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Presidential Directives: Background and Overview

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Summary

From the earliest days of the federal government, Presidents, exercising magisterial or executive power not unlike that of a monarch, from time to time have issued directives establishing new policy, decreeing the commencement or cessation of some action, or ordaining that notice be given to some declaration. The instruments used by Presidents in these regards have come to be known by various names, and some have prescribed forms and purposes. Executive orders and proclamations are probably two of the best-known types, largely because of their long-standing use and publication in the *Federal Register* and the *Code of Federal Regulations*. Others are less familiar, some because they are cloaked in official secrecy. There is, as well, the oral presidential directive, the sense of which is captured in an announcement that records what the President has prescribed or instructed. This report provides an overview of the different kinds of directives that have primarily been utilized by twentieth-century Presidents. Presenting background on the historical development, accounting, use, and effect of such directives, it will be updated as events suggest.

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Presidential Directives: Background and Overview

Responding to the request of a duly constituted joint committee of the two Houses of Congress “to recommend to the people of the United States a day of public thanksgiving ...,”¹ President George Washington assigned Thursday, November 26, using an October 3, 1789, instrument of proclamation.² It was the first proclamation issued by a President under the federal government established by the Constitution.

Four months earlier, on June 8, 1789, President Washington sent a communique to the acting holdover officers of the Confederation government, directing the preparation of a report “to impress me with a full, precise, and distinct *general idea* of the affairs of the United States” handled by each official.³ The forerunner or prototype of a body of presidential directives which would subsequently come to be denominated “executive orders,” the communique was issued, of course, before the creation of the great federal departments.

Various proclamations and orders would be issued by Presidents during the nineteenth century. A number had accumulated by the time efforts were begun, during the latter half of the century, to account better for them through a numbering process and to standardize their forms. Consequently, an examination of published collections of presidential papers, such as James D. Richardson’s *A Compilation of the Messages and Papers of the Presidents*, prepared under the direction of the congressional Joint Committee on Printing, reveals that, prior to the Lincoln Administration, a number of documents denominated as proclamations and other presidential instruments of no particular designation directed certain actions to be taken.⁴ These latter types of documents were what came to be officially called executive orders, largely because the first of them to be selected to begin the numbered series had been captioned “Executive Order Establishing a Provisional Court in Louisiana” by Richardson in his compilation of presidential papers. Signed by President Abraham Lincoln, it was dated October 20, 1862. However, another

¹*Annals of Congress*, vol. 1, Sept. 25, 1789, pp. 88, 914-915; *Ibid.*, Sept. 26, 1790, p. 90.

²James D. Richardson, comp., *A Compilation of the Messages and Papers of the Presidents*, vol. 1 (New York: Bureau of National Literature, 1897), p. 56.

³John C. Fitzpatrick, ed., *The Writings of George Washington*, vol. 30 (Washington: GPO, 1939), pp. 343-344. James D. Richardson (see note 2, above), who had compiled and published the first thorough collection of presidential papers in 1895, overlooked this directive and similar such orders of President Washington.

⁴See Robert D. Stevens and Helen C. Stevens, “Documents in the Gilded Age: Richardson’s Messages and Papers of the Presidents,” *Government Publications Review*, vol. 1, 1974, pp. 233-240.

contender for the position of first executive order, dated March 10, 1863, and concerning soldiers absent without leave, appeared in the *United States Statutes at Large*.⁵ Furthermore, the instrument selected as the second executive order, dated April 4, 1865, and concerning rewards for the arrest of felons from foreign countries committing felonies in the United States, was signed by Secretary of State William H. Seward rather than the President.⁶ The sixth executive order, dated July 20, 1868, and concerning the ratification of the Fourteenth Amendment to the Constitution, was also signed by Secretary Seward and has the form of a proclamation. The same was true of the seventh executive order, dated July 28, 1868, certifying the ratification of the Fourteenth Amendment and ordering its publication. Indeed, both of these last two instruments appeared in the *Statutes at Large* as proclamations.⁷ Such were the confused beginnings of bringing order out of the chaos surrounding the issuance of presidential directives.

