

Executive Orders

Dateline: 12/18/97

Executive Orders Defined

An Executive Order (EO) is a directive issued to executive-level agencies, department heads, or other employees from the President under the President's statutory, or [constitutional powers](#). In many ways, the EO is similar to written orders, or instructions the president of a corporation might send to department heads or directors. Thirty days after it is officially published in the Federal Register, an EO becomes law. While the EO does bypass the U.S. Congress and the standard legislative law making process, no part of an EO may be illegal or unconstitutional. The first EO was issued in 1789 by none other than George Washington. Not until 1907 were EOs given official numbers.

Reasons for Issuing an Executive Order

Presidents typically issue an EO for one of these purposes:

1. Operational management of the executive branch
2. Operational management of federal agencies or officials
3. To carry out statutory presidential responsibilities

- - [In 1970, President Nixon used this 398 word Executive Order establishing NOAA.](#)

How Executive Orders May be Vacated

The President can retract an EO at any time. The President may also issue an EO that supersedes an existing one. New incoming Presidents may choose to follow the EOs of their predecessors, replace them with new ones of their own, or revoke the old ones completely. In extreme cases, Congress may pass a law that alters an EO, and the Supreme Court can declare them unconstitutional.

Executive Orders vs. Proclamations

Presidential Proclamations differ from EOs in that they are either ceremonial in nature or deal with issues of trade and may or may not carry legal effect. All EOs become law.

Constitutional Authority for Executive Orders

Article II, section 1 of the Constitution reads, in part, *"The executive power shall be vested in a president of the United States of America."* And, Article II, section 3 asserts that, *"The President shall take care that the laws be faithfully executed..."* Since the Constitution does not specifically define executive power, critics of Executive Orders argue that these two passages do not imply Constitutional authority. But, Presidents of the United States since George Washington have argued that they do.

Modern Use of Executive Orders

Until World War I, the Executive Order was used for relatively minor, usually unnoticed acts of state. A trend that changed drastically with passage of the War Powers Act of 1917. This act passed during WWI granted the President temporary powers to immediately enact laws regulating trade, economy, and other aspects of policy as they pertained to enemies of America. A key section of the War Powers act also contained language specifically excluding American citizens from its effects.

The War Powers Act remained in effect and unchanged until 1933 when a freshly elected President Franklin D. Roosevelt found America in the panic stage of the Great Depression. The first thing FDR did was to convene a special session of Congress where he introduced a bill amending the War Powers Act to remove the clause excluding American citizens from being bound by its effects. This would allow the President to declare "national emergencies" and unilaterally enact laws to deal with them. This massive amendment was approved by both houses of Congress in under 40 minutes without debate.

Hours later, FDR officially declared the depression a "national emergency" and started issuing a string of Executive Orders that effectively were the "New Deal."

While some of FDR's actions were, perhaps, constitutionally questionable, history recognizes them as averting the growing panic and starting our economy on its way to recovery.

All Those Opposed

Many people strongly oppose the Executive Order as being an unconstitutional, even potentially dictatorial application of power. While the purpose of this article is not to state an opinion, or editorialize either way, I feel it only fair that this alternative point of view be represented.

[The WINDS.org - Presidential Executive Orders](#)

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