F.R. §§ 123.800–.808 (2026) (interim final rule); id. § 123.804(c)–(e) (preemption after 60 days); Cal. Pub. Res. Code §§ 21080(b)(3), 21080(b)(4) (CEQA emergency exemptions for wildfire reconstruction).

VI. POTENTIAL FEMA RULE IMPLEMENTING EO 14377

A. Statutory and Federalism Concerns

A FEMA rule implementing EO 14377 and mirroring the SBA framework would raise essentially the same legal concerns.[105] FEMA's core authorities under the Stafford Act presuppose a cooperative federalism model in which states and local governments retain primary responsibility for land use, zoning, permitting, and environmental review, with FEMA providing financial and technical assistance rather than displacing state regulatory systems.[106] Using general grant administration language in the Stafford Act to declare state and local permitting preempted after a fixed period, allowing FEMA-funded projects to proceed without local approvals, and barring local enforcement tools when preempted would fundamentally alter this structure without a clear-statement of Congressional intent.[107]

B. APA and NEPA Questions

From an administrative law perspective, a FEMA rule that copied the SBA model—adopting a one-size-fits-all delay trigger across Public Assistance, Hazard Mitigation, and housing programs—would be vulnerable under the APA for many of the same reasons as the SBA rule. FEMA would need to justify why a uniform temporal cutoff is reasonable across very different project types, explain how sidelining local permitting and environmental review affects long-term flood and wildfire risk, and seriously consider less intrusive, cooperative alternatives such as capacity funding, technical assistance, and performance benchmarks.[108] If FEMA instead relied on generalized claims of "cutting red tape" and urgency without engaging these tradeoffs

[105] 42 U.S.C. § 5121 *et seq.*; *see* Thomas Birkland & Sarah Waterman, *Is Federalism the Reason for Policy Failure in Hurricane Katrina?* 38 Publius 692, 700–02 (2008).

[106] 42 U.S.C. § 5170(a); 42 U.S.C. § 5174(a), (b)(1)(A), (b)(3); 44 C.F.R. § 206.201(m)–(o).

[107] *See* Gregory v. Ashcroft, 501 U.S. 452, 460–61 (1991); West Virginia v. EPA, 597 U.S. 697, 721–23 (2022); 42 U.S.C. § 5121 *et seq.*

[108] Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43, 51 (1983); 42 U.S.C. § 5121 *et seq.*

or alternatives, a rule would likely be viewed as arbitrary and capricious, exceeding the agency's statutory authority, and inconsistent with the Stafford Act's embedded assumption of state primacy in hazard mitigation and land use regulation.[109]

If FEMA were to adopt a similar rule and then rely on streamlined NEPA procedures or categorical exclusions to approve large numbers of projects, there is a substantial risk that neither level of government would fully consider how accelerated rebuilding in high-risk areas affects future flood, wildfire, and related losses, including the possibility that bypassing ordinary review and permitting will lead to new construction that is even more exposed to wildfire and flood hazards.[110] The rule's claim that it preserves substantive standards while disabling core enforcement and review mechanisms undercuts the practical value of any NEPA analysis that assumes those standards are meaningfully implemented.[111] A FEMA rule that treats a nationwide, enduring preemption regime as an emergency measure or as categorically excluded from detailed review would conflict with FEMA's EHP practice of using NEPA review to assess project-specific environmental and risk impacts before obligating funds.[112]

VII. POTENTIAL PLAINTIFFS AND PRACTICAL IMPLICATIONS

A. State and Local Governments

The rule imposes concrete burdens on states and localities responsible for land use, permitting, and environmental review. It unnecessarily complicates the enforcement of building codes, zoning ordinances, floodplain management requirements, and CEQA procedures where permits are unresolved after 60 days, and increases public safety and flood-risk concerns by

---

[109] *See State Farm*, 463 U.S. at 43; 42 U.S.C. § 5121 *et seq.*; *Gregory*, 501 U.S. at 460–61.

[110] *See* CONG. RSCH. SERV., RL34650, *Implementing NEPA for Disaster Response, Recovery, and Mitigation Projects* 15–18 (2011) (discussing risks of rebuilding in hazardous locations and the role of environmental review in hazard mitigation).

[111] *See* Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 43 (1983) (agency acts arbitrarily and capriciously if it "entirely failed to consider an important aspect of the problem"); La. Pub. Serv. Comm'n v. FCC, 476 U.S. 355, 374 (1986) (agency lacks power to preempt state law without statutory authority).

