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Presidential Directives: An Introduction

Presidential directives, such as proclamations and executive orders, are a tool used by Presidents to announce official policy and make declarations in their roles as leader of the executive branch, commander in chief of the Armed Forces, and head of state. Presidents have used directives throughout American history for a wide variety of purposes, but they have taken on a more central policy role in recent Administrations.

Background

In 1789, during the first months of government under the new Constitution, President Washington issued both the first presidential proclamation, declaring a national day of Thanksgiving in November 1789, and the first precursor of the modern executive order. In that directive, Washington ordered executive branch officers who had also served under the Articles of Confederation to report to the new President on the ongoing affairs of the government and to explain their duties.

Since the Administration of Franklin Delano Roosevelt, presidential directives have expanded in both form and function. Increasing use of executive orders and the development of national security directives have increased both the formality of the official presidential decision process and the breadth of covered actions and policy areas. The development process defined in Executive Order 11030 (originally issued June 19, 1962) sets out more detailed guidelines for the preparation and internal review of executive orders and proclamations.

The Constitution does not explicitly recognize a presidential power to issue directives. However, there has been general acceptance since the Washington Administration that this authority is necessary for the President to manage the executive branch and that some authority to issue directives is inherent in the executive's Article II powers. Congress may also grant the President discretion to make certain decisions and determinations that have legal effect but may be affected by subsequent legislative action.

Finding Presidential Directives

Many presidential directives are published in the *Federal Register* under the general heading "Executive Office of the President" and compiled in Title 3 of the *Code of Federal Regulations* (CFR). Under 44 U.S.C. §1505, proclamations, executive orders, and other documents of "general applicability and legal effect" must be published in the *Federal Register*.

While the *Federal Register* is the source of record and is updated daily, there may be a lag between the public

announcement of a directive by an Administration and its official publication.

The Daily Compilation of Presidential Documents (<https://www.govinfo.gov/app/collection/cpd>) and <https://www.whitehouse.gov/> also publish presidential directives (and other presidential documents including signing statements, messages, and press releases) but may not be as current or comprehensive as the *Federal Register*.

Presidential directives with ongoing effect remain in force across presidential transitions, but generally may be amended, repealed, or replaced by the President. For instance, at the start of an Administration, the new President frequently revokes or amends some of the executive orders issued by previous Presidents. When researching an executive order, therefore, it is important to determine its current status. Both the National Archives and Records Administration (partial coverage from the Franklin Roosevelt to Barack Obama Administrations at <https://www.archives.gov/federal-register/executive-orders/disposition>) and the *Federal Register* (beginning in 1994 at <https://www.federalregister.gov/presidential-documents/executive-orders>) maintain online disposition tables for executive orders. These tables allow users to check the status of individual orders, including whether they have been revoked, amended, or superseded by later executive orders.

Classes of Directives

Presidents may avail themselves of a few different types of directives. Although it is useful to know the different types of presidential directives, several of the classifications are not as clear or as legally significant as they might appear to be, and different Administrations may use different naming conventions in some cases.

Proclamations

There are two distinct classes of presidential directives that are referred to as proclamations. The first are ceremonial announcements, such as Washington's Thanksgiving proclamation, that are issued in observance of significant events. Second, there are substantive proclamations that are typically legal pronouncements on international trade, national emergencies, or federal land management. Proclamations issued pursuant to the Antiquities Act of 1906 (P.L. 59-209), which allows the President to create national monuments on public lands, are a well-known example of substantive proclamations.

Executive Orders

Executive orders are arguably the best-known type of presidential directives and, among all types of presidential directives, may have the most significant impact on policy.

Executive orders are typically directed at executive branch officials and instruct them on how to manage agency operations. By defining executive branch policies, though, executive orders may impact private citizens by altering how executive branch officials implement the law. In addition, executive orders generally do not include sunsets or other time limitations. Some Administrations have used the term *presidential memorandum* for directives that have similar legal effect to executive orders but are of limited duration.

Other Types of Directives

In addition to proclamations and executive orders, Presidents issue other types of directives with names including directives, decisions, notices, and findings. Although decisions regarding the titling of directives may be broadly consistent within a presidential Administration, the titles of certain types of directives may vary across Administrations. However, the use of different titles does not necessarily mean that certain types of directives are intended to serve different purposes or be otherwise distinct from directives issued by a previous Administration.

The clearest example of this phenomenon comes in national security policy. As stewardship of national security became a central part of the President's daily activities following World War II, national security directives became an important source of presidential policy. Many of these directives are classified documents and may not be declassified, if at all, until years or decades following the end of the Administration that issued them. Generally, the two types of national security directives are high-level discussion memoranda used by the President and senior advisors and decision documents that establish Administration policy.

As each President has brought his own perspective and style to managing the White House, the names of these national security directives have also changed with each Administration. For instance, they were referred to as National Security Presidential Directives in the George W. Bush Administration and Presidential Policy Directives in the Obama Administration, and are termed National Security Presidential Memoranda in the Trump Administration.

Use of Presidential Directives in Recent Administrations

Both the Obama and Trump Administrations have asserted presidential authority to shape policy with directives and implemented high-profile policies via executive order. A notable example from each Administration illustrates these actions' important national policy and political implications.

On January 22, 2009, President Barack Obama signed Executive Order 13492, which ordered a review of the status of all individuals detained by the Department of Defense at Guantanamo Bay Naval Base and directed that the detention facility be closed within one year. The order's implementation outcomes notwithstanding, it reflected a shift in executive branch policy and sought to resolve a politically controversial and legally complex issue.

President Trump's first executive order, Executive Order 13675, issued January 20, 2019, established that the Administration would seek the repeal of the Affordable Care Act (ACA) and directed executive agencies to "minimize the unwarranted economic and regulatory burdens of the [ACA]" and "afford the States more flexibility and control" in implementing the ACA. The order explicitly recognized that the executive branch lacked the authority to decline to enforce duly enacted law. However, it also changed how the executive branch would interpret and implement a major area of federal law and several significant federal programs.

Congress's Role

From the perspective of Congress, presidential directives can be divided into two categories based on the claimed source of authority. If a presidential directive purports to be based on the President's Article II powers, then separation of powers principles may dictate that Congress does not have the authority to alter or repeal the directive by legislation. In these cases, a presidential directive could still be challenged in court if a plaintiff believes it exceeds the President's Article II authority.

When the President issues a directive based on statutory authority, Congress has several avenues for direct action. Congress has revoked executive orders in the past via legislation. Additionally, Congress may alter the statute that provides the underlying authority for the President to issue the directive or use appropriations bill language to deny funding for the implementation of the directive or place other conditions upon spending for that purpose.

In addition, if Congress supports the directive, it may codify the substance, with or without modifications, through regular legislation, ensuring that the action cannot be reversed by future Administrations without congressional action. In all of the cases outlined above, Congress must pass legislation and it must be presented to the President and signed, or a veto must be overridden, for the action to have effect.

If Congress does not take action in response to a validly issued executive order, it continues in effect until it is altered or revoked by the President.

Finally, both Congress and the executive branch have established some parameters for presidential directives in general and executive orders in particular. For instance, as discussed above, Congress requires that proclamations, executive orders, and other documents be published in the *Federal Register*, which allows better public and legislative oversight of executive branch actions.

CRS Resources

For more detailed discussion, see CRS Report RS20846, *Executive Orders: Issuance, Modification, and Revocation*, by Todd Garvey.

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