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Updated May 22, 2025

Federal Power Act: The Department of Energy's Emergency Authority

Section 202(c) of the Federal Power Act (16 U.S.C. §824a(c)) grants the Secretary of Energy certain authorities over the temporary operation of the electricity system during emergencies. An executive order issued by President Trump in April 2025 has highlighted this authority and raised questions about its future implementation. This analysis provides a brief history of the emergency authorities and discusses current issues.

History of Section 202(c)

The Federal Power Act was enacted in 1935, and included emergency authority language. At the time, federal oversight of the electricity system was conducted by the Federal Power Commission (FPC). Now, the Federal Energy Regulatory Commission (FERC) has most responsibilities for electricity system oversight—but not for emergencies. The emergency authority was transferred to the Secretary of Energy when the Department of Energy (DOE) was established in 1977. Hereinafter, the emergency authority is described as residing with DOE.

Section 202(c) provides DOE broad discretion to require almost any change to the operation of the U.S. electricity system on a temporary basis. Specifically, DOE may "require by order such temporary connections of facilities and such generation, delivery, interchange, or transmission of electric energy as in its judgment will best meet the emergency and serve the public interest." DOE may execute this authority during war or any other time it "determines that an emergency exists by reason of a sudden increase in the demand for electric energy, or a shortage of electric energy or of facilities for the generation or transmission of electric energy, or of fuel or water for generating facilities, or other causes." This analysis focuses on the authority as used during emergencies, not war.

In 2015, Congress amended Section 202(c) to specify how the emergency authority should interact with environmental requirements for power plants. In practice, the amendments prioritize electric reliability over environmental outcomes, essentially by providing a waiver of federal, state, or local environmental laws and regulations during times of emergencies. This waiver has limitations. First, DOE emergency orders that may result in conflicts with environmental requirements may only be issued for 90-day periods. They may be renewed for additional 90-day periods as long as DOE deems them necessary to meet the emergency. Second, if an emergency order would result in a violation of a federal, state, or local environmental law or regulation, DOE must ensure the order is "only during hours necessary to meet the emergency and serve the public interest." Lastly, DOE must "to the maximum extent practicable" ensure the order is consistent with environmental laws or regulations and "minimizes any adverse environmental impacts."

DOE Implementation

DOE's regulations for implementing its emergency authority are at 10 C.F.R. §§205.370-205.379. They were finalized in 1981. The regulations define terms, including "emergency," and specify requirements for requesting an emergency order.

The Section 202(c) emergency authority is primarily focused on short-term situations, though as shown below DOE has exercised this authority in situations of varying duration. DOE's regulations emphasize the short-term nature of "emergencies" in this context. In the rulemaking, DOE explains, "The DOE does not intend these regulations to replace prudent utility planning and system expansion. This intent has been reinforced in the final rule by expanding the 'Definition of Emergency' to indicate that, while a utility may rely upon these regulations for assistance during a period of unexpected inadequate supply of electricity, it must solve long-term problems itself."

DOE and FPC have used the emergency authority several dozen times since 1935 in response to different kinds of emergencies. DOE's website contains information on use of the emergency authority from 2000. From 2000 to the present, DOE used its emergency authority in response to 17 events. Eleven events were weather-related and included hurricanes, heat waves, and winter storms. Some events prompted multiple emergency orders, either because more than one utility experienced emergency conditions (e.g., Winter Storm Elliot) or because the initial emergency order was extended (e.g., the California energy crisis). Details on the use of the Section 202(c) emergency authority prior to 2000 are not contained in one place and are therefore more difficult to comprehensively compile. According to one compilation of historic usage of the emergency authority, it was first used in June 1941, several months before the United States entered World War II. That analysis found the emergency authority was used 22 times during the war, 7 times between 1945 and 1977 (when the emergency authority was transferred to DOE), and zero times from 1977 to 2000.

The duration of emergency orders under Section 202(c) has varied, with some lasting a few hours and others extended to cover events lasting more than a year. The shortest order CRS identified in the orders listed on DOE's website occurred in response to a heat wave in Texas in September 2023. DOE granted an emergency order in this case for four hours on each of two days to respond to the highest levels of expected electricity demand. The order allowed one coal-

fired unit and 16 natural gas-fired units to operate in violation of limits on sulfur dioxide, nitrogen oxide, mercury, carbon monoxide, and wastewater during those hours, if required to maintain reliability. In the longest event CRS identified, DOE granted multiple renewals to a request to allow two coal-fired units in Virginia to continue operating as needed for reliability in violation of mercury emissions limitations while a transmission facility was constructed. Emergency orders in response to that event were in effect from June 16, 2017, to March 8, 2019.

