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**FOR JUSTICE**

# A Guide to Emergency Powers and Their Use

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Updated: September 4, 2019

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## About this Guide

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### **BACKGROUND**

Our democracy is built on a structure of limited and separated governmental powers. The Founders took pains to prevent the amassing of too much power in any one branch of government. In times of emergency, however, it might be necessary for the president to have greater-than-normal powers and flexibility in order to respond adequately to quickly unfolding events. But what extra powers should the president have, when should she be able to access them, and how should they be constrained in their use? To answer these questions, it is important to understand what the emergency powers landscape looks like today.

There are many types of emergency powers, some set forth in laws passed by Congress, others contained in secret presidential orders. One particularly important subset of these powers is a diverse collection of special statutory authorities that become available when the president or Congress declares a “national emergency.”

Presidential declarations of national emergency are governed by the National Emergencies Act, which went into effect in 1978. Under this law, the president has significant discretion to declare a national emergency; there are no statutory limitations, beyond the word “emergency” itself, on what type of event qualifies. The law provides that a national emergency will terminate after a year unless the president renews it, but such renewals happen routinely. And while Congress may vote to terminate a presidentially declared state of emergency, it has done so only once in four decades, in response to President Donald Trump’s declaration of a national emergency to secure funding that Congress had expressly denied for the construction of a wall along the southern border. Congress voted to end that emergency, but the president vetoed Congress’s resolution, and so the emergency remains in place.

Building on previous research in this area, the Brennan Center has identified 123 statutory powers that may become available to the president when she declares a national emergency. An additional 13 statutory powers become available when a national emergency is declared by Congress. Our research on these 136 powers is presented in this guide.

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## DESCRIPTION

The guide, **current as of September 4, 2019**, includes two tables. The first lists several important laws that establish general frameworks for different kinds of emergencies (including national emergencies, major disasters, public health emergencies, etc.). The second sets forth the 136 statutory provisions available during national emergencies; it displays these powers by subject matter, specifies the conditions triggering their use, and lists the occasions on which they have been invoked. Our methodology for developing this guide is available on the Brennan Center's website, along with a running list of national emergencies declared since the National Emergencies Act went into effect. There is also an online version of this guide that is searchable, sortable, and kept updated.

These online resources are available at <https://www.brennancenter.org/analysis/emergency-powers>. This guide is not a complete list of the president's emergency powers. Our goal was to comprehensively list the authorities available when either the president or Congress declares a national emergency, and to describe their historical usage. As noted, there are other types of emergency that can be declared; we listed some of the most important statutes governing those other kinds of emergency — including the Robert T. Stafford Disaster Relief and Emergency Assistance Act and the Public Health Service Act — under the first table (titled “Emergency Framework Statutes”), but we did not identify every instance in which those powers have been used. There are also statutes that provide powers to deal with specific crises (e.g., “insurrections”) without using the term “emergency”; those are not included in this guide. And the guide does not contain any non-statutory legal authorities, such as presidential directives or agency regulations.

## TOP-LINE OBSERVATIONS

The information that the Brennan Center has compiled in this guide and in the accompanying online list of national emergencies is eye-opening in many ways: in the nature of the powers provided, in how easily the executive can access them, and in how they have been used (or misused). Some highlights of the research include:

- Emergency powers cover almost every imaginable subject area, including the military, land use, public health, trade, federal pay schedules, agriculture, transportation, communications, and criminal law.
- Some of the laws stand out as particularly alarming in what they authorize and in their potential for abuse. One statute, for example, would allow the president to suspend a law that prohibits government testing of chemical and biological agents on unwitting human subjects. Section 706(c) of the Communications Act of 1934 allows the president to shut down or take over radio stations. If she proclaims a threat of war, she can go further and take over wire communications facilities as well. The International Emergency Economic Powers Act (IEEPA) allows the government to freeze any asset or block any financial transaction in which a foreign national has an interest, even if the asset belongs to an American or the transaction is between Americans.
- Other powers seem almost absurdly mundane, to the point that it is difficult to see how they could help alleviate emergency conditions. One law, for instance, allows members of the Coast Guard to serve as notaries public in times of national emergency. Another allows the Secretary of the Interior to close the Fort McHenry National Monument.
- Of the 136 authorities available to the president in a national emergency, 96 require nothing more than her signature on the emergency declaration. Twelve contain a *de minimis* restriction, such as a requirement that an agency head certify the necessity of the measure (something the president can presumably order the agency head to do). Fifteen contain a more substantive restriction, such as a requirement that the emergency relate to a particular subject matter or that it involve the use of armed forces. Only 13 require a congressional (versus presidential) declaration of emergency.
- These emergency authorities have accumulated over decades. Fifty-eight of the statutes were first enacted more than half a century ago. We could find no record of usage for many of the statutes — which raises the question of whether these powerful and potentially dangerous powers are even necessary. Indeed, more than half of the laws in the database (67 percent) appear to have never been invoked. At least four have been rendered facially obsolete since they were enacted. For instance, one statute provides powers regarding an island in the Panama Canal Zone that the United States no longer controls, and another one exempts World War II veterans from the draft.

- On the other hand, a few of the statutes have been used frequently, with six having been used more than 10 times. Most notably, the International Emergency Economic Powers Act has been invoked on an almost yearly basis since it was passed in 1977 and is cited in all but five of the emergencies ever declared under the National Emergencies Act. This level of reliance on an emergency power raises a different concern: that the actions being taken are not emergency actions at all, but the implementation of standard policy that should be bound by non-emergency law.
- Although the very concept of “emergency” suggests a temporary, short-term event, states of emergency last a long time, and they’re getting longer. Thirty-four of the 62 states of emergency declared since the National Emergencies Act was passed are still in effect today (current as of September 4, 2019). The average duration of declared emergencies is 9.6 years.\* Twenty-five emergencies have lasted 10 years or longer; 13 of these were declared between 2001 and 2008. The longest-lasting emergency, Blocking Iranian Government Property, was first declared in 1979 on the heels of the hostage crisis and has been persistently renewed for 39 years.
- Emergency powers are being used as a pretext to deal with other problems. Presidents Obama and Trump invoked nonexistent economic crises to decrease or eliminate statutory pay increases for federal workers. (While there was arguably an economic crisis at the beginning of Obama’s administration, he continued to invoke this emergency law throughout his two terms.) President Trump invoked the 9/11 state of emergency in 2017 to fill a chronic shortage in Air Force pilots.

In short, emergency powers offer a broad array of tools that would otherwise be unavailable to the executive branch. Some are highly potent and subject to abuse, while others are already being misused as convenient fixes to non-emergency problems. A large percentage of these authorities appear to be unnecessary and/or outdated. The president can invoke dozens of these laws simply by signing her name to an emergency declaration, and such declarations tend to linger on the books for many years. The bottom line: It is time to rethink whether our current legal framework for national emergencies is the right one, or whether changes are needed to preserve the balance of powers the Founders intended.

\* This figure was calculated using only those declared emergencies that already have lapsed or been terminated. Incorporating existing emergencies would result in an artificially low number, as it is highly unlikely that all such emergencies will terminate at the end of this year.

## A Guide to Emergency Powers and Their Use

U.S. Code Section	Subject Matter	Language dictating when powers become available	Invocations and Delegations of Authority
<b>Emergency Framework Statutes</b>			
<a href="#">50 U.S.C. §§ 1601-1651</a>	National Emergencies Act (1976)	“With respect to acts of Congress authorizing the exercise, during the period of a national emergency, of any special or extraordinary power, the President is authorized to declare such national emergency”	The National Emergencies Act imposes procedural requirements on the President’s exercise of emergency powers. It has governed the declaration of multiple emergencies. See <a href="#">here</a> for a complete list of national emergencies declared under this statute.
<a href="#">42 U.S.C. § 247d</a>	Public Health Service Act (1944)	“If the Secretary [of Health and Human Services] determines, after consultation with such public health officials as may be necessary, that – (1) A disease or disorder presents a public health emergency; or (2) A public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks, otherwise exists”	See <a href="#">here</a> for list of declarations under this statute since 2005.  Two recent invocations of this authority include: Pres. Memo., <i>Combatting the National Drug Demand and Opioid Crisis</i> , <a href="#">82 FR 50305</a> , Oct. 26, 2017 (instructing the HHS Secretary to declare a Public Health Emergency to combat the opioid crisis); and Proc. 8443, <i>Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic</i> , <a href="#">74 FR 55439</a> , Oct. 23, 2009.
<a href="#">42 U.S.C. §§ 5121 et seq.</a>	Robert T. Stafford Disaster Relief and Emergency Assistance Act (1988; earlier iterations, known as the “Disaster Relief Act,” were issued in 1950 and 1974)	A Governor can petition the President for a declaration of major disaster or emergency under this chapter when she reaches “a finding that [a] disaster is of such severity and magnitude that effective response is beyond the capabilities of the State and affected local governments and that Federal assistance is necessary” <a href="#">42 U.S.C. § 5170</a> <a href="#">42 U.S.C. § 5122</a> defines an emergency under this chapter as “any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement State	Between 1953 and 2014, averages of 35.5 major disaster declarations were issued annually by Presidents under the Stafford Act and its predecessor Disaster Relief Acts. Emergency declarations under this act have been issued on average 9 times annually between 1974 and 2014. Fire Management Assistance Grants have also been issued under this act at a rate of about 24 per year in the same period. For more information, see Bruce R. Lindsay and Francis X. McCarthy, <i>Stafford Act Declarations 1953-2014: Trends, Analyses, and Implications for</i>

		and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.” The same section defines a major disaster under this chapter as “any natural catastrophe (including any hurricane, tornado, storm, high water, winddriven [sic] water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President causes damage of sufficient severity and magnitude to warrant major disaster assistance under this chapter to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby”	<i>Congress</i> , <a href="#">R42702</a> , Congressional Research Service, 2015. *** The statute does allow for the deployment of federal troops to coordinate disaster response and provide relief efforts, but troops deployed under this statute do not have any law enforcement authority. ***
<a href="#">22 U.S.C. § 2318 (a)(1)</a>	President may direct the drawdown of defense articles from Department of Defense stocks, Department of Defense services, and military education and training, of a total value not to exceed \$100 million per year, for the purpose of providing military, economic, peacekeeping, antiterrorism, and/or non-proliferation assistance to foreign countries and international organizations (1961)	“(1) If the President determines and reports to the Congress in accordance with section 2411 of this title that – (A) an unforeseen emergency exists which requires immediate military assistance to a foreign country or international organization; and (B) the emergency requirement cannot be met under the authority of the Arms Export Control Act [ <a href="#">22 USC §§ 2751</a> et seq.] or any other law except this section”	Between 1988 and 2017, this statute was invoked 57 times, including recently in 2014: Pres. Determin. No. 2014-13, Drawdown Under Section 506(a)(1) of the Foreign Assistance Act of 1961 for France to Support Its Counterterrorism Efforts in Mali, Niger, and Chad, <a href="#">79 FR 49223</a> , Aug. 11, 2014.

## Statutes Available Upon Declaration of a National Emergency

The powers in the 136 statutes identified below become available in some way when the President or Congress declares a “national emergency.” The basic legal framework for a Presidential declaration of emergency is the National Emergencies Act, which is the first statute outlined above.

