

## **Compendium of Emergency Powers Statutes**

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### A Note on Methodology:

The primary aim of the following compendium and the paper it accompanies, *Toward a Comprehensive Reform of America's Emergency Law Regime*, 46 MICH. J.L. REFORM 728, is to catalogue statutory provisions and presidential orders containing powers that are explicitly activated by a presidential declaration of national emergency, analyze the most far-reaching of these powers, and propose reforms. Accordingly, I searched the United States Code Annotated as published by Westlaw for “national emergency” and for all citing references to statutes, regulations, executive orders, and other executive directives to any section of the National Emergencies Act.

Federal law provides for presidential declarations of emergency that are analogous to a “national emergency,” but are classified differently and trigger authorities beyond those activated by a declaration of national emergency. These additional types of emergencies are “national security emergency,” “catastrophic emergency,” “defense emergency,” “air defense emergency,” and “civil emergency.” I included these search terms in a subsequent search of the United States Code Annotated. Regulations in the Code of Federal Regulations implementing emergency powers contained in statutes are not surveyed in this compilation, on the theory that they would not confer any additional authority on the Executive Branch beyond that conferred by the statutes they implement. I subsequently conducted a series of searches for public presidential orders, made in any form, that purport to confer additional powers on the Executive Branch following a declaration of national emergency. For directives denominated “executive order” or “proclamation,” I searched for “emergency or emergencies” on a database maintained by the National Archives, which collects all available executive orders and proclamations.

Public presidential orders are also promulgated in an array of other forms. I searched “emergency or emergencies” under all relevant document titles in the Government Printing Office’s electronic Compilation of Presidential Documents and in the collection of presidential directives maintained by the Federation of American Scientists. To increase the chance of a complete compilation, I also searched the Federal Register as available electronically through Westlaw for “emergency or emergencies” in each of these document types, as well as in executive orders and proclamations.

I also searched for mention of emergencies in a third type of presidential order, termed a presidential directive. Presidents have called presidential directives by different names since Harry Truman issued the first such directive in 1947. The full text and even the titles of many directives are secret. Despite this secrecy, the Executive Branch has maintained that such directives retain the full force and effect of law. The directives take three primary forms: study directives, which instruct the National Security Council or other government agencies to provide information to the President on a given subject; decision directives, which contain orders and policy determinations; and Homeland Security Presidential Directives, which contain presidential decisions relative to homeland security policies of the United States. I searched both the Digital National Security Archive and the Federation of American Scientists’ collections of presidential directives for any mention of “emergency” or “emergencies.” I deemed relevant only those results that conferred power on the Executive Branch during a declared emergency.

My findings are incomplete in that many directives are still classified, and those about which something is publicly known likely represent only a portion of the total: the number of such directives is markedly lower in the presidencies of George W. Bush and Barack Obama than in previous administrations, despite expanded national security and military activities since 2001. This compilation also has a different focus than that assembled by the Senate Special Committee on the Termination of the National Emergency in 1976. While the latter attempted to include any and all provisions of law affected by a declaration of national emergency, the present compendium focuses on statutes and presidential directives that confer powers on the Executive Branch during a national emergency. I have elected not to include provisions from the Code of Federal Regulations in this version of the compendium, on the theory that administrative agency regulations that affect the exercise of emergency powers cannot confer more powers than the emergency powers statutes that authorize such regulations.

Title	Codification	Section	Subject Matter
<b>Foundational statutes</b>			
50	U.S.C.	1601-1651	National Emergencies Act
<b>Health and safety</b>			
38	U.S.C.	1721	Secretary of Veterans Affairs can prescribe limitations in connection with provision of health services.
42	U.S.C.	211	Restrictions on promotion in Public Health Service Corps may be waived.
42	U.S.C.	1320b-5	Secretary of Health and Human Services may waive confidentiality, certification, sanctions, other provisions s/he deems necessary to supply public health services.
42	U.S.C.	300ff-83	Provisions of HIV Health Care Services Program may be waived to improve health and safety.
50	U.S.C.	1515	President may suspend operation of any portion of chapter regulating chemical and biological warfare, testing, and disposal.
<b>Environment</b>			
20	U.S.C.	79	Permits use of Canal Zone island.
33	U.S.C.	1902	Regulations prohibiting discharge of toxic waste into waterways by US-registered vessels don't apply.
33	U.S.C.	2503	Public vessels may dispose of infectious medical waste in water.
<b>Defense and national security</b>			
5	U.S.C.	3326	Retired member of armed services may be appointed to serve in Department of Defense
10	U.S.C.	123	President may suspend any provision of law related to the promotion, involuntary retirement, or separation of commissioned officers of the armed forces.
10	U.S.C.	123a	President may waive requirements of statutes restricting the size of the armed forces and other military or civilian components of the Department of Defense
10	U.S.C.	155	Joint Staff officer tour requirements may be suspended.
10	U.S.C.	194	Certain limitation on size of defense agencies do not apply.
10	U.S.C.	454	Persons who have completed active-duty or reserve-component service responsibilities in military under Selective Service Act may be recalled to service.
10	U.S.C.	527	Officer strength and distribution in grade requirements may be suspended.