As happened during the years prior to the Lincoln Administration, a President might inscribe upon a sheet of paper words establishing new policy, decreeing the commencement or cessation of some action, or ordaining that notice be given to some declaration. Dated and signed by the Chief Executive, the result was a presidential directive. Such instruments have come to be known by various names, and some have prescribed forms and purposes. Executive orders and proclamations are probably two of the best known types, largely because of their long-standing use and publication in the *Federal Register* and the *Code of Federal Regulations (CFR)*. Others are less familiar, some because they are cloaked in official secrecy. There is, as well, the oral presidential directive, the sense of which is captured in an announcement which records what the President has prescribed or instructed.

Introduction

This report provides an overview of the different kinds of directives that have been utilized primarily by twentieth century Presidents. It presents background on their historical development, accounting, use, and effect. Turning to the last of these considerations before discussing each type of presidential directive, it may be generally said that most of these instruments establish policy, and many have the force of law. Policy, in this context, is understood as a statement of goals or objectives which a President sets and pursues. Whether these directives have the force of law depends upon such factors as the President's authority to issue them, their conflict with constitutional or statutory provisions, and their promulgation in accordance with prescribed procedure. Indeed, as history has shown, presidential directives may be challenged in court or through congressional action. In the latter case, however, difficulties may arise if Congress, through legislative action, attempts to supersede or nullify a presidential directive issued, in whole or in part, pursuant to the Executive's constitutional authority, the result being a possible infringement by one constitutional branch upon the powers of another. Congress has been more

⁵See 13 Stat. 775.

⁶See 13 Stat. 776.

⁷See 15 Stat. 706, 708.

successful in overturning or modifying executive orders based solely upon or authorized by a statute, which, of course, was the creation of the legislature.

Exercising its power of the purse, Congress has provided that appropriated funds may not be made available to pay the expenses of any executive agency, including agencies established by executive order, after such agency has been in existence for one year, unless Congress appropriates money specifically for it or authorizes the expenditure of funds by it.⁸ In some situations, where Congress has delegated authority to the President, it has legislated requirements that executive orders exercising this authority be subject to either congressional review and possible cancellation before becoming effective, or modification, including cancellation, after being issued.⁹

Finally, Congress has legislated procedures concerning the issuance of presidential proclamations and executive orders. With the Federal Register Act of 1935, Congress mandated the publication of the *Federal Register*, an executive branch gazette that is produced each working day by the National Archives and Records Administration. That statute also requires the *Federal Register* publication of all “Presidential proclamations and Executive orders, except those not having general applicability and legal effect or effective only against Federal agencies or persons in their capacity as officers, agents, or employees thereof.” In effect, the vast majority of presidential proclamations and executive orders must be published, particularly those prescribing a penalty. The statute also indicates that (1) “documents or classes of documents that the President may determine from time to time have general applicability and legal effect” and (2) “documents or classes of documents that may be required so to be published by Act of Congress” shall also be reproduced in the *Federal Register*.¹⁰ In fact, Presidents have elected to publish some other kinds of directives, which are discussed below. All such presidential instruments published in the *Federal Register* are collected in annual volumes of Title 3 of the *Code of Federal Regulations* for ready reference.

Administrative Orders

The first administrative order, so denominated, was issued May 25, 1940. It established the Office for Emergency Management in the Executive Office of the President.¹¹ The directive appeared to be issued pursuant to and as an extension of an executive order (E.O. 8248) of September 8, 1939, which organized the Executive Office of the President and made generic reference to an office for emergency management which might be subsequently established in the event of a national emergency or the threat of a national emergency. The second administrative order,

⁸See 58 Stat. 361, at 387; 31 U.S.C. 3147.

⁹See 47 Stat. 382, at 413; 48 Stat. 8, at 16; 90 Stat. 1255; 50 U.S.C. 1621-1622; also see U.S. Congress, House Committee on Government Operations, *Security Classification Policy and Executive Order 12356*, 97th Cong., 2nd sess., H.Rept. 97-731 (Washington: GPO, 1982), p. 35.