U.S. Code Section	Subject Matter	Language dictating when powers become available	Invocations and Delegations of Authority
	<b>Key:</b>	No restrictions on President’s power to invoke during a national emergency	<i>Orders in italics below cite the relevant code section of the purposes of delegating or transferring authority without invoking those powers;</i> *No relevant citations* indicates that the researchers did not identify any invocations of the emergency powers in citing references available on Westlaw; **Zero citations** indicates that no citing references at all were available on Westlaw for the code section indicated.
		No meaningful restrictions on President’s power to invoke during a national emergency	
<b>Public Health</b>			
<a href="#">42 U.S.C. § 1320b-5</a>	Secretary of Health and Human Services may waive confidentiality, certification, sanctions, and other provisions as necessary to supply public health services (2002)	“in any emergency area and during an emergency period,” defined as “(g)(1)(A) an emergency or disaster declared by the President pursuant to the <a href="#">National Emergencies Act</a> or the Robert T. <a href="#">Stafford Disaster Relief and Emergency Assistance Act</a> ; and (B) a public health emergency declared by the Secretary pursuant to section 247d of this title.” <a href="#">Section 247d</a> says “If the Secretary determines, after consultation with such public health officials as may be necessary, that (1) a disease or disorder presents a public health emergency or (2) a public health emergency, including significant outbreaks of infectious diseases or bioterrorist attacks otherwise exists, the Secretary may take such action as may be appropriate to respond”	More commonly referred to as Social Security Act (SSA) § 1135. See <a href="#">here</a> for list of recent waivers issued under SSA § 1135.  For an example of a recent invocation of this statute, see Proc. 8443, Declaration of a National Emergency With Respect to the 2009 H1N1 Influenza Pandemic, <a href="#">74 FR 55439</a> , Oct. 23, 2009.  Certain authorities under this section have since been delegated, though the waiver authority remains with the Secretary. See <i>Department of Health and Human Services, Centers for Medicare &amp; Medicaid Services; Delegation of Authority</i> , <a href="#">75 FR 11185</a> , Mar. 10, 2010 ( <i>delegating certain authorities under this section</i> )

			<p><i>to the Administrator of the Centers for Medicare &amp; Medicaid Services).</i></p>
<p><a href="#">21 U.S.C. § 360bbb-3</a></p>	<p>Secretary of Health and Human Services may authorize the use of an unapproved drug, device, or biological product, or an unapproved use of an approved drug, device, or biological product (2004)</p>	<p>“The Secretary may make a declaration that the circumstances exist justifying the authorization under this subsection for a product on the basis of—</p> <p>(A) a determination by the Secretary of Homeland Security that there is a domestic emergency, or a significant potential for a domestic emergency, involving a heightened risk of attack with a biological, chemical, radiological, or nuclear agent or agents;</p> <p>(B) a determination by the Secretary of Defense that there is a military emergency, or a significant potential for a military emergency, involving a heightened risk to United States military forces of attack with a biological, chemical, radiological, or nuclear agent or agents;</p> <p>(C) a determination by the Secretary that there is</p>	<p>This statute has been invoked over a dozen times since being enacted in 2004, to authorize use of unapproved products to respond to emergencies ranging from anthrax threats to Ebola. Nine Emergency Use Authorizations (EUAs) are currently in effect in the United States. See <a href="#">here</a> for a list of active declarations under this statute, and <a href="#">here</a> for an archived list of past declarations.</p> <p>For a recent example of a declaration under this statute, see HHS Notice, Determination and Declaration Regarding Emergency Use of in Vitro Diagnostic Tests for Detection of Zika Virus and/or Diagnosis of Zika Virus Infection, <a href="#">81 FR 10878</a>, Feb. 26, 2016 (revoked June 30, 2017).</p>



		a public health emergency, or a significant potential for a public health emergency, that affects, or has a significant potential to affect, national security or the health and security of United States citizens living abroad, and that involves a biological, chemical, radiological, or nuclear agent or agents, or a disease or condition that may be attributable to such agent or agents; or (D) the identification of a material threat pursuant to section 319F-2 of the Public Health Service Act [ <a href="#">42 U.S.C. § 247d-6b</a> ] sufficient to affect national security or the health and security of United States citizens living abroad”	
<a href="#">42 U.S.C. § 7410 (f)</a>	Governor of a State may petition the President to suspend any part of Clean Air Act implementation plan or any requirement under <a href="#">42 U.S.C. § 7651j</a> (concerning excess emissions penalties or offsets) for up to 4 months (1977)	“Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity” that a temporary suspension may be necessary, and that “other means of responding to the emergency may be inadequate”	*No relevant citing references on Westlaw*  This statute has not been used to declare a national energy emergency, but it was used in the late 1970s to declare regional energy emergencies in <a href="#">Ohio</a> , <a href="#">Indiana</a> , <a href="#">Kentucky</a> , <a href="#">Pennsylvania</a> , <a href="#">Maryland</a> , <a href="#">Alabama</a> , <a href="#">Florida</a> , and <a href="#">Oregon</a> .
<a href="#">42 U.S.C. § 217</a>	President may use the Public Health Service to such extent and in such manner as shall in their judgment promote the public interest; or President may by Executive Order declare the commissioned corps of the Public Health Service to be a military service (1944)	“In time of war, or of emergency proclaimed by the President;” or “In time of war, or of emergency involving the national defense proclaimed by the President”	E.O. 9575, Declaring the Commissioned Corps of the Public Health Service to Be a Military Service and Prescribing Regulations Therefore, <a href="#">10 FR 7895</a> , June 21, 1945 (declaring commissioned corps of the Public Health Service a military service for “the period of the present war”).
<a href="#">50 U.S.C. § 1515</a>	President may suspend the operation of provisions regulating the storage, transportation, disposal, procurement, handling, and testing of chemical and biological	“during the period of any war declared by Congress and during the period of any national emergency declared by Congress or by the President”	*No relevant citing references on Westlaw*

	weapons, including the prohibition on testing such weapons on human subjects (1969)		
<a href="#">33 U.S.C. § 1902 (b)(3)(F)</a>	Certain laws governing the disposal of garbage at sea – including restrictions on disposal near land and a prohibition on the discharge of waste that may contain toxic chemicals or heavy metals – do not apply (1987)	During “time of war or a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">33 U.S.C. § 2503 (1)(B)</a>	Public vessels may dispose of potentially infectious medical waste in ocean waters more than 50 nautical miles from the nearest land after taking precautions to prevent the waste from coming ashore after disposal (1988)	During “time of war or declared national emergency”	*No relevant citing references on Westlaw*
<a href="#">42 U.S.C. § 6393 (a)(2)(A)</a>	President may waive 30-day minimum comment period on proposed rules and regulations issued under the Energy and Policy Conservation Act (1975)	“if the President finds that such waiver is necessary to act expeditiously during an emergency affecting the national security of the United States”	*No relevant citing references on Westlaw*  <i>E.O. 11912, Delegation of Authorities Relating to Energy Policy and Conservation, <a href="#">41 FR 15825</a>, Apr. 13, 1976 (delegating Presidential authorities under this section to the Administrator of the Federal Energy Administration).</i>
<a href="#">42 U.S.C. § 300ff-83</a>	Secretary of Health and Human Services may waive provisions of HIV Health Care Services Program to improve the health and safety of those receiving care under the Program and the general public, but may not expend more than 5% of the funds allocated under the Program for supplemental grants (2006)	“in an emergency area and during an emergency period,” defined as: “a geographic area in which there exists (A) an emergency or disaster declared by the President pursuant to the <a href="#">National Emergencies Act</a> or the Robert T. <a href="#">Stafford Disaster Relief and Emergency Assistance Act</a> ; or (B) a public health emergency declared by the Secretary pursuant to <a href="#">section 247d</a> of this title”; and “the period in which there exists ---	*No relevant citing references on Westlaw*

		(A) an emergency or disaster declared by the President pursuant to the <a href="#">National Emergencies Act</a> or the Robert T. <a href="#">Stafford Disaster Relief and Emergency Assistance Act</a> ; or (B) a public health emergency declared by the Secretary pursuant to <a href="#">section 247d</a> of this title”	
<b>Land Management</b>			
<a href="#">20 U.S.C. § 79</a>	Barro Colorado island in the Panama Canal Zone, which is otherwise to be left in its “natural state for scientific observation,” may be used for other purposes (1940)	“in event of declared national emergency”	*No relevant citing references on Westlaw*
<a href="#">16 U.S.C. § 831s</a>	Government may take possession of land specified in Tennessee Valley Authority Act for the purpose of manufacturing explosives or for other war purposes (1933)	“in case of war or national emergency declared by Congress”	*No relevant citing references on Westlaw*  The Tennessee Valley Authority was a critical supplier of electrical power and raw materials for the purposes of building bombs and other supplies for World War II during the 1940s, but not pursuant to this statute.
<a href="#">43 U.S.C. § 155</a>	Certain provisions regulating withdrawal, reservation, restriction, and utilization of public lands by or for the Department of Defense for defense purposes do not apply (1958)	“in time of war or national emergency hereafter declared by the President or the Congress”	*No relevant citing references on Westlaw*
<a href="#">43 U.S.C. § 1341 (c)</a>	The Secretary of the Interior, upon a recommendation of the Secretary of Defense, may suspend operations under any lease, with payment of just compensation to the lessee whose operations are suspended, for any lease of land of the outer Continental Shelf (1953)	All leases of land of the outer Continental Shelf shall contain or be construed to contain a provision authorizing the exercise of this power “...during a state of war or national emergency declared by the Congress or the President of the United States after August 7, 1953”	*No relevant citing references on Westlaw*

<a href="#">16 U.S.C. § 440</a>	Secretary of the Interior may close Ft. McHenry, and it may be used for military purposes (1925)	“in case of a national emergency”	*No relevant citing references on Westlaw*  The Coast Guard used Fort McHenry as a training station during World War II, but not pursuant to this statute. Instead, the War Department leased part of the fort from the National Parks Service. For more information on this history, see David Marin, “For the safety of ports, ships, and facilities,” Coast Guard Mid Atlantic, Sept. 5, 2015, <a href="http://midatlantic.coastguard.dodlive.mil/2015/09/for-the-safety-of-ports-ships-and-facilities/">http://midatlantic.coastguard.dodlive.mil/2015/09/for-the-safety-of-ports-ships-and-facilities/</a> .
<a href="#">40 U.S.C. § 8722 (b)(2)</a>	Department of Defense is not required to consult with National Capital Planning Commission for projects within the Capitol grounds or structures erected within existing military reservations, unless any developments materially affect traffic or require coordinated planning of the surrounding area (2002)	“during wartime or national emergency”	*No relevant citing references on Westlaw*
<a href="#">40 U.S.C. § 905</a>	Procedures for providing notice to local government and prospective purchasers before purchase or sale of real property in urban areas by Administrator of General Services may be waived (2002)	“during a period of national emergency proclaimed by the President”	*No relevant citing references on Westlaw*
<a href="#">7 U.S.C. § 4208</a>	Legal provisions intended to protect farmland do not apply to the acquisition or use of farmland for national defense purposes (1990)	“during a national emergency”	*No relevant citing references on Westlaw*
<a href="#">49 U.S.C. § 47152 (5)</a>	Federal government may use, control, or possess any part of a public airport that was conveyed to	“During a national emergency declared by the President or Congress”	After World War II, as part of a surplus property conveyance program, the federal government conveyed without monetary consideration some military air bases to state and local governments