10	U.S.C.	603	President may appoint any qualified person to officer position in armed forces branches, subject to certain limitations.
10	U.S.C.	620	Secretary of Defense may keep officer ordered to active duty off the active-duty list.
10	U.S.C.	688	Exclusion of officers selected for early retirement, and time limit on reservist period, do not apply.
10	U.S.C.	690	Limitations waived on number of retired officers on active duty.
10	U.S.C.	708	Secretary can cancel educational leave of absence.
10	U.S.C.	712	President has discretion to detail member of armed forces to assist any country.
10	U.S.C.	871 Art. 71	Court martial sentence can be suspended or altered by Secretary of Defense.
10	U.S.C.	1076a	Secretary may waive payment of premium for TRICARE dental plan to expedite deployment.
10	U.S.C.	1087e	Department of Education may grant deferment for borrower serving in national emergency.
10	U.S.C.	1104	VA care may be provided to those serving in national emergency.
10	U.S.C.	1491	Secretary of Defense may waive provisions requiring funeral honors.
10	U.S.C.	1580	Secretaries of military departments may designate emergency-essential employees.
10	U.S.C.	2208	Secretary of Defense may waive requirement to notify Congress of advance billing of customer of working capital fund.
10	U.S.C.	2350j	SecDef or other military secretary may carry on construction project with funds contributed from NATO and other countries without notice to Congress
10	U.S.C.	2461	Requirement that private-public competition occur before Department of Defense-provided function is privatized does not apply.
10	U.S.C.	2632	Secretary of Defense may provide transportation to and from a private corporation.
10	U.S.C.	2662	Advance reporting requirements for real property transactions of Secdef waived during war/NE
10	U.S.C.	2692	Toxic and hazardous materials not of military origin may be stored on military base if they constitute military resources intended to be used during peacetime civil emergencies.
10	U.S.C.	2808	Secretary of Defense may authorize construction projects without regard to any other provision of law.
10	U.S.C.	3033	Army Chief of Staff may be reappointed.
10	U.S.C.	3014	Limitations on size of Department of the Army do not apply.

10	U.S.C.	3063	Secretary of Army may discontinue, consolidate branches of Army for duration of national emergency.
10	U.S.C.	4025	Work hours of laborers and mechanics in the Army may be expanded.
10	U.S.C.	5014	Limitations on size of Department of the Navy do not apply.
10	U.S.C.	5033	Chief of Naval Operations can be reappointed.
10	U.S.C.	5043	Commandant of Marine Corps may be reappointed.
10	U.S.C.	5450	More than ten retired flag officers may be on duty in the Navy.
10	U.S.C.	5451	President may suspend distribution and grade requirements for Navy.
10	U.S.C.	6485	Fleet Reserve may be ordered to active duty without consent.
10	U.S.C.	7224	Subject to Navy regulations, any person may be transported and quartered on Navy vessel.
10	U.S.C.	8014	Limitations on size of Department of the Air Force do not apply.
10	U.S.C.	8033	Air Force Chief of Staff may be reappointed.
10	U.S.C.	9025	Work hours of Air Force laborers and mechanics may be expanded.
10	U.S.C.	12006	President may exceed statutory limits on size of the armed forces.
10	U.S.C.	12103	Enlistment in Reserves in effect during a national emergency declared by Congress continues until six months after the end of an emergency.
10	U.S.C.	12301	Reservist may be involuntarily called to service.
10	U.S.C.	12302	Reservist may be called to serve in Ready Reserve.
10	U.S.C.	12311	If an agreement with member of Reserve to serve on active duty expires during national emergency, the member may be kept on active duty without consent.
10	U.S.C.	12316	Member of Reserve entitled to a pension is not entitled to the pension when serving on active duty for more than thirty days unless the amount of the pension is greater than the amount of active duty pay.
10	U.S.C.	14317	Reserve officer not on active duty list who is ordered to active duty may be considered for promotion.
10	U.S.C.	16163	Government may provide educational assistance to member serving in active duty or full-time National Guard duty during national emergency.
10	U.S.C.	16201	Financial assistance authorized to health-care professionals serving in Reserve components.
14	U.S.C.	275	President may suspend all procedures related to selection, promotion, retention of Coast Guard officers.