Executive Order (E.O.) 14262

On April 8, 2025, President Trump issued E.O. 14262, "Strengthening the Reliability and Security of the United States Electric Grid." E.O. 14262 directs DOE to "streamline, systemize, and expedite" its processes for issuing emergency orders when "the relevant grid operator forecasts a temporary interruption of electricity supply is necessary to prevent a complete grid failure." A blackout is an example of a temporary interruption of electricity supply.

The E.O. additionally directs DOE to develop a protocol to identify generation resources that are critical to system reliability. The protocol must "include all mechanisms available under applicable law, including section 202(c) of the Federal Power Act, to ensure any generation resource identified as critical within an at-risk region is appropriately retained." Further, the protocol must prevent, "as the Secretary of Energy deems appropriate and consistent with applicable law," identified resources from "leaving the bulk-power system" or converting fuels in such a way that reduces their accredited capacity. An example of fuel conversion that could reduce accredited capacity is replacing a coal-fired power plant with a solar farm.

The language of the E.O. is nonspecific regarding the duration of any DOE action to retain resources or prevent them from leaving the bulk-power system. The E.O. language could be interpreted to mean DOE should take long-term action (i.e., lasting multiple years) or indefinite action. Emergency orders issued in response to multiyear events would be unusual, though not unprecedented, applications of DOE's Section 202(c) authority. As a result, it is unclear what limits to the authority might exist through judicial review or other avenues if DOE chose to issue long-term or indefinite emergency orders.

Issues for Congress

E.O. 14262 does not specify how DOE should streamline its processes for issuing emergency orders. Congress could evaluate whether DOE's existing regulations require streamlining and, if Congress determines they do, could provide policy direction and set a timeline for updating the regulations. Congress could also leave it to DOE's discretion as to when and how to update its regulations.

Congress could weigh DOE action in this space against other priorities for the department, because updating processes for issuing emergency orders could divert DOE resources from other activities. On the one hand, brownouts or blackouts due to insufficient electricity supplies are relatively rare in the United States. Grid operators have their own processes in place for managing the grid during times of supply shortages, and DOE emergency orders are rarely requested. On the other hand, many observers anticipate electricity demand to increase in the coming years faster than new supply can be brought online. If these trends continue, brownouts or blackouts could become more common, potentially increasing Congress's interest in addressing emergency situations for electricity supply.

Regarding the statutory authority itself, Congress could consider whether amendments to Section 202(c) of the Federal Power Act are appropriate.

One potential aspect for congressional consideration is the duration of DOE emergency orders, especially in relation to critical resources identified pursuant to E.O. 14262. Under current law, and assuming such order might result in a conflict with environmental requirements, DOE could potentially reissue its emergency orders every 90 days for an indeterminate amount of time. Repeated emergency orders may raise feasibility questions, such as whether successive emergency orders would be upheld by the courts or whether power plant owners would make long-term investments in maintaining power plants that are operating primarily under emergency orders. Congress could consider evaluating and clarifying via legislation whether the Section 202(c) authority is better reserved for short-term situations or whether application to long-term situations is appropriate. Some backers of power plants at risk of retirement (e.g., coal-fired power plants) might support extended emergency orders based on long-term economic considerations. At the same time, some backers of power plants with low greenhouse gas emissions (e.g., solar generators) might support extended emergency orders based on long-term environmental considerations. Others might prefer to limit DOE's emergency authorities to short-term situations. A more limited role for DOE in electricity system operations allows for greater use of market forces and reliance on local- and state-level processes to prepare for and respond to emergencies.

Another potential aspect for congressional consideration is the definition of "emergency" in the context of Section 202(c). Current law gives DOE broad discretion in determining what constitutes an emergency. Congress could consider whether this level of discretion is appropriate, or whether additional (or alternative) statutory direction would better serve current system needs. As noted above, some supporters of specific kinds of power plants might view sustained economic conditions or environmental impacts as emergencies that warrant DOE action. Those situations would appear to be novel exercises of DOE authority under Section 202(c), if DOE were to interpret them in such a way. Amendments to the Federal Power Act could clarify whether DOE's emergency authority could be used in response to those situations or any other long-term situation. Other stakeholders might wish to limit DOE's discretion in when to issue emergency orders, for example by modifying the currently broad statutory language or by requiring additional review by FERC or another entity.

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IF12991

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