	the local or state government as surplus property (1944)		for use as airports. This provision was invoked to reclaim at least one of these air bases during the Korean War national emergency. <i>See generally</i> “Gabreski Airport History,” Suffolk County Government, accessed Oct. 19, 2018, <a href="http://www.suffolkcountyny.gov/Departments/EconomicDevelopmentandPlanning/FrancisSGabreskiAirport/AirportHistory.aspx">http://www.suffolkcountyny.gov/Departments/EconomicDevelopmentandPlanning/FrancisSGabreskiAirport/AirportHistory.aspx</a> .
<a href="#">23 U.S.C. §§ 127 (h), (i)</a>	(h) Secretary of Transportation may waive vehicle weight limits on Interstate 95 between Augusta, ME and Bangor, ME for bulk shipments of jet fuel to the Air National Guard Base at Bangor International Airport (2001); (i) a State may issue special 120-day permits during an emergency to overweight vehicles and loads that can easily be dismantled or divided (2012)	(h) “...during a period of national emergency in order to respond to the effects of the national emergency.”  (i) if “the President has declared the emergency to be a major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ( <a href="#">42 U.S.C. § 5121 et seq.</a> ); the permits are issued in accordance with State law; and the permits are issued exclusively to vehicles and loads that are delivering relief supplies”	**Zero citing references on Westlaw**
<a href="#">40 U.S.C. § 545 (b)(1)(A)</a>	Administrator of General Services may, if necessary in the public interest, negotiate disposal of a particular lot of surplus personal property without first publicly advertising for bids, but subject to obtaining competition that is feasible under the circumstances (2002)	“during the period of a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">42 U.S.C. § 4625 (c)(3)(B)</a>	Provision that persons displaced by a federal project may not be required to leave their dwelling unless they have had a reasonable opportunity to relocate to a comparable replacement dwelling does not apply (1971)	“in the case of– (A) a major disaster as defined in <a href="#">section 5122(2)</a> of this title; (B) a national emergency declared by the President; or (C) any other emergency which requires the person to move immediately from the dwelling	*No relevant citing references on Westlaw*

		because the continued occupancy of such dwelling by such person constitutes a substantial danger to the health or safety of such person”	
<b>Military and National Defense</b>			
<a href="#">50 U.S.C. §§ 1431-1435</a>	President may authorize any agency that exercises functions in connection with the national defense to enter into, amend, or make advance payments on contracts up to certain specified amounts and subject to certain restrictions, without regard to other provisions of law relating to contract formation, amendment, or performance, if the President deems it to be in the interest of national defense (1958)	This authority is “effective only during a national emergency declared by Congress or the President and for six months after the termination thereof or until such earlier time as Congress, by concurrent resolution, may designate” ( <a href="#">50 U.S.C. § 1435</a> )	This statute was promptly invoked by E.O. 10789, Authorizing Agencies of the Government to Exercise Certain Contracting Authority in Connection with National-Defense Functions and Prescribing Regulations Governing the Exercise of Such Authority, <a href="#">23 FR 8897</a> , Nov. 14, 1958, and has been continually exercised under this order ever since. For more information, see <a href="#">here</a> .  A recent example of a specific invocation of this statute is Pres. Memo., Authorizing the Exercise of Authority under Public Law 85-804: Memorandum for the Administrator of the United States Agency for International Development, <a href="#">Nov. 13, 2014</a> (authorizing USAID director to enter into contracts in support of responding to Ebola outbreak in Africa where the contractor, employees, or subcontractors will have significant exposure to Ebola).
<a href="#">10 U.S.C. § 7224</a>	Secretary of the Navy may authorize by regulation the transport and subsistence of any person on naval vessels at government expense (1946)	“In time of war or during a national emergency declared by the President”	**Zero citing references on Westlaw**
<a href="#">10 U.S.C. § 3063 (b)</a>	Secretary of the Army may discontinue or consolidate basic branches of the Army (1956)	“for the duration of any war, or of any national emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12302 (a)</a>	An authority designated by the Secretary concerned may, without the consent of the persons	“in time of national emergency declared by the President after January 1, 1953, or when otherwise authorized by law”	E.O. 12743, Ordering the Ready Reserve of the Armed Forces to Active Duty, <a href="#">56 FR 2661</a> , Jan. 18, 1991 (invoked as previously codified – 10

	concerned, order any unit and any member of the Ready Reserve to active duty for up to 24 consecutive months; no more than 1,000,000 members of the Ready Reserve may be on active duty without their consent under this section at any one time (1956)		U.S.C. § 673 – in response to “the continuing threat posed by Iraq’s invasion of Kuwait,” “in furtherance of <a href="#">[E.O.] 12722</a> , dated August 2, 1990”);  Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a> , Sept. 14, 2001 (invoked in response to events of 9/11/2001);  E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a> , Sept. 14, 2001 (invoked in response to events of 9/11/2001).
<a href="#">14 U.S.C. § 652</a>	Any law removing any restriction contained in any then-existing law as applied to the Navy shall remove such restrictions as applied to the Coast Guard (1949)	“for the duration of a war or national emergency proclaimed by the President”	E.O. 13253, Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">67 FR 2791</a> , Jan. 16, 2002 (invoked to respond further to the events of 9/11/2001, and delegated to the Secretary of Transportation) (later amended to delegate such authority to Secretary of Homeland Security instead of Secretary of Transportation).
<a href="#">14 U.S.C. § 660 (a)</a>	Secretary of the department in which the Coast Guard is operating may, at reasonable rates of fare fixed, provide transportation to and from work for people working at private plants that are manufacturing material for the Coast Guard (1980)	“during a war or during a national emergency declared by Congress or the President”	**Zero citing references on Westlaw**

<a href="#">10 U.S.C. § 2632 (a)(2)(D)</a>	Secretary of military department concerned may provide transportation to and from work for employees of and “persons attached to” a private plant manufacturing material for that department (1979)	“during a war or a national emergency declared by Congress or the President”	*No relevant citing references on Westlaw*
<a href="#">46 U.S.C. § 8301 (d)(1)</a>	The Secretary of the Department in which the Coast Guard is operating may suspend provisions related to masters and officers of merchant vessels (1983)	“during a national emergency proclaimed by the President”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 527</a>	President may suspend statutory officer strength and distribution in grade requirements (1980)	“In time of war, or of national emergency declared by Congress or the President”	E.O. 12743, Ordering the Ready Reserve of the Armed Forces to Active Duty, <a href="#">56 FR 2661</a> , Jan. 18, 1991 (invoked in response to “the continuing threat posed by Iraq’s invasion of Kuwait,” “in furtherance of <a href="#">[E.O.] 12722</a> , dated August 2, 1990,” and delegated to Secretary of Defense);  Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a> , Sept. 14, 2001 (invoked in response to events of 9/11/2001);  E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a> , Sept. 14, 2001 (invoked in response to events of 9/11/2001 and delegated to Secretary of Defense).
<a href="#">10 U.S.C. § 603</a>	President may temporarily appoint any qualified person to any officer grade in the Army, Navy, Air Force, or Marine Corps, but not to grades above major general or rear admiral (1980)	“In time of war, or of national emergency declared by the Congress or the President”	E.O. 13321, Appointments During National Emergency, <a href="#">68 FR 74465</a> , December 17, 2003 (invoked to respond further to the national emergency declared by <a href="#">Proc. 7463</a> of Sept. 14, 2001, and delegated to Secretary of Defense);



			Four civilians were appointed to Military Commission Review Panel in 2004 under this authority. See <a href="#">here</a> for more information.
<a href="#">10 U.S.C. § 12006 (a)</a>	President may suspend the operation of statutes governing the authorized strengths and distribution of reserve officers in an active status in the armed forces (1994)	“In time of war, or of national emergency declared by Congress or the President”	Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a> , Sept. 14, 2001 (invoked in response to events of 9/11/2001);  E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a> , Sept. 14, 2001 (invoked in response to the events of 9/11/2001).
<a href="#">14 U.S.C. § 722</a>	President may suspend the operation of certain statutes related to officers in the Coast Guard Reserve (1980)	“In time of war or national emergency declared by Congress”	E.O. 13253, Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">67 FR 2791</a> , Jan. 16, 2002 (invoked to respond further to events of 9/11/2001 and delegated to the Secretary of Transportation) (later amended to delegate such authority to Secretary of Homeland Security instead of Secretary of Transportation).
<a href="#">49 U.S.C. § 114 (g)</a>	Undersecretary of Transportation authorized to coordinate domestic transportation, among other duties (2001)	“during a national emergency” – however, “The Secretary shall prescribe the circumstances constituting a national emergency for purposes of this subsection”	*No relevant citing references on Westlaw*
<a href="#">50 U.S.C. § 4533 (a)(7)</a>	Procedural and substantive limitations in statute granting the President broad authority to create, maintain, protect, expand, or restore domestic industrial base capabilities that are essential for the national defense may be waived (1950)	“(A) during a period of national emergency declared by the Congress or the President; or (B) upon a determination by the President, on a nondelegable basis, that action is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability”	*No relevant citing references on Westlaw*

<a href="#">10 U.S.C. § 5451</a>	President may suspend the operation of statutes imposing distribution in grade requirements on the Navy (1956; powers amended and expanded to allow suspension of further statutes in 1991)	“during a war or national emergency... [not to] continue beyond September 30 of the fiscal year following that in which the war or national emergency ends”	**Zero citing references on Westlaw**  The only statute currently subject to this section is <a href="#">10 USC § 5450</a> , which caps the number of retired Navy flag officers on active duty at ten.
<a href="#">10 U.S.C. § 1104 (d)</a>	Department of Veterans Affairs may provide healthcare to members of the armed forces serving in national emergency (1989)	“during and immediately following a period of war, or during and immediately following a national emergency involving the use of the armed forces in armed conflict”	**Zero citing references on Westlaw**
<a href="#">10 U.S.C. §§ 3014 (f)(4), (5)</a>	Limitations on the size of the Office of the Secretary of the Army do not apply (1986; national emergency provisions narrowed in 2016)	Limitations “do not apply in time of war;” certain limitations “may be exceeded by a number equal to 15 percent of such limitation in time of national emergency”	**Zero citing references on Westlaw**
<a href="#">10 U.S.C. §§ 5014 (f)(4), (5)</a>	Limitations on the size of the Office of the Secretary of the Navy do not apply (1986; national emergency provisions narrowed in 2016)	Limitations “do not apply in time of war;” certain limitations “may be exceeded by a number equal to 15 percent of such limitation in time of national emergency”	**Zero citing references on Westlaw**
<a href="#">14 U.S.C. § 724 (c)</a>	President may suspend or defer any end-strength limitation for any military or civilian component of the Coast Guard Reserve for a period not to exceed six months after the end of the war or national emergency (2002)	“If at the end of any fiscal year there is in effect a declaration of war or national emergency”	**Zero citing references on Westlaw**
<a href="#">31 U.S.C. § 3522 (b)(3)</a>	Additional time available for audit of armed forces (1982)	“during a war or national emergency and for 18 months after the war or emergency ends”	**Zero citing references on Westlaw**
<a href="#">10 U.S.C. § 8014 (f)(5)</a>	Limitations on size of Office of the Secretary of the Air Force do not apply (1986; national emergency provisions narrowed in 2016)	Limitations “do not apply in time of war;” certain limitations “may be exceeded by a number equal to 15 percent of such limitation in time of national emergency”	*No relevant citing references on Westlaw*
<a href="#">14 U.S.C. § 2703 (a)</a>	President may defer any “end strength” (the number of active duty military and civilian personnel in a military or civilian component	“if at the end of any fiscal year there is in effect a declaration of war or national emergency”	*No relevant citing references on Westlaw*

