

## National Emergencies Act, Sections 201 and 301 Fact Sheet

### Overview

The [National Emergencies Act \(NEA\)](#) authorizes the president to declare a “national emergency.”<sup>1</sup> A declaration under NEA triggers emergency authorities contained in other federal statutes. Past NEA declarations have addressed, among other things, the imposition of export controls and limitations on transactions and property from specified nations.<sup>2</sup> A national emergency was declared in 2001 after the September 11<sup>th</sup> terrorist attacks and has been renewed every year since then.

### What the Law Does

The NEA authorizes the president to declare a national emergency, which declaration activates emergency powers contained in other federal statutes.<sup>3</sup> During the 2009 H1N1 influenza pandemic, the president’s declaration of a national emergency under the NEA, coupled with the HHS secretary’s prior determination of a public health emergency under [Section 319 of the Public Health Service Act \(PHSA\)](#), permitted the activation of [Social Security Act \(SSA\) Section 1135 waiver](#) authorities. (See Figure A for the text of the 2009 H1N1 NEA declaration.)

### How the Law Works

The NEA does not provide any specific emergency authority on its own, but relies on emergency authorities provided in other statutes. A national emergency declaration allows for the activation of these other statutory authorities. Emergency statutory provisions are not activated automatically, however; they must be specifically identified in the president’s declaration before these authorities may be given effect.

### Declaration

NEA Section 201 authorizes the president to declare a national emergency. The proclamation of a national emergency must be immediately transmitted to Congress and published in the *Federal Register*.<sup>1,2</sup> Under NEA Section 301, statutory emergency authorities enabled by the national emergency declaration cannot be exercised until the president specifies the provisions of law under which the president or other officials will act. Such specification may be made either in the declaration or in subsequent Executive Orders published in the *Federal Register* and transmitted to Congress.

### Termination

A national emergency can be terminated if the president issues a proclamation or if Congress enacts a joint resolution terminating the emergency. A national emergency will terminate automatically upon the anniversary of the proclamation unless the president renews the proclamation by transmitting notice to Congress within a 90-day period prior to the anniversary date and publishing it in the *Federal Register*.

### Immunity and Liability Issues

The national emergency provisions of the NEA do not address liability issues or provide any immunity. The act could be used to activate emergency authorities in other federal statutes that provide immunity during emergency events.

### How the Law Affects States

National emergency declarations under the NEA can impact states through the federal statutory emergency authorities activated once the NEA declaration is made. The most recent example of this effect was the activation of SSA Section 1135 waiver authority during the H1N1 influenza pandemic.

## FIGURE A

DECLARATION OF A NATIONAL EMERGENCY WITH RESPECT  
TO THE 2009 H1N1 INFLUENZA PANDEMIC  
BY  
THE PRESIDENT OF THE UNITED STATES OF AMERICA  
A PROCLAMATION  
October 24, 2009

"NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including sections 201 and 301 of the National Emergencies Act (50 U.S.C. 1601 et seq.) and consistent with section 1135 of the Social Security Act (SSA), as amended (42 U.S.C. 1320b-5), do hereby find and proclaim that, given that the rapid increase in illness across the Nation may overburden health care resources and that the temporary waiver of certain standard Federal requirements may be warranted in order to enable U.S. health care facilities to implement emergency operations plans, the 2009 H1N1 influenza pandemic in the United States constitutes a national emergency. Accordingly, I hereby declare that the Secretary may exercise the authority under section 1135 of the SSA to temporarily waive or modify certain requirements of the Medicare, Medicaid, and State Children's Health Insurance programs and of the Health Insurance Portability and Accountability Act Privacy Rule throughout the duration of the public health emergency declared in response to the 2009 H1N1 influenza pandemic. In exercising this authority, the Secretary shall provide certification and advance written notice to the Congress as required by section 1135(d) of the SSA (42 U.S.C. 1320b-5(d))."<sup>4</sup>

### Sources

<sup>1</sup> National Emergencies Act, Pub. L. No. 94-412. Codified in part at 50 U.S.C. §§ 1621, 1631.

<sup>2</sup> Relyea H. Congressional Research Service. *National Emergency Powers* (98-505). August 30, 2007. Available at [www.law.umaryland.edu/marshall/crsreports/crsdocuments/98505\\_08302007.pdf](http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/98505_08302007.pdf). Accessed January 31, 2012.

<sup>3</sup> Swendiman K and Jones NL. Congressional Research Service. *The 2009 Influenza Pandemic: Selected Legal Issues* (R40560). October 29, 2009. Available at [www.law.umaryland.edu/marshall/crsreports/crsdocuments/R40560B\\_05212009.pdf](http://www.law.umaryland.edu/marshall/crsreports/crsdocuments/R40560B_05212009.pdf). Accessed January 31, 2012.

<sup>4</sup> White House, "Declaration of a National Emergency with Respect to the 2009 H1N1 Influenza Pandemic." October 24, 2009. Available at [www.whitehouse.gov/the-press-office/declaration-a-national-emergency-with-respect-2009-h1n1-influenza-pandemic-0](http://www.whitehouse.gov/the-press-office/declaration-a-national-emergency-with-respect-2009-h1n1-influenza-pandemic-0). Accessed January 31, 2012.

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