14	U.S.C.	331	Retired may be recalled to active duty.
14	U.S.C.	359	Coast Guard commandant may order any enlisted member on retired list to active duty.
14	U.S.C.	367	Coast Guard member can be detained in service.
14	U.S.C.	371	Requirement that at least 20 percent of aviation cadets in Coast Guard come from Coast Guard members does not apply.
14	U.S.C.	636	Commissioned and warrant officers in Coast Guard may perform notarial functions.
14	U.S.C.	652	Any restrictions removed relative to the Navy also removed relative to the Coast Guard.
14	U.S.C.	660	Coast Guard secretary may transport people working at private plants manufacturing materials for Coast Guard.
14	U.S.C.	661	President may waive end-strength limitations on size of Coast Guard.
14	U.S.C.	722	Various laws related to Coast Guard officer requirements suspended.
14	U.S.C.	724	Coast Guard Reserve end-strength limitations may be suspended.
16	U.S.C.	440	Ft. McHenry may be closed for military purposes.
16	U.S.C.	831s	Government may take possession of land specified in Tennessee Valley Authority Act.
22	U.S.C.	2318	President may authorize drawdown of defense stockpiles to provide military assistance to foreign nation or international organization.
33	U.S.C.	2293	Secretary of Defense may reprogram funds from Army civil works projects to any other national defense project, without regard to any other provision of law.
33	U.S.C.	3061	National Oceanic and Atmospheric Administration personnel and assets may be transferred to military.
40	U.S.C.	8722	Defense Department need not consult with National Capital Planning Commission for certain construction projects.
46	U.S.C.	8103	Citizenship requirements for service in Navy Reserve may be suspended
50	U.S.C.	98f	Material in strategic raw materials stockpile may be released.
50	U.S.C.	1431-1437	President may authorize any agency to enter into contracts up to certain specified amounts, notwithstanding any provision of law relating to contract formation, if the President deems it to be in the interest of national defense.
50 app.	U.S.C.	9	Alien property held by Alien Property Custodian may be sold prior to entry of judgment in suit concerning said property.

50 app.	U.S.C.	456	Exemption from Selective Service requirements removed for various categories of military personnel who have completed their terms of enlistment.
50 app.	U.S.C.	460	President may assign additional military personnel to Selective Service System.
<b>Other government operations</b>			
5	U.S.C.	5303	President may alter automatic adjustments to federal pay schedules.
5	U.S.C.	5304a	President may implement alternative comparability payments for government employees.
10	U.S.C.	2304	Agency head may waive competitive bidding requirements.
19	U.S.C.	1318	Treasury Secretary may consolidate customs offices, modify hours at customs offices, take any other action necessary to respond to national emergency or specific threat.
20	U.S.C.	1098bb	Secretary of Education may waive provisions of Higher Education Relief Opportunities for Students Act of 2003.
31	U.S.C.	3522	Additional time available for audit of armed forces.
31	U.S.C.	3727	Contracts w/certain agencies can be changed to provide "that a future payment under the contract to an assignee is not subject to reduction or setoff."
33	U.S.C.	854a1	Officers of NOAA may be temporarily appointed or advanced.
33	U.S.C.	3030	Temporary advancement of NOAA officers authorized.
40	U.S.C.	545	Administrator of General Services can waive competitive bidding procedures for contracts for disposal of surplus property.
40	U.S.C.	3147	President may suspend wage-rate requirements for public contracts.
40	U.S.C.	905	Public notice and information requirements may be waived for sale of government property in urban areas.
41	U.S.C.	253	Considerations pertaining to national emergencies provide one ground for excluding source during competitive bidding procedures, can be justification for waiving procedures.
41	U.S.C.	1710	The requirement that certain government agency functions can't be converted to contractors without a competitive process does not apply.
41	U.S.C.	3303	Certain sources may be excluded from competitive bidding practices if another source is needed as a supplier.