	of the armed forces or of the Department of Defense on the last day of a particular accounting period) limitations with respect to that fiscal year for any military or civilian component of the Coast Guard, for a period up to six months after the end of war or termination of national emergency (2002)		
<a href="#">10 U.S.C. § 123a (a)</a>	<p>(1) President may waive any statutory “end strength” (the number of active duty military and civilian personnel in a military or civilian component of the armed forces or of the Department of Defense on the last day of a particular accounting period) for that fiscal year</p> <p>(2) President may waive any statutory limit that would otherwise apply during the period on the number of members of a reserve component who are authorized to be on active duty, if the President determines the waiver is necessary to provide assistance in responding to the major disaster or emergency (1990)</p>	<p>(1) “If at the end of any fiscal year there is in effect a war or national emergency”</p> <p>(2) “When a designation of a major disaster or emergency (as those terms are defined in section 102 of [the Stafford Act, <a href="#">42 U.S.C. § 5122</a>]) is in effect”</p>	<p>Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001);</p> <p>E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a>, Sept. 14, 2001 (invoked to respond to the events of 9/11/2001, and delegated to the Secretary of Defense);</p> <p>E.O. 13253, Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">67 FR 2791</a>, Jan. 16, 2002 (invoked to respond further to the events of 9/11/2001, and delegated to the Secretary of Transportation).</p>
<a href="#">10 U.S.C. § 2808 (a)</a>	Secretary of Defense, without regard to any other provision of law, may undertake military construction projects, and may authorize Secretaries of the military	“In the event of a declaration of war or the declaration by the President of a national emergency in accordance with the National Emergencies Act ( <a href="#">50 U.S.C. §§ 1601</a> et seq.) that requires use of the armed forces”	E.O. 12734, National Emergency Construction Authority, <a href="#">55 FR 48099</a> , Nov. 14, 1990 (invoked to respond further to the emergency declared in <a href="#">E.O. 12722</a> on Aug. 2, 1990, regarding Iraq’s invasion of Kuwait);

	departments to undertake military construction projects, that are necessary to support such use of the armed forces (1982)		E.O. 13235, National Emergency Construction Authority, <a href="#">66 FR 58343</a> , Nov. 16, 2001 (invoked to respond further to the events of 9/11/2001).
<b>Federal Employees</b>			
<a href="#">5 U.S.C. § 5303 (b)</a>	President may alter automatic adjustments to federal pay schedules after first reporting to Congress (1966)	“If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the pay adjustment...in any year to be inappropriate”	This provision has been routinely invoked by Presidents seeking to adjust federal pay schedules since the mid-1990s. See <a href="#">here</a> for more information.  President Trump recently announced his intention to implement alternative plans for pay adjustments under the authority of this statute in January 2019. See Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate, <a href="#">White House</a> , Aug. 30, 2018.
<a href="#">5 U.S.C. § 5304a</a>	President may implement alternative comparability payments for government employees after first reporting to Congress (1990)	“If, because of national emergency or serious economic conditions affecting the general welfare, the President should consider the level of comparability payments...in any year to be inappropriate”	This provision has been routinely invoked by Presidents seeking to adjust federal pay schedules since the mid-1990s. See <a href="#">here</a> for more information.  President Trump recently announced his intention to implement alternate plans for pay adjustments under the authority of this statute in January 2019. See Text of a Letter from the President to the Speaker of the House of Representatives and the President of the Senate, <a href="#">White House</a> , Aug. 30, 2018.
<a href="#">40 U.S.C. § 3147</a>	President may suspend statutory wage-rate requirements for public contracts (1931)	“during a national emergency”	President Franklin Roosevelt invoked this provision to suspend the Davis-Bacon Act nationwide in 1934 but ended the suspension within a month. This provision may also have been used to suspend Davis-Bacon under the generalized state of emergency proclaimed

			<p>during World War II. For more information, see William G. Whittaker, <i>The Davis-Bacon Act: Suspension</i>, <a href="#">RL 33100</a>, Congressional Research Service, September 26, 2005, 4.</p> <p>Recent invocations of this statute have been consistently controversial. The longest invocation of this statute since World War II only lasted for four months. See, e.g.:</p> <p>Proc. 4031, Proclaiming the Suspension of the Davis-Bacon Act of March 3, 1931, <a href="#">53 FR 3457</a>, Feb. 23, 1971 (suspending the Davis-Bacon Act nationwide due to “conditions involving the construction industry which, taken together, create an emergency situation.” The proclamation was rescinded a month later);</p> <p>Proc. 6491, To Suspend the Davis-Bacon Act of March 3, 1931, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricanes Andrew and Iniki, <a href="#">57 FR 47553</a>, Oct. 14, 1992 (declaring “a ‘national emergency’ within the meaning of Section 6 of the Davis-Bacon Act” in a limited area for hurricane relief efforts. The proclamation was rescinded by President Clinton in February 1993);</p> <p>Proc. 7924, To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in Response to the National Emergency Caused by Hurricane Katrina, <a href="#">70 FR 54225</a>, Sept. 8, 2005 (declaring that the conditions caused by Hurricane Katrina “constitute a ‘national emergency’ within the</p>
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			meaning of section 3147 of title 40, United States Code”). This declaration sparked some debate about the validity of such an invocation without a declaration under the National Emergencies Act. The question was never resolved as the suspension was lifted by Proc. 7959, Revoking Proclamation 7924, <a href="#">70 FR 67897</a> , Nov. 3, 2005; see <i>Prevailing Wage Requirements and the Emergency Suspension of the Davis-Bacon Act</i> , <a href="#">RL33276</a> , Congressional Research Service, February 16, 2006, 4-7.
<a href="#">10 U.S.C. § 2461 (e)</a>	Department of Defense function performed by civilian employees may be converted to contractor performance without a public-private competition (1989)	“during war or during a period of national emergency declared by the President or Congress”	A review of citing references on Westlaw reveals that this clause has been relied upon in arbitration decisions over privatization of Department of Defense functions as recently as 2006, despite never being invoked in a formal declaration of national emergency.
<a href="#">10 U.S.C. § 688 (f)</a>	Certain retired officers may be ordered to active duty, and time limits on recall service by retired servicemembers do not apply (1996)	“in time of war or of national emergency declared by Congress or the President”	E.O. 13814, Amending Executive Order 13223, <a href="#">82 FR 49273</a> , Oct. 20, 2017 (invoking section 688 “to provide the Secretary of Defense additional authority to manage personnel requirements in a manner consistent with the authorization provided in <a href="#">E.O. 13223</a> of September 14, 2001,” to address a shortage of pilots in the Air Force by enabling retired pilots to return to active duty).
<a href="#">10 U.S.C. § 690 (c)</a>	Limitations on the number of retired officers who may be ordered to active duty at any one time do not apply (1996)	“in time of war or national emergency declared by Congress or the President”	E.O. 13814, Amending Executive Order 13223, <a href="#">82 FR 49273</a> , Oct. 20, 2017 (invoking section 690 “to provide the Secretary of Defense additional authority to manage personnel requirements in a manner consistent with the authorization provided in <a href="#">E.O. 13223</a> of September 14, 2001,” to address a shortage of pilots in the Air Force by enabling retired pilots to return to active duty).

<a href="#">10 U.S.C. § 12243</a>	President may suspend any provision of law related to the promotion, retirement, or separation of permanent reserve warrant officers of any armed force (1956)	“In time of war, or of emergency declared after May 29, 1954, by Congress or the President”	**Zero citing references on Westlaw**  <i>E.O. 11390, Delegation of Certain Functions of the President to the Secretary of Defense, <a href="#">33 FR 841</a>, Jan. 22, 1968 (Section 1(4) of this order delegated powers under this statute to the Secretary of Defense)</i>
<a href="#">10 U.S.C. § 871, Art. 71 (b)</a>	In the case of a commissioned officer, cadet, or midshipman, the Secretary, Under Secretary, or Assistant Secretary of the military department concerned may commute a court martial sentence of dismissal to reduction to any enlisted grade. A person so reduced may be required to serve for the duration of the war or emergency and for six months thereafter (1956)	“in time of war or national emergency”	*No relevant citing references on Westlaw*  <i>E.O. 10498, Delegating to the Secretaries of the Military Departments and the Secretary of the Treasury Certain Authority Vested in the President by the Uniform Code of Military Justice, <a href="#">18 FR 7003</a>, Nov. 6, 1953 (delegating the authority conferred by this statute to secretaries of military departments concerned as to persons convicted by military tribunals under their jurisdiction)</i>
<a href="#">42 U.S.C. § 211 (k)</a>	Certain restrictions on promotion of commissioned officers of the Regular Corps of the Public Health Service do not apply (1944)	In “time of war, or of national emergency proclaimed by the President”	*No relevant citing references on Westlaw*  <i>E.O. 10506, Delegating Certain Functions of the President Under the Public Health Service Act, <a href="#">18 FR 8219</a>, Dec. 10, 1953 (delegating the authority given by this statute to waive restrictions on promotion in the Public Health Service Corps in times of national emergency generally to the Secretary of Health, Education, and Welfare);</i>  <i>E.O. 11140, Delegating Certain Functions of the President Relating to the Public Health Service, <a href="#">29 FR 1637</a>, Jan. 30, 1964 (delegating the authority given by this statute to waive restrictions on promotion in the Public Health Service Corps in times of national emergency</i>

			<i>generally to the Secretary of Health and Human Services).</i>
<a href="#">10 U.S.C. § 123</a>	President may suspend any provision of law related to the promotion, involuntary retirement, or separation of commissioned officers of the Army, Navy, Air Force, Marine Corps, or Coast Guard Reserve (1958)	“In time of war, or of national emergency declared by Congress or the President” and “so long as such war or national emergency continues”	<p><i>E.O. 11390, Delegation of Certain Functions of the President to the Secretary of Defense, 33 FR 841, Jan. 22, 1968 (delegating these authorities to the Secretary of Defense);</i></p> <p>Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001);</p> <p>E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001 and delegated to the Secretary of Defense);</p> <p>E.O. 13253, Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">67 FR 2791</a>, Jan. 16, 2002 (invoked to respond further to the events of 9/11/2001, and delegated to the Secretary of Transportation).</p>
<a href="#">14 U.S.C. § 371 (b)</a>	Requirement that at least 20 percent of Coast Guard aviation cadets procured in each fiscal year be procured from qualified enlisted members of the Coast Guard does not apply (1966)	“in time of war or national emergency declared by Congress”	**Zero citing references on Westlaw**



