

TRUMP/BIDEN EXECUTIVE ORDERS: DO YOU HAVE WHIPLASH YET?

National Sea Grant Law Center
Informational Webinar
March 3, 2021



Webinar Overview

- NSGLC Introduction
- Executive Order 101
- Quick Status Updates of Key Trump/Biden EOs

Who We Are

- One of 34 Sea Grant Programs
- Based at the University of Mississippi School of Law
- Established to provide non-advocacy legal research, outreach, and education services to Sea Grant network.
- Don't forget to follow us on Twitter and Facebook!



<http://nsglc.olemiss.edu>



Advisory Service

Do you have a legal question? Our Advisory Service is here for you! We can conduct legal research to help you find answers.

Send us an email: sshowalt@olemiss.edu

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- Legal research service provided free of charge to Sea Grant Programs.
- Research only! Prohibited from providing legal advice.



Executive Orders

A brief look at what they are &
how they work

What is an Executive Order?

E.O.s are created using the president's authority provided by the Constitution or delegated to the president by Congress.

E.O.s direct agency action, but they do not immediately change the law. Agencies implement E.O.s by changing their policies or regulations.

Executive orders have the force of law IF the president has authority to issue the order through the Constitution or Congressional authority.

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E.O.s are written, signed, and published in the Federal Register.

What limits Executive Orders?

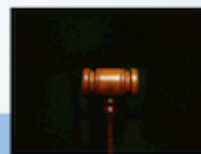
An E.O. may be modified or nullified by a court if it finds the president lacked the proper authority to issue an order.

Congress may nullify an E.O. It may also remove the authority of the president to issue an E.O. by changing the law that granted authority in the first place.

Current presidents may revoke E.O.s issued by previous presidents.



Checked &
Balanced



Fun fact!

Dating back to George Washington, every U.S. President has issued at least one Executive Order



Executive Orders
Available:
**The Federal Register
Archives**

<https://www.archives.gov/federal-register/executive-orders>

What's the Difference?



Executive Orders

- Signed
- Numbered consecutively
- Always published in the Federal Register.
- Force of law



Proclamations

- Signed
- Numbered consecutively
- Published in the federal register
- Force of law



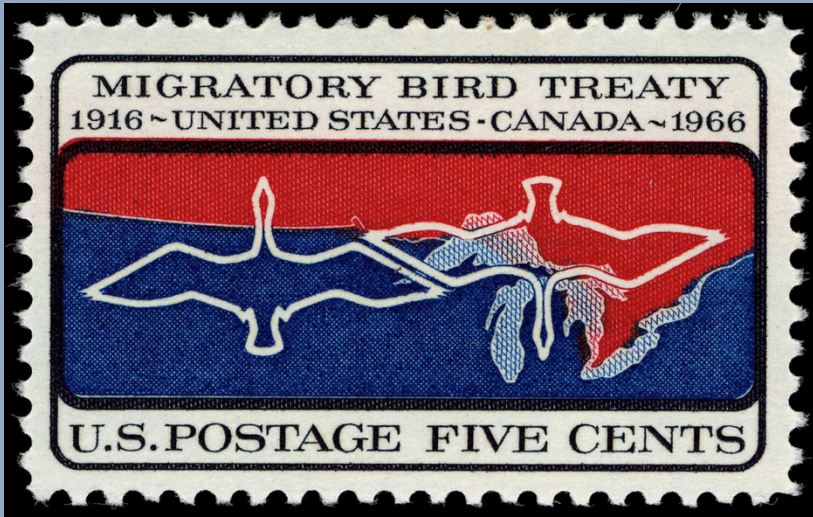
Other Executive Actions

- Not numbered
- Not signed
- Sometimes published in the federal register
- Do not have the force of law

Memo re: Regulatory Freeze Pending Review

- Issued on January 20, 2021.
- Called for a freeze on proposing or issuing rules until the Biden Administration has a chance to review.
- Possible Outcomes:
 - No action - rule moves forward as planned.
 - For final rules, delayed effective date and additional comment period.
 - For proposed rules, may see changes to final rule or no final rule issued.

Example: Regulations Governing Take of Migratory Birds



- Published by FWS on January 7, 2021 with effective date of February 8.
- Highly controversial - DOI Solicitor's memo providing legal justification for rule had been strike down by court.
- Biden Administration delayed effective date until March 8, 2021 and re-opened public comment period.

E.O. 13922: Revocation of Certain Executive Orders Concerning Federal Regulation

- Issued January 25, 2021
- Revoked 6 orders issued by the Trump Administration related to regulatory reform, including the 2-for-1 order.
- Directs agencies to “promptly take steps” to rescind any regulations, guidance, orders or policies implementing any directives of the revoked orders.