¹⁰See 44 U.S.C. 1505.

¹¹See 3 C.F.R., 1938-1943 Comp., p. 1320.

dated January 7, 1941, further defined the status and functions of the Office for Emergency Management and was also issued pursuant to E.O. 8248.¹² Thus, the impression was left that administrative orders might be a subset of directives used to detail further policy primarily established by executive orders. However, this soon proved not to be the case.

The third administrative order, so designated, was a July 29, 1943, letter transferring certain functions of the Office for Emergency Management. The next two orders, issued April 13, 1945, concerned keeping flags at half-staff on all federal buildings and temporarily closing federal departments and agencies in conjunction with ceremonies on the occasion of President Franklin D. Roosevelt's death. Both were signed by Secretary of State Edward R. Stettinius, Jr. A September 10, 1945, administrative order, signed by Secretary of War Henry L. Stimson, indicated how the term "World War II" was to be officially used. The next order, dated August 15, 1945, and signed by President Harry S. Truman, terminated the Office of Censorship and voluntary censorship of the domestic press and radio.¹³

These and subsequent instruments denominated as administrative orders took a variety of forms — delegations of authority, determinations, directives, findings, letters, memoranda, and orders — on a wide array of administrative matters. In fact, some items appeared to overlap other types of presidential directives. For example, some international trade instruments, sometimes in letter form, were considered to be administrative orders,¹⁴ as were designations of officials.¹⁵ In 1972, certain instruments, identified as presidential determinations, but appearing in *CFR* Title 3 compilations in the administrative orders category, began to have hyphenated identification numbers, the first figure indicating the year of issuance and the second marking the sequence of promulgation.¹⁶ Presidential determinations, as a particular type of administrative order, first appeared in the *Federal Register* and *CFR* in 1964.¹⁷ In general, indications are that, during at least the past 40 years, presidential directives published in the *Federal Register* in forms other than those of executive orders, or proclamations, have been denominated as administrative orders when reproduced in *CFR* Title 3 compilations.

Certificates

Apparently only one presidential certificate, as such, was published in the *Federal Register* and subsequently included in a *CFR* Title 3 compilation. Issued March 27, 1940, pursuant to a farm crop production and harvesting loan statute of

¹²Ibid., pp. 1320-1321.

¹³See Ibid., 1943-1948 Comp., pp. 1078-1079.

¹⁴See Ibid., 1964-1965 Comp., pp. 372-374; Ibid., 1966-1970 Comp., pp. 997-1005.

¹⁵See Ibid., 1966-1970 Comp., p. 1005.

¹⁶See Ibid., 1971-1975 Comp., p. 1082.

¹⁷See Ibid., 1964-1965 Comp., pp. 372-374.

1937,¹⁸ the instrument certified that four Washington counties were distressed emergency areas and, therefore, not subject to the loan limitations stated in the law.¹⁹ Although there is evidence that Presidents had issued statutorily authorized certificates prior to this time, no directives of this designation have appeared in subsequent *CFR* Title 3 compilations.²⁰

Designations of Officials

Since the establishment of the *Federal Register* and the *CFR*, presidential letters designating individuals to hold specified official positions in the government have been reproduced in these publications. The first, dated May 28, 1941, vested Secretary of the Interior Harold L. Ickes with the additional position and accompanying duties of Petroleum Coordinator for National Defense. The second, however, established a new position, Coordinator of Information, and designated William J. Donovan, a private individual, to fill it.²¹ Subsequent designations have been of both types — some being an additional position for an individual already holding an official post, others being an original appointment of a private person to an existing vacant or newly created position. The President may unilaterally make designations where no Senate approval of the appointment is required and where he has the authority and resources to create new official positions to be filled by designees. Some designations are merely delegations of presidential authority to constitutional officers such as Cabinet secretaries.²² Two more recent designations, one in 1979 and another in 1982, were of a slightly different character: officials, by title, were designated to have authority to security classify information at the “Top Secret” level.²³