<a href="#">10 U.S.C. § 8033 (a)(1)</a>	Air Force Chief of Staff may be reappointed for a second term of not more than four years (1967)	“In time of war or during a national emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">14 U.S.C. § 331</a>	Secretary of the department in which the Coast Guard is operating may order any regular officer on the retired list to active duty (1963)	“In time of war or national emergency”	<p>Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001);</p> <p>E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001 and delegated to the Secretary of Transportation when the Coast Guard is not serving as part of the Navy) (later amended to delegate such authority to Secretary of Homeland Security instead of Secretary of Transportation).</p>
<a href="#">14 U.S.C. § 359</a>	Commandant of the Coast Guard may order any enlisted member on the retired list to active duty (1949)	“In times of war or national emergency”	<p>Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001);</p> <p>E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001 and delegated to the Secretary of Transportation when the Coast Guard is not serving as part of the Navy) (later amended to delegate such authority to Secretary of Homeland Security instead of Secretary of Transportation).</p>

<a href="#">33 U.S.C. § 3030</a>	Subject to certain limitations, all laws authorizing temporary appointment or advancement of commissioned officers in the Navy also apply to officers of the National Oceanic and Atmospheric Administration (2002)	“in time of war or national emergency”	*No relevant citing references on Westlaw*  <i>E.O. 13341, Further Amendment to Executive Order 11023, Providing for the Performance by the Secretary of Commerce of Certain Functions Relating to the National Oceanic and Atmospheric Administration, 69 FR 29843, May 20, 2004 (amending E.O. 11023, 27 FR 5131, May 28, 1962, and delegating authority to make appointments and promotions under this section to the Secretary of Commerce).</i>
<a href="#">10 U.S.C. § 5450</a>	More than ten retired flag officers may be on active duty in the Navy (1956)	“in time of war or national emergency”	**Zero citing references on Westlaw**
<a href="#">10 U.S.C. § 155 (f)(4)</a>	Restrictions on Joint Staff officer tours of duty do not apply (1986)	In “time of war; or (B) during a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 194 (e)</a>	Certain caps on defense agency personnel do not apply (1986)	“(1) in time of war; or (2) during a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 620 (d)</a>	Secretary of military department concerned may keep reserve officer ordered to active duty off the active duty list for up to 24 months (1994)	“during a war or national emergency”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 708 (d)(1)</a>	Secretary of military department concerned may cancel educational leave of absence granted to a member of the armed forces (1984)	“in time of war, or of national emergency declared by the President or the Congress after October 19, 1984”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 978 (e)</a>	President may suspend requirements that applicants for enlistment in the armed forces undergo drug and alcohol use and dependency testing prior to enlistment (1988)	“In time of war, or time of emergency declared by Congress or the President”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 1076a (e)(2)</a>	Secretary may waive charges for dental care through TRICARE	“During a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*

	dental program for reserve members to facilitate deployment (1999)		
<a href="#">10 U.S.C. § 3033 (a)(1)</a>	Army Chief of Staff may be reappointed for a second term of not more than four years (1969)	“In time of war or during a national emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 5033 (a)(1)</a>	Chief of Naval Operations can be reappointed for a second term of not more than four years (1986)	“In time of war or during a national emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 5043 (a)(1)</a>	Commandant of Marine Corps may be reappointed for a second term of not more than four years (1986)	“In time of war or during a national emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 6911 (b)</a>	Requirement that 20% of aviation cadets in the naval service in each fiscal year be procured from qualified enlisted Navy and Marine Corps members may be waived (1981)	“in time of war or emergency declared by Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12311 (d)</a>	If an agreement with a member of a reserve component to serve on active duty expires during a war or national emergency, the member may be kept on active duty without their consent (1956)	“If a [standard written agreement to serve for a period of active duty] expires during a war or during a national emergency declared by Congress or the President after January 1, 1953”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12313 (b)</a>	Member of a reserve component may be released from active duty (other than for training) only if (1) a board of officers convened at his request recommends the release and the recommendation is approved; (2) the member does not request that a board be convened; or (3) his release is otherwise authorized by law. These restrictions do not apply during a	“In time of war or of national emergency declared by Congress or the President after January 1, 1953”	*No relevant citing references on Westlaw*

	period of demobilization or reduction in strength of the armed force concerned (1956)		
<a href="#">10 U.S.C. § 14317 (e)</a>	Reserve officer not on active duty list who is ordered to active duty may be considered for promotion (1994)	“in time of war or national emergency”	*No relevant citing references on Westlaw*
<a href="#">50 U.S.C. § 3809 (e)</a>	President may assign additional armed forces personnel to Selective Service System (1997)	“during a time of war or a national emergency declared by Congress or the President”	*No relevant citing references on Westlaw*
<a href="#">7 U.S.C. § 1982 (a)</a>	Agricultural debt relief authorized for reservists mobilized to serve during national emergency (2004)	“during a war or during a national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">41 U.S.C. § 1710 (e)</a>	An executive agency function performed by civilian employees may be converted to contractor performance without a public-private competition (2011)	“...during war or during a period of national emergency declared by the President or Congress”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12301 (a)</a>	An authority designated by the Secretary concerned may, without the consent of the persons affected, order any unit and any member of a reserve component under the jurisdiction of that Secretary to active duty for the duration of the war or emergency and for six months thereafter (1956)	“In time of war or of national emergency declared by Congress, or when otherwise authorized by law”	This provision has not been invoked since WWII.  <i>See</i> Colonel Kevin Cieply, “Charting a New Role for Title 10 Reserve Forces: A Total Force Response to Natural Disasters,” Dept. of Army Pamphlet 27-100-196, <i>Military Law Review</i> , Summer 2008.
<a href="#">50 U.S.C. §§ 3806 (b), (c)</a>	(b) Certain World War II veterans, who would ordinarily be exempt from Selective Service, may be drafted; and (c) Certain persons, who would ordinarily be exempt from Selective Service because of prior service in the Reserves, may be drafted (1948)	(b) “after a declaration of war or national emergency made by the Congress subsequent to June 24, 1948” (c) “after a declaration of war or national emergency made by the Congress after August 9, 1955”	*No relevant citing references on Westlaw*  ***Due to age limits for Selective Service, the authority conferred by section (b) has been effectively moot since the late 1950s***

<a href="#">50 U.S.C. § 4560 (e)</a>	President may provide for the establishment and training of a “nucleus executive reserve” for employment in executive positions in government (1955)	“during periods of national defense emergency, as determined by the President”	*No relevant citing references on Westlaw*  <i>E.O. 13603, National Defense Resources Preparedness, 77 FR 16651, Mar. 16, 2012 (Sections 501 and 502 of this order delegate authority under this statute to “the head of each agency otherwise delegated functions under the order”).</i>
<a href="#">10 U.S.C. § 4025</a>	Regular work hours of laborers and mechanics in the Army producing military supplies or munitions may be exceeded with overtime pay (1956)	“During a national emergency declared by the president, the regular working hours... under regulations prescribed by the Secretary of the Army... may be exceeded”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 6485 (a)</a>	Competent authority may order members of Fleet Reserve and Fleet Marines Corps Reserve to active duty without their consent (1956)	“(1) in time of war or national emergency declared by Congress, for the duration of the war or national emergency and for six months thereafter; (2) in time of national emergency declared by the President; or (3) when otherwise authorized by law”	*No relevant citing references on Westlaw*
<a href="#">14 U.S.C. § 636 (a)(2)</a>	Commissioned and warrant officers in Coast Guard may, pursuant to rules prescribed by the Commandant, exercise the powers of a notary public (1949)	“in time of war or national emergency”	*No relevant citing references on Westlaw*
<a href="#">14 U.S.C. § 275</a>	President may suspend any section of <a href="#">14 U.S.C. Ch. 11</a> relating to selection, promotion, or involuntary separation of Coast Guard officers, and may promote warrant officers below the grade of chief warrant officer to the next higher grade. Promotions and appointments made under this section are temporary and are subject to certain procedural requirements. (1963)	“In time of war, or of national emergency declared by the President or Congress[.]” Any suspension of procedures under this section “may not continue beyond six months after the termination of the war or national emergency.”	E.O. 13253, Amendment to Executive Order 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">67 FR 2791</a> , Jan. 16, 2002 (invoked in response to the events of 9/11/2001 and delegated to the Secretary of Transportation) (later amended to delegate authority to Secretary of Homeland Security instead of Secretary of Transportation).

<a href="#">10 U.S.C. § 12305 (a)</a>	President may suspend any provision of law relating to promotion, retirement, or separation applicable to any member of the armed forces who the President determines is essential to national security (1983)	“during any period members of a reserve component are serving on active duty pursuant to an order to active duty under authority of” 10 U.S.C. §§ <a href="#">12301</a> , <a href="#">12302</a> , or <a href="#">12304</a>	Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a> , Sept. 14, 2001 (invoked in response to the events of 9/11/2001);  E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a> , Sept. 14, 2001 (invoked in response to the events of 9/11/2001);  <i>E.O. 12728, Delegating President’s Authority to Suspend Any Provision of Law Relating to Promotion, Retirement, or Separation of Members of Armed Forces, 55 FR 35029, Aug. 22, 1990 (delegating authority under this section to the Secretary of Defense and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Department of the Navy).</i>
<a href="#">10 U.S.C. § 1491 (e)</a>	Secretary of Defense may waive any requirements with respect to funeral honors for veterans (1999)	“when the Secretary considers it necessary to do so to meet the requirements of war, national emergency, or a contingency operation or other military requirements.” This authority may not be delegated.	**Zero citing references on Westlaw**
<a href="#">38 U.S.C. § 1721</a>	Secretary of Veterans Affairs may prescribe limitations on the provision of hospital, nursing home, and domiciliary care and medical services in VA facilities (1988)	“during a period of national emergency (other than a period of war or an emergency described in section 8111A of this title)” <a href="#">Section 8111A</a> describes “a period of national emergency declared by the President or the Congress that involves the use of the armed forces in armed conflict”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 1064</a>	Members of National Guard and their dependents can use commissary stores and exchange	When “called or ordered to duty in response to a federally declared disaster or national emergency...during the period of such duty”	*No relevant citing references on Westlaw*

	stores and other revenue-generating facilities operated by the Department of Defense (1998)		
<a href="#">20 U.S.C. § 1087e (f)(2)(c)</a>	Department of Education may defer payment requirements and interest accrual for borrower serving on active duty during national emergency (2006)	“during which the borrower – (i) is serving on active duty during a war or other military operation or national emergency; or (ii) is performing qualifying National Guard duty during a war or other military operation or national emergency, and for the 180-day period following the demobilization date for the service”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 9025</a>	Regular work hours of Air Force laborers and mechanics producing military supplies or munitions may be exceeded with overtime pay (1956)	“During a national emergency declared by the President... [and] under regulations prescribed by the Secretary of the Air Force”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12103 (c)</a>	Term of service of a person enlisted as a Reserve, that would otherwise expire, continues until six months after the end of the emergency (1958)	This provision affects “enlistment that is in effect at the beginning of a war or of a national emergency declared by Congress, or entered into during such a war or emergency”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 12316 (b)</a>	Reservist 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 (1958)	Upon “being ordered to active duty for a period of more than 30 days in time of war or national emergency” and being “found physically qualified to perform that duty,” the Member ceases to be entitled to pension payments and instead becomes entitled to “the pay and allowances authorized by law for the duty that he is performing” for the duration of the period of active duty	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 16163 (a)</a>	A member of a reserve component is entitled to federal educational assistance (2004)	If, on or after September 11, 2001, the member served “on active duty in support of a contingency operation for 90 consecutive days or more,” or performed full time National Guard duty under section 502(f) of title 32 for 90	*No relevant citing references on Westlaw*