41	U.S.C.	3304	Noncompetitive bidding procedures may be used to maintain one contractor or facilitate industrial mobilization.
42	U.S.C.	4625	Requirements that residents displaced by federal projects be given a reasonable opportunity to relocate does not apply.
43	U.S.C.	155	Certain provisions regulating withdrawal of public lands for use for defense purposes do not apply.
49	U.S.C.	114	Undersecretary of Transportation authorized to coordinate domestic transportation, among other duties.
50	U.S.C.	2091	Loan-guarantee criteria waived for contractors deemed to be providing vital services.
50	U.S.C.	2160	President may appoint "nucleus executive reserve" for service throughout government.
<b>Economy</b>			
7	U.S.C.	1332	Secretary of Agriculture may change national marketing quota of wheat.
7	U.S.C.	1371	Secretary of Agriculture may change national marketing quota of cotton and rice.
7	U.S.C.	1427a	Secretary of Agriculture may sell or otherwise dispose of agricultural reserve.
7	U.S.C.	1444	Secretary of Agriculture may set aside cropland and put limitation on cotton acreage.
7	U.S.C.	1736y	Executive Branch may limit exports of agricultural commodities and the products of such commodities.
7	U.S.C.	1743	Agricultural commodity set-aside may be sold or disposed of
7	U.S.C.	1982	Debt relief authorized for reservists mobilized to serve during national emergency.
7	U.S.C.	4208	Statutes and federal policies to protect farmland do not apply.
29	U.S.C.	171-182	Federal government granted authority to resolve labor disputes that may threaten national safety during national emergency.
30	U.S.C.	185	President may restrict exports of oil.
35	U.S.C.	181	Patents may be kept secret for duration of national emergency.
42	U.S.C.	2138	Atomic energy licenses may be suspended.
42	U.S.C.	5177a	Emergency grants authorized to be given to low-income migrant and seasonal farmworkers.
46	U.S.C.	7507	Merchant-marine licenses may be extended.
46	U.S.C.	53107	Certain contractors of vessels must enter into National Preparedness Agreements, make vessels available.

46	U.S.C.	56102	Enables government to declare that, without the permission of the Secretary of Transportation, certain owners of vessels are not permitted to register their vessels with a foreign government, sell their vessel to a noncitizen, assign mortgage backed by vessel to noncitizen, allow noncitizen to obtain controlling interest in corporation that owns vessel or a facility for its repair.
46	U.S.C.	56301	Secretary of Transportation may requisition, purchase, and charter any vessel.
46	U.S.C.	57521	Pres may terminate charter of government-owned merchant vessel.
47	U.S.C.	308	Federal Communications Commission (FCC) may modify licenses or construction permits for broadcast stations.
47	U.S.C.	606	President may modify regulations pertaining to use of electromagnetic spectrum, close or seize stations involving wire communication.
49	U.S.C.	47152	Government may use any airport where conveyed surplus property in which it has an interest is located, subject to certain exceptions.
50	U.S.C.	191	Pres authority to inspect, seize vessels, regulate anchorage during NE
50	U.S.C.	1701-1707	International Emergency Economic Powers Act (broad authority to regulate financial and other commercial transactions involving designated entities).
50 app.	U.S.C.	2091	Limits on presidentially authorized loan guarantees do not apply.
50 app.	U.S.C.	2093	Restrictions on broad provisions empowering president to regulate economic life of nation can be waived.
<b>Criminal Liability</b>			
18	U.S.C.	793	Gathering, transmitting, or losing defense or national emergency-related information.
18	U.S.C.	2153	Sabotage during national emergency.
18	U.S.C.	2154	Manufacture of defective material during national emergency.
<b>EXECUTIVE ORDERS</b>			
Proclamation (Proc.) 2040			Bank Holiday
Proc. 2941			Korean War
Proc. 2942			Postal Strike
Proc. 4074			Balance of Payments Crisis
Executive Order (E.O.) 12170			Blocking Iranian Government Property
E.O. 12938			Proliferation of Weapons of Mass Destruction

