

***IT'S BEST TO BECOME ACQUAINTED WITH THE PRESIDENTIAL EXECUTIVE ORDERS AS THEY ARE CONTROLLING THE US FISHING INDUSTRY. Bob Jones***

## **What is an Executive Order?**

*From time to time I hear that President Bush has issued an Executive Order establishing this policy or that. What is an Executive Order? Where does the President get the authority to issue them? Is there any way to reverse an Executive Order?*

"Stroke of the pen. Law of the Land. Kinda cool."

*Paul Begala, former Clinton advisor, The New York Times, July 5, 1998*

"We've switched the rules of the game. We're not trying to do anything legislatively."

*Interior Secretary Bruce Babbitt, The Washington Times, June 14, 1999*

Executive Orders (EOs) are legally binding orders given by the President, acting as the head of the Executive Branch, to Federal Administrative Agencies. Executive Orders are generally used to direct federal agencies and officials in their execution of congressionally established laws or policies. However, in many instances they have been used to guide agencies in directions contrary to congressional intent.

Not all EOs are created equal. Proclamations, for example, are a special type of Executive Order that are generally ceremonial or symbolic, such as when the President declares National Take Your Child To Work Day. Another subset of Executive Orders are those concerned with national security or defense issues. These have generally been known as National Security Directives. Under the Clinton Administration, they have been termed "Presidential Decision Directives."

Executive Orders do not require Congressional approval to take effect but they have the same legal weight as laws passed by Congress. The President's source of authority to issue Executive Orders can be found in the Article II, Section 1 of the Constitution which grants to the President the "executive Power." Section 3 of Article II further directs the President to "take Care that the Laws be faithfully executed." To implement or execute the laws of the land, Presidents give direction and guidance to Executive Branch agencies and departments, often in the form of Executive Orders.

## **A Brief History and Examples**

Executive Orders have been used by every chief executive since the time of George Washington. Most of these directives were unpublished and were only seen by the agencies involved. In the early 1900s, the State Department began numbering them; there are now over 13,000 numbered orders. Orders were retroactively numbered going back to 1862 when President Lincoln suspended the writ of habeas corpus and issued the Emancipation Proclamation by Executive Order. There are also many other Executive

Orders that have not been numbered because they have been lost due to bad record-keeping. Such is not the problem today. All new Executive Orders are easily accessible (see below).

Many important policy changes have occurred through Executive Orders. Harry Truman integrated the armed forces under Executive Order. President Eisenhower used an EO to desegregate schools. Presidents Kennedy and Johnson used them to bar racial discrimination in federal housing, hiring, and contracting. President Reagan used an EO to bar the use of federal funds for advocating abortion. President Clinton reversed this order when he came into office.

President Clinton has come under fire for using the EO as a way to make policy without consulting the Republican Congress (see the quotes at the beginning of this article). Clinton has signed over 300 EOs since 1992. In one case, he designated 1.7 million acres of Southern Utah as the Grand Staircase - Escalante National Monument. He also designated a system of American Heritage Rivers and even fought a war with Yugoslavia under Executive Order.

## **Controversy**

Executive Orders are controversial because they allow the President to make major decisions, even law, without the consent of Congress. This, of course, runs against the general logic of the Constitution -- that no one should have power to act unilaterally. Nevertheless, Congress often gives the President considerable leeway in implementing and administering federal law and programs. Sometimes, Congress cannot agree exactly how to implement a law or program. In effect, this leaves the decision to the federal agencies involved and the President that stands at their head. When Congress fails to spell out in detail how a law is to be executed, it leaves the door open for the President to provide those details in the form of Executive Orders.

## **Congressional Recourse**

If Congress does not like what the executive branch is doing, it has two main options. First, it may rewrite or amend a previous law, or spell it out in greater detail how the Executive Branch must act. Of course, the President has the right to veto the bill if he disagrees with it, so, in practice, a 2/3 majority is often required to override an Executive Order.

Congress is less likely to challenge EOs that deal with foreign policy, national defense, or the implementation and negotiation of treaties, as these are powers granted largely to the President by the Constitution. As the Commander-in-Chief of the armed forces, the President is also considered the nation's "Chief Diplomat." In fact, given national security concerns, some defense or security related EOs (often called National Security Directives or Presidential Decision Directives) are not made public.

In addition to congressional recourse, Executive Orders can be challenged in court, usually on the grounds that the Order deviates from "congressional intent" or exceeds the President's constitutional powers. In one such notable instance, President Harry Truman, was rebuked by the Supreme Court for overstepping the bounds of presidential authority. After World War II, Truman seized control of steel mills across the nation in an effort to settle labor disputes. In response to a challenge of this action, the Supreme Court ruled that the seizure was unconstitutional and exceeded presidential powers because neither the Constitution or any statute authorized the President to seize private businesses to settle labor disputes. For the most part, however, the Court has been fairly tolerant of wide range of executive actions.

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## **Additional Resources**

The ultimate criticism of Executive Orders is that the runaway use of EOs could result in a President becoming a virtual dictator, capable of making major policy decisions without any congressional or judicial input. The following web sites contain articles arguing against the liberal use of Executive Orders by the President.

- [The Impact of Executive Orders on the Legislative Process: Executive Lawmaking?](#) William Olsen, Cato Institute
- [Executive Orders A Blueprint for Dictatorship?](#) Tanya L. Green, J.D., Concerned Women for America

## **For What Purposes Have Presidents Used Executive Orders?**

The best way to get a feel for the types of "laws" that are made by Executive Order is to access them online. Executive Orders are available through multiple government publications and on the Internet (except those classified in the name of national security). You can read the text of these orders daily in the *Federal Register* and also under Title 3 of the *Code of Federal Regulations*. All EOs have been numbered and published since 1936.

## **Sites Providing Access to Executive Orders**

- [The White House](#)
- [Executive Orders Disposition Tables](#) (Federal Register)
- [Fedlaw](#)

## **Executive Orders in the States**

The use of Executive Orders is not just a presidential activity. They are also used by most state governors, who are the chief executives of their states. The following links will give you a feel for the types of Executive Orders used in a few states:

- [Florida](#)
- [Pennsylvania](#)
- [Utah](#)

<http://www.thisnation.com/question/040.html>