		consecutive days or more “for the purpose of responding to a national emergency declared by the President and supported by Federal funds.” The relevant section of <a href="#">32 U.S.C. § 502 (f)</a> describes the circumstances in which the National Guard may be ordered to active duty, including generally in “support of operations undertaken by the member’s unit at the request of the President or Secretary of Defense.”	
<a href="#">37 U.S.C. § 1009 (e)</a>	President may implement alternate pay adjustments for members of the uniformed services after first reporting to Congress (2003)	“If, because of national emergency or serious economic conditions affecting the general welfare, the President considers the pay adjustment which would otherwise be required by this section in any year to be inappropriate”	*No relevant citing references on Westlaw*
<a href="#">20 U.S.C. § 1098bb</a>	Secretary of Education may waive provisions of Higher Education Relief Opportunities for Students Act of 2003 (2003)	“as the Secretary deems necessary in connection with a war or other military operation or national emergency”	*No relevant citing references on Westlaw*
<a href="#">22 U.S.C. § 4103</a>	President may suspend provisions related to labor-management relations “with respect to any post, bureau, office or activity” of the Department of State (1980)	“if the President determines in writing that the suspension is necessary in the interest of national security because of an emergency”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 1580</a>	Secretary of Defense or of military department concerned may designate emergency-essential employees in the Department of Defense (1999)	Emergency essential employees as regularly designated under this statute may have exceptional rights and responsibilities “in connection with a war, a national emergency declared by Congress or the President, or the commencement of combat operations of the armed forces in the zone”	A review of citing references on Westlaw confirms that Department of Defense employees are regularly designated “emergency essential” per the terms of this statute, and subject to the exceptional rights and requirements thereof. A comprehensive listing of employees designated as such, or of precipitating emergencies necessitating the use of “emergency essential” employees, does not appear to be readily available to the public.
<a href="#">10 U.S.C. §§ 12304 (a), (b)</a>	President may authorize the Secretary of Defense, or Secretary of Homeland Security with respect	“when the President determines that it is necessary to augment the active forces for any named operational mission or that it is necessary	*No relevant citing references on Westlaw* This statute has never been invoked for the purposes of responding to a domestic emergency



	<p>to the Coast Guard when it is not operating as a service in the Navy, to order any unit and any member to active duty as a unit of the Selected Reserve for up to 365 days without the consent of the members concerned (1976; emergency language added in 1998)</p>	<p>to provide assistance” in response to “an emergency involving –  (1) a use or threatened use of a weapon of mass destruction; or  (2) a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property”</p>	<p>as outlined in § 12304 (b), but the general authority of the President to augment the forces as necessary for operational missions has been invoked in executive orders seven times since 1990, for the purposes of augmenting forces in missions on the <a href="#">Arabian Peninsula</a>; responding to <a href="#">disasters</a> in <a href="#">Haiti</a>; conducting operations in and around the <a href="#">former Yugoslavia</a>; assisting operations in <a href="#">Southwest Asia</a>; and responding to the Ebola outbreak in <a href="#">West Africa</a>.</p>
<p><a href="#">38 U.S.C. § 8111A</a></p>	<p>Secretary of Veteran’s Affairs may provide hospital care, nursing home care, and medical services to members of the armed forces on active duty (1982)</p>	<p>“During and immediately following a period of war, or a period of national emergency declared by the President or the Congress that involves the use of the armed forces in armed conflict” and “during and immediately following a disaster or emergency [declared by the President under the Stafford Act, <a href="#">42 U.S.C. §§ 5121 et seq.</a> or activated by the Secretary of Health and Human Services under the Public Health Service Act, <a href="#">42 U.S.C. § 300hh</a>]”</p>	<p>E.O. 12751, Health Care Services for Operation Desert Storm, <a href="#">56 F.R. 6787</a>, Feb. 14, 1991 (providing medical services to members of the Armed Forces on active duty in Operation Desert Storm);</p> <p>The Veterans Health Administration has been providing healthcare to active duty service members pursuant to this statute consistently since at least 2005: see, e.g. VHA Directive 2005-045, Treatment of Active Duty Service Members in VA Health Care Facilities, 2005 WL 6240720, Oct. 4, 2005;</p> <p>VHA Directive 2010-051, Treatment of Active Duty and Reserve Component Servicemembers in VA Health Care Facilities, 2010 WL 5676520, Nov. 28, 2010;</p> <p>VHA Directive 1305, Treatment of Active Duty and Reserve Component Servicemembers in VA Health Care Facilities, 2017 WL 1058015, Mar. 10, 2017.</p>

<b>Asset Seizure, Control, and Transfer</b>			
<a href="#">50 U.S.C. § 98f (a)(2)</a>	Any officer or employee of the United States designated by the President may order the release of materials in the strategic raw materials stockpile for use, sale, or other disposition, if she determines that the release is required for purposes of the national defense (1939)	“in time of war declared by the Congress or during a national emergency”	*No relevant citing references on Westlaw*
<a href="#">50 U.S.C. § 4309</a>	Alien Property Custodian, or any successor officer, may, upon determination by the President that the interest and welfare of the United States require the sale, sell any alien property or interest in their custody prior to entry of judgment in suit concerning said property or interest (1917)	“in time of war or during any national emergency declared by the President”	*No relevant citing references on Westlaw*  <i>Functions of Alien Property Custodian under this act were transferred to Attorney General by Reorg. Plan No. 1 of 1947, Sec. 101, <a href="#">12 E.R. 4534</a>, July 1, 1947.</i>
<a href="#">7 U.S.C. § 5712 (c)</a>	President can prohibit or limit the export of any agricultural commodity (1990)	“during a period for which the President has declared a national emergency or for which the Congress has declared war”	*No relevant citing references on Westlaw*
<a href="#">35 U.S.C. § 181</a>	Whenever the publication or disclosure of an invention might be detrimental to national security, the Commissioner of Patents may order the invention kept secret and the publication of the application or the grant of a patent withheld for the duration of a national emergency plus six-months. Outside of an emergency, such orders may only last one year absent an affirmative determination that the national interest requires renewal of the order. (1952)	“during a national emergency declared by the President”	The database of orders issued under this statute does not appear to be available on Westlaw. As of the end of FY 2018, 5,792 secrecy orders were in effect per information released by the <a href="#">Patent and Trademark Office</a> . Only 85 of those orders were newly declared in 2018. It is unclear from the available information how many of the other 5,707 secrecy orders remained in place due to national emergencies, versus being renewed annually as a result of the affirmative declaration process.

<p><a href="#">50 U.S.C. §§ 4531 (a)(2), (d)(1)</a></p>	<p>(a)(2) President may authorize an agency to guarantee loans by private institutions in order to finance products and services essential to the national defense without regard to normal procedural and substantive requirements for such loan guarantees; (d)(1) Federal government may make a guarantee or obligation relating to a domestic industrial base shortfall that causes the aggregate outstanding amount of all guarantees for that shortfall to exceed \$50,000,000 without first notifying Congress (1950)</p>	<p>(a)(2) “during a period of national emergency declared by Congress or the President”; (d)(1)(i) “during a period of national emergency declared by Congress or the President; or (ii) upon a determination by the President, on a nondelegable basis, that a specific guarantee is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability”</p>	<p>*No relevant citing references on Westlaw*</p> <p><i>E.O. 13603, National Defense Resources Preparedness, 77 FR 16651, Mar. 16, 2012 (Section 305 delegates authority under this statute to “the head of each agency engaged in procurement for the national defense”).</i></p>
<p><a href="#">47 U.S.C. § 606 (c)</a></p>	<p>President may, if he deems it necessary in the interest of national security or defense, suspend or amend regulations applicable to stations or devices capable of emitting electromagnetic radiations; direct the closure of any station for radio communication, or any device capable of emitting electromagnetic radiations between 10 kilocycles and 100,000 megacycles that is suitable for use as a navigational aid beyond five miles, and the removal therefrom of its apparatus and equipment; or authorize the use or control of any such station or device and/or its apparatus and equipment by any department of the Government. The government shall pay compensation to the owners</p>	<p>“Upon proclamation by the President that there exists war or a threat of war, or a state of public peril or disaster or other national emergency, or in order to preserve the neutrality of the United States”</p>	<p>E.O. 8964, Prescribing Regulations Governing the Use, Control, and Closing of Radio Stations and the Preference or Priority of Communications, <a href="#">6 FR 6367</a>, Dec. 10, 1941 (delegating authority to the Board of War Communications, which exercised it throughout World War II);</p> <p>E.O. 9089, Prescribing Regulations Governing the Use, Control, and Closing of Stations and Facilities for Wire Communications, <a href="#">7 FR 1777</a>, Mar. 6, 1942 (updating the grant of authority to the Board in light of amendments to section 606) (this authority was revoked, and the Board of War Communications was abolished by E.O. 9831, Abolishing the Board of War Communications, <a href="#">12 FR 1363</a>, Feb. 24, 1947);</p> <p><i>This power has been repeatedly delegated to different agencies, including most recently to the</i></p>

	(1934; substantively amended in 1951)		<i>President's Critical Infrastructure Protection Board's Committee for National Security and Emergency Preparedness Communications by E.O. 13231, Critical Infrastructure Protection in the Information Age, 66 FR 53063, Oct. 16, 2001.</i>
<a href="#">7 U.S.C. § 1332 (c)</a>	Secretary of Agriculture may increase or terminate national marketing quota for wheat (1938)	"because of a national emergency or because of a material increase in the demand for wheat"	**Zero citing references on Westlaw**
<a href="#">7 U.S.C. § 1371 (b)</a>	Secretary of Agriculture may increase or terminate national marketing quota or acreage allotment for cotton and rice (1938)	"because of a national emergency or because of a material increase in export demand"	**Zero citing references on Westlaw**
<a href="#">7 U.S.C. § 1743 (a)(6)</a>	President may direct the donation, sale, or other disposition of agricultural commodity set-aside (1954)	"for disaster relief purposes in the United States or to meet any national emergency declared by the President"	*No relevant citing references on Westlaw*
<a href="#">7 U.S.C. § 624 (b)</a>	President may take immediate action to impose fees and limitations on the importation of certain agricultural products without awaiting recommendations from the International Trade Commission (1953)	"In any case where the Secretary of Agriculture determines and reports to the President with regard to any article or articles that a condition exists requiring emergency treatment"	Proc. 4423, Import Limitation on Dry Milk Mixtures, <a href="#">41 FR 12875</a> , Mar. 26, 1976 (issued after "The Secretary of Agriculture [...] determined and reported [...] with regard to such dry milk mixtures that a condition exists which requires emergency treatment and that the import restrictions hereinafter proclaimed should be imposed immediately without awaiting the recommendations of the United States International Trade Commission.");  Proc. 4538, Import Fees on Sugar, Sirups, and Molasses, <a href="#">Nov. 11, 1977</a> (issued after "The Secretary of Agriculture ... determined ... that a condition exists which requires emergency treatment" with regard to the importation of sugars, syrups, and molasses);