[112] *See* CONG. RSCH. SERV., RL34650, *Implementing the National Environmental Policy Act (NEPA) for Disaster Response, Recovery, and Mitigation Projects* 9–15 (2011); FEMA, *EHP Review Process: Integrating NEPA into Hazard Mitigation and Public Assistance* 2–4 (2020).

allowing construction without full review.[113] States such as California and local governments such as Los Angeles therefore have strong sovereign and quasi-sovereign interests in maintaining regulatory authority over permitting and environmental review, particularly in high-risk flood and wildfire areas.[114] Supreme Court precedent, including *Massachusetts v. EPA*, recognizes that states receive "special solicitude" in standing analyses when federal action affects their sovereign prerogatives and their ability to protect residents' health, safety, and environment.[115]

Other states and localities engaged in disaster recovery under the Stafford Act and SBA loan programs would be similarly positioned. Because the rule applies nationwide to all SBA disaster loans (including retroactively to loans approved as early as January 1, 2025), any jurisdiction currently managing post-disaster reconstruction in flood- or fire-prone areas could plausibly allege concrete injuries to regulatory authority, planning regimes, and public safety from the preemption of permitting and enforcement tools.[116]

B. Professional and Non-Governmental Organizations

Professional organizations have colorable associational standing. Local administrators and state officials are directly affected when they cannot enforce permits or related standards, face increased risk of non-compliant development in high-hazard zones, and must navigate potential liability when they cannot carry out statutory duties.[117] If those injuries are closely tied to the organization's mission, the claims and relief at issue do not require participation of

---

[113] *See* Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. at 3817; 13 C.F.R. § 123.804 (interim final rule); Cal. Pub. Res. Code §§ 21000–21189.3.

[114] Alfred L. Snapp & Son, Inc. v. Puerto Rico ex rel. Barez, 458 U.S. 592, 601 (1982) (recognizing states' sovereign interest in "the power to create and enforce a legal code").

[115] Massachusetts v. EPA, 549 U.S. 497, 518–20 (2007) (recognizing states' "special solicitude" in standing analysis when asserting injury to sovereign and quasi-sovereign interests).

[116] *See* Improving SBA Disaster Loan Ability to Provide Meaningful and Timely Assistance, 91 Fed. Reg. at 3816; 13 C.F.R. § 123.800 (interim final rule applies nationwide to all disaster loans).

[117] *See* FEMA, *National Flood Insurance Program Community Rating System Coordinator's Manual* 110–15 (2021) (explaining local officials' responsibilities for enforcing floodplain management ordinances and the consequences of non-compliant development in high-risk areas); ASFPM, *National Flood Programs and Policies in Review* 23–30 (2015) (discussing how limits on permitting and enforcement affect local administrators' ability to meet statutory duties and increase risk of unsafe development in hazard zones).

individual members.[118] Environmental and planning organizations may similarly be able to demonstrate informational, procedural, or programmatic harms associated with the rule's treatment of environmental review and enforcement mechanisms.

C. Injunctive Relief

A multi-plaintiff coalition combining state and local governments with professional and non-governmental organizations would present a broad range of concrete injuries. Such a coalition would underscore both sovereign interests in land use and environmental regulation and professional or organizational interests in effective hazard mitigation. Given the rule's nationwide application, its retroactive reach to 2025 loans, and its limitation on enforcement tools during ongoing reconstruction, courts would likely view requests for preliminary injunctive relief as presenting serious questions and potentially irreparable harm while legal challenges proceed.[119] The same general standing and remedial considerations would apply to any future FEMA rule that adopted a similar structure under the Stafford Act.

IX. CONCLUSION

EO 14377 and the SBA Interim Final Rule raise substantial questions under the governing statutes and doctrines. The Small Business Act and the Stafford Act were not drafted as vehicles for nationwide preemption of permitting and enforcement; they assume state primacy in these domains and frame federal programs as support, not replacement. The rule's claim to preempt state and local requirements after 60 days, disable key enforcement tools, and leave

---

[118] *See* Hunt v. Washington State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977) (establishing associational standing where: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit").

[119] *See* 13 C.F.R. §§ 123.800–.808 (2026) (applying the interim final rule nationwide and to SBA disaster loans approved on or after Jan. 1, 2025, and limiting state and local enforcement tools for covered projects); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20–22 (2008) (articulating preliminary-injunction standard, including "likely irreparable harm" and serious questions going to the merits in some circuits); *Massachusetts v. EPA*, 549 U.S. 497, 518–26 (2007) (recognizing states' special solicitude in standing and irreparable-harm analysis where federal action affects sovereign interests).

compliance to builder self-certification is difficult to reconcile with the underlying statutory structure.

Federalism clear-statement principles and the major questions doctrine reinforce these statutory limits. When the federal government seeks to reorder core state police power functions—zoning, building safety, floodplain management, and environmental review—courts require unmistakable congressional authorization. Here, the asserted preemptive power arises not from such a clear statement but from general program administration clauses, which are insufficient for such a transformative shift in agency authority.

The rule's procedural and substantive features raise significant APA and NEPA questions. Invoking the "good cause" exception more than a year after the Los Angeles fires, while issuing a nationwide rule with retroactive reach to 2025 loans, stretches that exception beyond its narrow statutory bounds. The 60-day cutoff, the failure to adequately address the safety and environmental functions of permitting, the tension between preserving substantive standards while preempting the permitting process used to ensure compliance with those substantive standards, and the lack of serious engagement with less intrusive alternatives all raise arbitrary-and-capricious concerns. If FEMA were to adopt a parallel rule, it would inherit the same statutory, federalism, and APA vulnerabilities and would also have to justify that approach under NEPA, including a documented assessment of how sidelining local environmental review affects long-term flood and wildfire risk. For jurisdictions and professionals involved in permitting and disaster recovery, these legal questions have parallel practical implications for risk, program administration, and federal–state relations.