E.O. 12947			Prohibiting Transactions with Terrorists Who Threaten to Disrupt the Middle East Peace Process
E.O. 12957			Prohibiting Certain Transactions with Respect to the Development of Iranian Petroleum Resources
E.O. 12978			Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers
Proc. 6867			Regulation of the Anchorage and Movement of Vessels with Respect to Cuba
E.O. 13047			Prohibiting New Investment in Burma
E.O. 13067			Blocking Sudanese Government Property and Prohibiting Transactions with Sudan
E.O. 13159			Blocking Property of the Government of the Russian Federation Relating to the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons
E.O. 13219			Blocking Property of Persons Who Threaten International Stabilization Efforts in the Western Balkans
E.O. 13222			Continuation of Export Control Regulations
Proc. 7463			Declaration of National Emergency by Reason of Certain Terrorist Attacks
E.O. 13224			Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism
E.O. 13288			Blocking Property of Persons Undermining Democratic Processes or Institutions in Zimbabwe
E.O. 13303			Protecting the Development Fund for Iraq and Certain Other Property in Which Iraq Has an Interest
E.O. 13338			Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria
E.O. 13348			Blocking Property of Certain Persons and Prohibiting the Importation of Certain Goods from Liberia
E.O. 13396			Blocking Property of Certain Persons Contributing to the Conflict in Côte d'Ivoire
E.O. 13405			Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus
E.O. 13413			Blocking Property of Certain Persons Contributing to the Conflict in the Democratic Republic of the Congo
E.O. 13441			Blocking Property of Persons Undermining the Sovereignty of Lebanon or Its Democratic Processes and Institutions
E.O. 13466			Continuing Certain Restrictions with Respect to North Korea and North Korean Nationals
E.O. 13536			Blocking Property of Certain Persons Contributing to the Conflict in Somalia
E.O. 13566			Blocking Property and Prohibiting Certain Transactions Related to Libya

E.O. 13581			Blocking Property of Transnational Criminal Organizations
E.O. 13611			Blocking Property of Persons Threatening the Peace, Security, or Stability of Yemen
E.O. 12396			Delegation of defense officer personnel management functions.
E.O. 12277			Direction to transfer Iranian government assets.
E.O. 12279			Direction to transfer Iranian Government assets held by domestic banks
E.O. 12280			Direction to transfer Iranian Government financial assets held by non-banking institutions
E.O. 12281			Direction to transfer certain Iranian Government assets
E.O. 12294			Suspension of litigation against Iran
E.O. 12284			Restrictions on the transfer of property of the former Shah of Iran
E.O. 12283			Non-prosecution of claims of hostages and for actions at the United States Embassy and elsewhere
E.O. 12276			Direction relating to establishment of escrow accounts [regarding hostage agreement with Iran]
E.O. 12278			Direction to transfer Iranian Government assets overseas
E.O. 11161			Relating to certain relationships between the Department of Defense and the Federal Aviation Administration
E.O. 12472			Assignment of national security and emergency preparedness telecommunications functions
E.O. 11390			Delegation of certain functions of the President to the Secretary of Defense
E.O. 10840			Designating the Federal Aviation Administration as an agency to have certain contractual authority under the Assignment of Claims Act of 1940, as amended
E.O. 12919			National Defense Industrial Resource Preparedness
E.O. 12899			Implementation of North American Free Trade Agreement
<b>Other Presidential Directives</b>			
Homeland Security Presidential Directive (HSPD) 1			Organization and Operation of the Homeland Security Council (Oct. 29, 2001)
HSPD 5			Management of Domestic Incidents (Feb. 28, 2003)
HSPD 7			Critical Infrastructure Identification, Prioritization, and Protection (Dec. 17, 2003)

HSPD 9			Defense of United States Agriculture and Food (Jan. 30, 2004)
HSPD 10			Biodefense for the 21st Century (Apr. 28, 2004)
HSPD 18			Medical Countermeasures Against Weapons of Mass Destruction (Jan. 31, 2007)
HSPD 21			Public Health and Medical Preparedness (Oct. 18, 2007)
National Security Presidential Directive (NSPD) 17			National Strategy to Combat Weapons of Mass Destruction (Dec. 2002)
NSPD 43			Domestic Nuclear Detection (Apr. 15, 2005)
NSPD 51			National Continuity Policy (May 9, 2007)
Presidential Policy Directive (PPD) 8			National Preparedness (Mar. 30, 2011)