			<p>Proc. 4547, Import Fees on Sugar, Sirups, and Molasses, <a href="#">91 Stat. 1775</a>, Jan. 20, 1978 (issued after “The Secretary of Agriculture has [...] informed me that the fees established by [Proc. No. 4538] are insufficient [...] and has reaffirmed his determination that the condition requires emergency treatment.”);</p> <p>Proc. 4807, Modification of Import Controls on Peanuts, <a href="#">Dec. 4, 1980</a> (issued by Reuben Askew, U.S. Trade Representative, on behalf of President Carter – who delegated this authority with respect to peanuts – after “The Secretary of Agriculture has ... determined and reported to me that a condition exists with respect to peanuts which requires emergency treatment...”)</p>
<a href="#">46 U.S.C. § 56301</a>	Secretary of Transportation may requisition, purchase, or charter the use of a vessel owned by U.S. citizens, documented under U.S. law, or under construction in the U.S. (1936)	“During a national emergency declared by Presidential proclamation, or a period for which the President has proclaimed that the security of the national defense makes it advisable”	E.O. 9054, Establishing a War Shipping Administration In The Executive Office of the President and Defining its Functions and Duties, <a href="#">7 FR 837</a> , Feb. 7, 1942 (invoked as § 902 of the Merchant Marine Act of 1936, now codified at 46 U.S.C. § 56301, and delegated to and exercised extensively by the War Shipping Administration during World War II).
<a href="#">46 U.S.C. § 56309</a>	Secretary of Transportation may purchase, requisition, charter, take over the title of, or take over possession of any merchant vessel not owned by U.S. citizens but lying idle in U.S. waters. The government shall pay just compensation to the owners. (1941)	“During any period in which vessels may be requisitioned under this chapter” <a href="#">46 U.S.C. § 56301</a> defines this period as: “a national emergency declared by Presidential proclamation, or a period for which the President has proclaimed that the security of the national defense makes it advisable”	E.O. 8771, Authorizing the United States Maritime Commission to Take Over Certain Foreign Merchant Vessels, <a href="#">6 FR 2759</a> , June 6, 1941 (authorizing use of Pub. L. 77-101, a predecessor of 46 U.S.C. § 56309, by the United States Maritime Commission);  <i>E.O. 9054, Establishing a War Shipping Administration in the Executive Office of the President and Defining its Functions and Duties, <a href="#">7 FR 837</a>, Feb. 7, 1942 (transferring the</i>

			<i>functions assigned in E.O. 8771 to the War Shipping Administration).</i>
<a href="#">46 U.S.C. § 57521</a>	Secretary of Transportation may terminate charter of government-owned merchant vessel without cost to the government (1936)	“during a national emergency proclaimed by the President or a period for which the President has proclaimed that the security of the national defense makes it advisable”	E.O. 9054, Establishing a War Shipping Administration in the Executive Office of the President and Defining its Functions and Duties, <a href="#">7 FR 837</a> , Feb. 7, 1942 (invoked authority under § 712 of the Merchant Marine Act of 1936, now codified at 46 U.S.C. § 57521, and delegated that authority to the War Shipping Administration during World War II).
<a href="#">46 U.S.C. § 70051</a> (formerly <a href="#">50 U.S.C. § 191</a> )	Secretary of Transportation may (1) make, subject to approval of the President, rules and regulations governing the anchorage and movement of any vessel, foreign or domestic, in U.S. territorial waters; (2) inspect such vessel at any time; (3) place guards thereon; and (4) if necessary to secure such vessels from damage or injury, or to prevent damage or injury to any U.S. harbor or waters, or to secure the observance of U.S. rights and obligations, take, by and with the consent of the President, full possession and control of such vessel and remove the officers and crew and all other persons not specially authorized by the Secretary to go or remain on board (1917)	“Whenever the President by proclamation or Executive order declares a national emergency to exist by reason of actual or threatened war, insurrection, or invasion, or disturbance or threatened disturbance of the international relations of the United States, or whenever the Attorney General determines that an actual or anticipated mass migration of aliens en route to, or arriving off the coast of, the United States presents urgent circumstances requiring an immediate Federal response”	E.O. 12513, Prohibiting Trade and Certain Other Transactions Involving Nicaragua, <a href="#">50 FR 18629</a> , May 1, 1985 (invoked in response to the “policies and actions of the Government of Nicaragua”);  E.O. 13810, Imposing Additional Sanctions With Respect to North Korea, <a href="#">82 FR 44705</a> , Sept. 20, 2017 (prohibiting ships that call at a port in North Korea, or engage in a “ship-to-ship transfer” with “such a vessel” from calling at a port in the U.S. within 180 days);  This statute has also routinely been invoked with respect to regulating anchorage and movement of vessels around Cuba since 1996, when Cuban military aircraft destroyed U.S. civilian aircraft in international airspace. The initial emergency declaration was Proc. No. 6867, Declaration of a National Emergency and Invocation of Emergency Authority Relating to the Regulation of the Anchorage and Movement of Vessels, <a href="#">61 E.R. 8843</a> , Mar. 1, 1996. The most recent continuation of this emergency was Proc. No. 9699, Modifying and Continuing the National Emergency With Respect to Cuba and

			Continuing to Authorize the Regulation of the Anchorage and Movement of Vessels, <a href="#">83 FR 8161</a> , Feb. 22, 2018.
<a href="#">10 U.S.C. § 2208 (1)(2)</a>	Secretary of Defense may waive requirement to notify Congress of advance billing of customer of working capital fund (1997)	“during a period of war or national emergency; or to the extent that the Secretary determines necessary to support a contingency operation”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 2350j (e)(3)(A)</a>	Secretary of Defense, or secretary of a military department authorized by Secretary of Defense, may carry out military construction project using funds contributed from NATO and other countries without a full report to Congress and waiting period (1999)	“if the project is necessary to support the armed forces in the country or region in which the project is carried out by reason of a declaration of war, or a declaration by the President of a national emergency pursuant to the National Emergencies Act ( <a href="#">50 U.S.C. 1601 et seq.</a> ), that is in force at the time of the commencement of the project”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 2662 (f)</a>	Secretary of military department concerned, or Secretary of Defense with respect to Department of Defense transactions, may waive advance reporting requirements for real property transactions (1992)	“if the Secretary concerned determines that the transaction is made as a result of any of the following: (A) A declaration of war (B) A declaration of a national emergency by the President pursuant to the National Emergencies Act ( <a href="#">50 U.S.C. §§ 1601 et seq.</a> ) (C) A declaration of an emergency or major disaster pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act ( <a href="#">42 U.S.C. §§ 5121 et seq.</a> ) (D) The use of the militia or the armed forces after a proclamation to disperse under <a href="#">section 334</a> of this title. (E) A contingency operation OR “if the Secretary determines that an event [as described above] is imminent; and the transaction is necessary for purposes of preparation for such event”	*No relevant citing references on Westlaw*
<a href="#">33 U.S.C. § 2293</a>	Secretary of the Army may terminate or defer any Army civil	“In the event of a declaration of war or a declaration by the President of a national	*No relevant citing references on Westlaw*

	works project and apply the resources, including funds, personnel, and equipment, of the Army’s civil works program to authorized civil works, military construction, and civil defense projects that are essential to the national defense, without regard to any other provision of law (1986)	emergency in accordance with the National Emergencies Act [ <a href="#">50 U.S.C. §§ 1601 et seq.</a> ] that requires or may require use of the Armed Forces”	
<a href="#">42 U.S.C. § 2138</a>	Atomic Energy Commission may suspend atomic energy licenses if necessary to the common defense and security (1946)	“Whenever the Congress declares that a state of war or national emergency exists”	*No relevant citing references on Westlaw*  <i>Note: The Atomic Energy Commission was abolished in 1974. Authority under 42 U.S.C. § 2138 was transferred to the Nuclear Regulatory Commission. Pub. L. 93-438, Title II, <a href="#">88 Stat. 1244</a>, Oct. 11, 1974, § 202.</i>
<a href="#">46 U.S.C. § 7507</a>	(a) Secretary of the department in which the Coast Guard is operating may extend an expiring license or certificate of registry for one year; (b) Secretary of the department in which the Coast Guard is operating may extend an expiring merchant mariner’s document for one year (2010)	(a) “if the Secretary determines that the extension is required to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry or in response to a national emergency or natural disaster”; (b) “if the Secretary determines that the extension is required to enable the Coast Guard to eliminate a backlog in processing applications for those licenses or certificates of registry or in response to a national emergency or natural disaster”	*No relevant citing references on Westlaw*
<a href="#">46 U.S.C. § 53107</a>	Owners or operators of vessels in the Maritime Security Fleet must enter into Emergency Preparedness Agreements with the Secretary of Transportation, in which they agree to make commercial transportation resources (including services) available (2003)	“upon request by the Secretary of Defense during a time of war or national emergency, or whenever the Secretary of Defense determines that it is necessary for national security or contingency operation (as that term is defined in <a href="#">section 101 of title 10</a> , United States Code)”	*No relevant citing references on Westlaw*  Due to the nature of this statute (a contract provision), Westlaw would likely only contain citations to legal challenges to the statute, not to every instance in which it has been invoked.



<p><a href="#">47 U.S.C. § 308</a></p>	<p>Federal Communications Commission (FCC) may grant temporary broadcast station licenses and construction permits, or temporary modifications and renewals thereof, without the filing of a formal application (1952)</p>	<p>“(1) in cases of emergency found by the Commission involving danger to life or property or due to damage to equipment, or (2) during a national emergency proclaimed by the President or declared by the Congress and during the continuance of any war in which the United States is engaged and when such action is necessary for the national defense or security or otherwise in furtherance of the war effort, or (3) in cases of emergency where the Commission finds, in the non-broadcast services, that it would not be feasible to secure renewal applications from existing licensees or otherwise follow normal licensing procedure”</p>	<p>*No relevant citing references on Westlaw*</p>
<p><a href="#">42 U.S.C. § 8374</a></p>	<p>President may allocate coal and require the transportation thereof for the use of any electric power plant or major fuel-burning installation; and may stay the application of any provision or rule pertaining to electric power plants for up to 90 days or for the duration of the emergency, whichever is shorter (1978)</p>	<p>“(1) If the President— (A) declares a severe energy supply interruption, as defined in <a href="#">section 6202(8) of this title</a>, or (B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines— (i) is, or is likely to be, of significant scope and duration, and of an emergency nature; (ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and (iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God”</p>	<p>*No relevant citing references on Westlaw*</p>
<p><a href="#">31 U.S.C. § 3727 (d)</a></p>	<p>Department of Defense, General Services Administration, Department of Energy (when carrying out duties and powers formerly carried out by the Atomic Energy Commission), or other agency the President designates may make contracts that provide, or</p>	<p>“During a war or national emergency proclaimed by the President or declared by law and ended by proclamation or law”</p>	<p>A review of citing references on Westlaw suggests that the substance of this statute may be regularly incorporated into standard government contracts, but records regarding when it’s been used effectively to modify terms of those contracts are unclear. <i>See, e.g., Reliance Ins. Co. v. United States</i>, 15 Cl. Ct. 62 (June 2, 1988) (No. 379-86C).</p>

