



# AUSA BACKGROUND BRIEF



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## SUMMARY OF AUTHORITIES AVAILABLE TO THE PRESIDENT IN EMERGENCIES SHORT OF A DECLARED WAR

The deployment of active and reserve component units to the Persian Gulf region in the face of Iraq's invasion of Kuwait has captured the attention of the American people and of the world. Acting in his capacity as commander in chief of the armed forces and using authorities granted by law, the president has acted quickly to deter further Iraqi incursions in the region and postured U.S. military strength to conduct offensive combat operations if necessary.

The United States has not declared war against Iraq, nor has a national emergency been formally declared by either Congress or the president. Setting aside the historical — and ongoing — debate regarding the relative constitutional powers and roles of the president and Congress to commit military forces and the ramifications of the 1973 War Powers Act, it is instructive to identify the authorities available to the president under different scenarios. The table that follows summarizes some of the principal authorities that the president may exercise in emergencies where a formal declaration of national emergency or war has not been made:

<u>U.S. Code</u>	<u>Emergency Authority</u>	<u>Invoked?</u>
10 USC 673b	Call-up of 200,000 selected reservists.	*Yes
10 USC 673c	Stop-Loss (retention of personnel on active duty).	Yes
10 USC 688	Recall of retired service members with more than 20 years active duty.	Yes
10 USC 712	Detail of service members to assist other countries in military matters.	No
14 USC 3	Coast Guard to operate as a service of the Navy.	No
10 USC 351	Arming of American vessels or aircraft.	No
10 USC 2404	Contract restriction waiver during an energy emergency.	No
41 USC 1314	Acquisition and use of natural resources.	No
50 USC 98	Stockpiling, disposal and release of critical and strategic materials.	No
50 USC App468	Mandatory orders for prompt delivery of material or articles for use by the armed forces.	No
50 USC App2091	Expansion of productive capacity and supply.	No

50 USCAp 2071	Obtain priority service for CONUS transportation services.	No
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(\*The FY91 DOD Appropriations Act increased the initial call-up period from 90 to 180 days and authority to extend the call-up period for 180 additional days. This authority applies only to combat units called during FY91.)

In the event that the president or Congress should declare a national emergency, the principal authorities available to the president are as follows:

10 USC 673	Order up to one million members of the Ready Reserve to active duty for not more than 24 months.
10 USC 7224	Secretary of the Navy authority to designate persons to be carried on naval vessels at government expense.
42 USC 217	Use of Public Health Service commissioned corps as a branch of land or naval forces.
47 USC 706	Authority to suspend or amend FCC rules and regulations.
10 USC 2808	Authority to use unobligated military construction funds for construction that supports the use of armed forces required by a national emergency.
46 USC 835	Restrictions on the transfer of shipping facilities.
46 USC 1241	Waiver of requirement to ship 50 percent on privately owned U.S flag vessels.
46 USC 1242	Purchase, requisition or charter of vessels owned by U.S. citizens.
50 USC 191	Authority to control ocean-going vessels in U.S. waters.
50 USC 196	Authority to seize non-U.S. owned vessels lying idle in U.S. waters.
50 USC App1744	Composition of ships in the National Defense Reserve Fleet.
50 USC 1431	Exemption of national defense contracts from certain statutory limitations.
50 USC 1511	Suspension of restrictions on chemical and biological agents.

Two authorities that significantly impact the reserve components are available to the president only when Congress declares a national emergency. They are as follows:

10 USC 511	Extension of term of service for an enlisted member transferred to a reserve component.
10 USC 672	Authority to order any member or unit of a reserve component, including standby and retired reservists, to active duty for the duration of hostilities, plus six months.