E.O.: Promoting COVID-19 Safety in Domestic and International Travel

- Executive Order 13998 issued on January 21, 2021.
- Directs U.S. Coast Guard (USGS) to require masks worn in compliance with CDC guidelines on “public maritime vessels ... and all forms of public transportation.”
- USGS issued COVID-19 a Marine Safety Information Bulletin implementing CDC guidelines
- Applies to all commercial vessels on international, interstate, and intrastate waterways



E.O. 13985: Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

- ID best practices for assessing equity.
- Allocate resources.
- Address barriers.
- Interagency Working Group on Equitable Data
- The EO revokes:
 - **Executive Order 13950 (Combating Race and Sex Stereotyping)**
 - **Executive Order 13958 (Establishing the President's Advisory 1776 Commission)**



E.O. 13988: Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

- Title VII and any federal laws or regulations aimed at sex discrimination also prohibit discrimination on the basis of gender identity and sexual orientation.
- Review of agencies' existing regulations, orders, and guidance related to endorsing or implementing Title VII or any other laws that prohibit sex discrimination.
- Each agency must develop a plan to carry out the EO within 100 days.



Presidential Memorandum on Tribal Consultation and Strengthening Nation-to-Nation Relationships

- Issued on January 26, 2021, and published as 86 FR 7491.
- Reaffirms policies and deadlines announced in EO 13175.

EO 13175

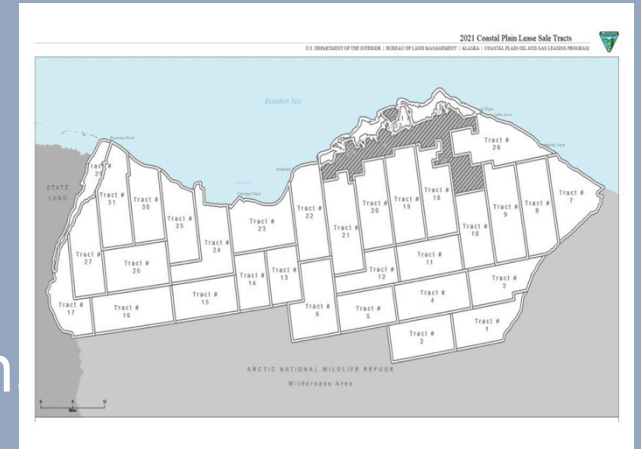
- Recognizes sovereignty and self-government
- Establishment of Consultation Policies
- Required agencies to submit plans of action

Presidential Memorandum

- Directs agencies to submit plan of action within 90 days
- Designate agency official
- OMB will prepare report for President within one year

E.O. 13990: Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis

- Executive Order 13990 issued on January 20, 2021.
 - Four types of actions to protect public health.
- EO placed a temporary moratorium on the implementation of Coastal Plain Oil and Gas Leasing Program.
 - Directs Secretary to review and conduct new analysis of environmental impacts.
 - Agencies can suspend leases or decline to issue federal authorizations.
 - Leaseholders have opportunity to sue if the federal government is not meeting the lease term
 - Not a permanent protection of the refuge.



E.O. 14008: Tackling the Climate Crisis at Home and Abroad

International implications



- Rejoin Paris Climate Agreement
 - Develop nationally determined contribution (NDC)
 - Climate finance plan



- Directs State Dept to send the Kigali Amendment to the Montreal Protocol to Senate for approval (HFCs)

EO 14008: Tackling the Climate Crisis at Home and Abroad

Domestic implications

- Climate = essential element of U.S. foreign policy and national security.
- Creates White House Office of Domestic Climate Policy and the National Climate Task Force



Inaugural National Climate Advisor Gina McCarthy

- Prohibits federal agencies from subsidizing fossil fuels
- Moratorium on new OCSLA oil and gas leases



EO: Tackling the Climate Crisis at Home and Abroad

Section 207- Renewable Energy on Public Lands and in Offshore Waters

- DOI to identify steps to increase renewable energy on public lands and offshore waters.
- Goal: double offshore wind by 2030.
- Must also ensure “robust protection for our lands, waters, and biodiversity and creating good jobs.”



EO: Tackling the Climate Crisis at Home and Abroad

Empowering Workers by Advancing Conservation, Agriculture, and Reforestation



Section 214- Policy:

“Coastal communities have an essential role to play in mitigating climate change and strengthening resilience by protecting and restoring coastal ecosystems, such as wetlands, seagrasses, coral and oyster reefs, and mangrove and kelp forests, to protect vulnerable coastlines, sequester carbon, and support biodiversity and fisheries.”

EO: Tackling the Climate Crisis at Home and Abroad

Empowering Workers by Advancing Conservation, Agriculture, and Reforestation

Section 215- Civilian Climate Corps

- Develop strategy for a Civilian Climate Corps Initiative “within existing appropriations.”
- Mobilize next generation of conservation and resilience workers.
- Goals include bolstering community resilience, protecting biodiversity, improving recreational access, and addressing climate change.



EO: Tackling the Climate Crisis at Home and Abroad

Empowering Workers by Advancing Conservation, Agriculture, and Reforestation

Section 216- Conserving Our Nation's Lands and Waters

- Goal: Conserve at least 30% of lands and waters by 2030
- Solicit input from stakeholders including fishermen
- *NOAA Administrator*- collect input from fishermen, regional ocean councils, scientists and other stakeholders.
 - Topic: how to make fisheries and protected resources more resilient to climate change.
 - This could include:
 - Changes in management and conservation measures.
 - Improvements in science, monitoring, and cooperative research.



Questions?

Please type your question into the Chat window.

Contact Us

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