	modify contracts to provide, that a future payment under the contract to an assignee is not subject to reduction or setoff (1982)		
<a href="#">7 U.S.C. §§ 1427a (c), (d)</a>	(c) Secretary of Agriculture may sell or otherwise dispose of agricultural reserve; (d) Secretary of Agriculture may dispose of agricultural reserve (1973)	(c) “when a state of emergency has been proclaimed by the President or by concurrent resolution of Congress declaring that such reserves should be disposed of,”; (d) “(1) for use in relieving distress (A) in any State, the District of Columbia, Puerto Rico, Guam, or the Virgin Islands of the United States; (B) in connection with any major disaster or emergency determined by the President to warrant assistance by the Federal Government under the Disaster Relief and Emergency Assistance Act (88 Stat. 143, as amended; <a href="#">42 U.S.C. 5121</a> ); and (C) in connection with any emergency determined by the Secretary to warrant assistance under section 1427 of this title, the Act of September 21, 1959 (73 Stat. 574, as amended; <a href="#">7 U.S.C. 1427</a> noted), or <a href="#">section 2267</a> of this title; or (2) use in connection with a state of civil defense emergency as proclaimed by the President or by the concurrent resolution of the Congress in accordance with title VI of The Robert T. Stafford Disaster Relief and Emergency Assistance Act [ <a href="#">42 U.S.C. 5195 et seq.</a> ]”	Proc. 6907, Declaration of a State of Emergency and Release of Feed Grain From the Disaster Reserve, <a href="#">61 FR 35083</a> , July 1, 1996 (invoked in response to a long drought in the Southwest).
<a href="#">42 U.S.C. § 5177a</a>	Secretary of Agriculture may make grants to public agencies or private organizations with 501(c)(3) status that have experience in providing emergency services to low-income	“where the Secretary [of Agriculture] determines that a local, State, or national emergency or disaster has caused low-income migrant or seasonal farmworkers to lose income, to be	A review of citing references on Westlaw suggests that this provision has been used to issue grants at least as recently as 2008, when the Department of Agriculture issued a Request for Proposals: The National Emergency or Disaster

	migrant and seasonal farmworkers (1990)	unable to work, or to stay home or return home in anticipation of work shortages”	Grants to Assist Low-Income Migrant and Seasonal Farmworkers, <a href="#">73 FR 6467-01</a> , Feb. 4, 2008. The language of the Request does not indicate where a complete accounting of grants issued under this statute would be published, however.
<a href="#">46 U.S.C. § 56102</a>	A person may not, without the permission of the Secretary of Transportation, place a vessel owned in whole or in part by a U.S. citizen or corporation under foreign registry; sell or otherwise transfer to a non-citizen a vessel owned in whole or in part by a U.S. citizen, a vessel documented under the laws of the U.S., or a facility for building or repairing vessels; issue, assign, or transfer to a non-citizen an instrument of indebtedness secured by a mortgage of a vessel to a trustee; construct or agree to construct a vessel in the U.S. for a non-citizen; allow a non-citizen to obtain a controlling interest in a U.S. corporation that owns a vessel or a facility for building or repairing vessels; or cause a vessel built in the U.S. to leave before it is documented under the laws of the U.S. (2006)	“During war, or a national emergency declared by Presidential proclamation”	A prior, similar, version of this statute, originally enacted Sept. 7, 1916, ch. 451, § 37, formed the statutory basis for Proc. 1354, Emergency in Water Transportation of the United States, <a href="#">Feb. 5, 1917</a> (declaring a national emergency due to the “insufficiency of maritime tonnage to carry the products of the farms, forests, mines and manufacturing industries of the United States, to their consumers abroad and within the United States,” and prohibiting the sale or transfer of ships registered and licensed in the U.S. to “any person not a citizen” or to any “foreign registry or flag.”).  A previous codification at 46 USCA § 835 was also cited in multiple cases voiding transfers/sales in 1965. See, e.g. <i>Chemical Bank New York Trust Co. v. S.S. Westhampton, C.A.4 (Md.)</i> , 358 F.2d 574 (1965), <i>cert. denied</i> , 87 S. Ct. 228; <i>Chemical Bank New York Trust Co. v. S.S. Westhampton, D.C. Md.</i> 268 F. Supp. 169 (1967); <i>United States v. Vessel FL 4127 SE, S.D. Fla.</i> 1970, 311 F. Supp. 1353 (1970).
<b>Criminal Prosecution and Detainment Powers</b>			
<a href="#">18 U.S.C. § 793</a>	Criminal provision of the Espionage Act extends to prohibited places designated by the President where anything for the	“in time of war or in case of national emergency”	*No relevant citing references on Westlaw*  Although there have been multiple prosecutions under this statute, we were not able to identify

	use of the Army, Navy, or Air Force is being prepared or constructed or stored (1917)		any instances in which prosecution was due specifically to the designation of additional prohibited places under the emergency provisions of the statute.
<a href="#">18 U.S.C. § 2153</a>	Injuring, interfering with, or obstructing the preparation for, or carrying out of, war or defense activities of the United States or associated countries, with the intent to do so or reason to believe the actions will do so, punishable with fine or imprisonment up to 30 years (1948)	“when the United States is at war, or in times of national emergency as declared by the President or by the Congress”	Used to prosecute several Vietnam War protestors and anti-nuclear-weapons protestors in the 1960s.
<a href="#">18 U.S.C. § 2154</a>	Willful manufacture of defective war material with intent to, or reason to believe it will, injure, interfere with, or obstruct the United States or associated countries’ preparation or carrying out of war or defense activities, punishable with fine or imprisonment up to 30 years (1954)	“when the United States is at war, or in times of national emergency as declared by the President or by the Congress”	Used to prosecute some manufacturers of war materials during and after World War II.
<b>International Relations</b>			
<a href="#">19 U.S.C. § 1318</a>	(a) President may authorize the Secretary of the Treasury to permit duty-free importation of supplies needed for use in emergency relief work; (b) Secretary of the Treasury may eliminate, consolidate, or relocate any office or port of entry of the Customs Service; modify hours of service, alter services rendered at any location, or reduce the number	(a) “Whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise”;  (b) “When necessary to respond to a national emergency declared under the National Emergencies Act or to a specific threat to human life or national interests”	Proc. No. 2545, Free Importation of Jerked Beef, 56 Stat. 1945, Apr. 1, 1942 (invoked to allow the duty-free importation of jerked beef to Puerto Rico, as a substitute for a basic staple food [codfish] that was in short supply due to the war);  Proc. No. 2948, Merchandise in General-Order and Bonded Warehouses, <a href="#">16 FR 10589</a> , Oct. 12, 1951 (invoked in response to national emergency


	<p>of employees at any location; or take any other action that may be necessary to respond directly to the national emergency or specific threat (1930)</p>		<p>declared Dec. 16, 1950, in wake of Chinese intervention in Korean War);</p> <p>Proc. No. 4074, Imposition of Supplemental Duty for Balance of Payments Purposes, <a href="#">85 Stat. 926</a>, Aug. 15, 1971 (invoked because “there has been a prolonged decline in international monetary reserves of the United States, and our trade and international competitive position is seriously threatened”);</p> <p>This statute was also cited by the Customs and Border Protection division of the Department of Homeland Security as the legal framework that enabled the distribution of counterfeit goods to Katrina victims in 2006, on the basis of the national emergency as declared in Proc. 7924, To Suspend Subchapter IV of Chapter 31 of Title 40, United States Code, Within a Limited Geographic Area in response to the National Emergency Caused by Hurricane Katrina, <a href="#">70 FR 54225</a>, Sept. 8, 2005. See Kristina Rae Montanaro, “‘Shelter Chic’: Can the U.S. Make it Work?”, <i>Vanderbilt Law Journal</i> <a href="#">42 (2009):1663</a>, 1695 (analyzing the legal and policy implications of this invocation).</p>
<p><a href="#">14 U.S.C. § 367 (3)</a></p>	<p>Coast Guard member may be detained in service beyond the term of his or her enlistment, in the interest of national defense, for a period not to exceed six months after the end of the war or the</p>	<p>“during a period of war or national emergency as proclaimed by the President”</p>	<p>Proc. 7463, Declaration of National Emergency By Reason of Certain Terrorist Attacks, <a href="#">66 FR 48199</a>, Sept. 14, 2001 (invoked in response to the events of 9/11/2001);</p> <p>E.O. 13223, Ordering the Ready Reserve of the Armed Forces to Active Duty and Delegating</p>

	termination of the emergency (1949)		Certain Authorities to the Secretary of Defense and the Secretary of Transportation, <a href="#">66 FR 48201</a> , Sept. 14, 2001 (invoked in response to the events of 9/11/2001 and delegated to the Secretary of Transportation when the Coast Guard is not serving as part of the Navy) (later amended to delegate such authority to Secretary of Homeland Security instead of Secretary of Transportation).
<a href="#">10 U.S.C. § 712 (a)(3)</a>	President may detail members of the armed forces to assist any country that he considers it advisable to assist in the interest of national defense (1956)	“Upon the application of the country concerned, whenever [the President] considers it in the public interest...during a war or a declared national emergency”	*No relevant citing references on Westlaw*
<a href="#">10 U.S.C. § 123b</a>	President may waive statutory restrictions on using Department of Defense funding to support more than 203,000 members of the armed forces assigned to permanent duty ashore in nations outside the United States (1994)	“in the event of a declaration of war or an armed attack on any [ally]” or “if the President declares an emergency”	**Zero citing references on Westlaw**
<a href="#">46 U.S.C. § 8103 (h)(1)</a>	President may suspend citizenship and nationality requirements for officers and seamen on documented U.S. vessels (1983)	“during a proclaimed national emergency”	*No relevant citing references on Westlaw*
<a href="#">42 U.S.C. § 6212a (d)(1)(A)</a>	President may impose export licensing requirements or other restrictions on the export of crude oil from the United States for up to 1 year (2015)	If “(A) the President declares a national emergency and formally notices the declaration of a national emergency in the Federal Register; (B) the export licensing requirements or other restrictions on the export of crude oil from the United States under this subsection apply to 1 or more countries, persons, or organizations in the context of sanctions or trade restrictions imposed by the United States for reasons of national security by the Executive authority of the President or by Congress; or	*No relevant citing references on Westlaw*

		<p>(C) the Secretary of Commerce, in consultation with the Secretary of Energy, finds and reports to the President that—</p> <p>(i) the export of crude oil pursuant to this Act has caused sustained material oil supply shortages or sustained oil prices significantly above world market levels that are directly attributable to the export of crude oil produced in the United States; and</p> <p>(ii) those supply shortages or price increases have caused or are likely to cause sustained material adverse employment effects in the United States”</p>	
<p><a href="#">50 U.S.C. §§ 1701-1707</a></p>	<p>Known as the International Emergency Economic Powers Act (IEEPA), these statutes confer broad authority to regulate financial and other commercial transactions involving designated entities, including the power to impose sanctions on individuals and countries (1977)</p>	<p>“to deal with any unusual and extraordinary threat, which has its source in whole or substantial part outside the United States” and “with respect to which a national emergency has been declared for purposes of this chapter and may not be exercised for any other purpose. Any exercise of such authorities to deal with any new threat shall be based on a new declaration of national emergency which must be with respect to such threat”</p>	<p>These powers are exclusively invoked in tandem with the National Emergencies Act and have been invoked in 55 separate emergency declarations since 1978. On average, IEEPA declarations are renewed annually for about 9 years. For a recent example of an invocation of the International Emergency Economic Powers Act, see E.O. 13848, Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election, <a href="#">83 FR 46843</a>, Sept. 12, 2018. For a comprehensive list of initial emergency declarations invoking IEEPA powers, see <a href="#">here</a>.</p>

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