Executive Orders

Executive orders are one of the oldest types of presidential directive, an early model appearing in June 1789, when President Washington directed the acting holdover officers of the Confederation government to prepare for him a report “to impress me with a full, precise, and distinct *general idea* of the affairs of the United States” handled by each official. Like most executive orders, it was directed to, and governed actions by, executive officials and agencies. However, some executive orders, such as perhaps those concerning emergency situations and relying upon the President’s constitutional authority or powers statutorily delegated to him by Congress to respond to exigencies, were of a more profound character. For example, President Roosevelt used an executive order (E.O. 9066) on February 19, 1942, to

¹⁸50 Stat. 5.

¹⁹3 C.F.R., 1938-1943 Comp., p. 1322.

²⁰See, for example, Samuel I. Rosenman, comp., *The Public Papers and Addresses of Franklin D. Roosevelt. Vol. 4: The Court Disapproves, 1935* (New York: Random House, 1938), p. 113 (certification of the proposed Constitution of the Philippine Islands).

²¹See 3 C.F.R., 1938-1943 Comp., pp. 1323-1325.

²²See *Ibid.*, p. 1326; *Ibid.*, 1943-1948 Comp., p. 1083.

²³See *Ibid.*, 1979 Comp., p. 519; *Ibid.*, 1983 Comp., pp. 257-259.

require the internment of American citizens of Japanese ancestry who were living in certain designated Pacific coast defense areas.

The issuance of executive orders by Presidents followed not only the practice of state governors, but also relied upon constitutional authority, such as the Commander-in-Chief role and the faithful execution of the laws clause, and statutory law. Under the new federal government, the Department of State was responsible for preserving presidential executive orders. Examples of early presidential directives having the characteristics of executive orders may be found in Richardson's *A Compilation of the Messages and Papers of the Presidents*. In 1907, the Department of State began to assign identification numbers to both executive orders and proclamations, making a determined, but not totally successful, effort to include previously issued instruments of both types in this accounting.²⁴ The numbering of executive orders began with an October 20, 1862, instrument signed by President Lincoln. The Federal Register Act of 1935 effectively required that both executive orders and proclamations be published in the *Register*.²⁵ The first executive order so published was E.O. 7316 of March 13, 1936, concerning the enlargement of the Cape Romain migratory bird refuge in South Carolina. Beginning with this instrument, all subsequent presidential executive orders have been reproduced in *CFR* Title 3 compilations. Regulations governing the preparation, presentation, filing, and publication of executive orders and proclamations are prescribed in E.O. 11030, as amended.

General Licenses

Indications are that only one presidential general license, as such, was published in the *Federal Register* and subsequently included in a *CFR* Title 3 compilation. Issued December 13, 1941, shortly after the Japanese attack on Pearl Harbor and congressional declarations of war on Japan and Germany,²⁶ the general license, signed by President Roosevelt, authorized the conduct of certain export transactions otherwise prohibited during wartime by the Trading with the Enemy Act of 1917, as amended. It also delegated to the Secretary of the Treasury responsibility to regulate such transactions.²⁷ An emergency action taken to assist the prosecution of the war, the general license facilitated the shipment of material to U.S. allies for that effort. No directives of this designation have appeared in subsequent *CFR* Title 3 compilations.

Homeland Security Presidential Directives

In the aftermath of the September 11, 2001 terrorist attacks on the World Trade Center in New York City and the Pentagon in suburban Washington, DC, President George W. Bush established, with E.O. 13228 of October 8, 2001, the Office of

²⁴Laurence F. Schmeckebier and Roy B. Eastin, *Government Publications and Their Use*, 2nd revised edition (Washington: Brookings Institution, 1969), p. 341.

²⁵See 44 U.S.C. 1505.

²⁶See 55 Stat. 795, 796.

²⁷3 C.F.R. 1938-1943 Comp., p. 1328.

Homeland Security and the Homeland Security Council within the Executive Office of the President to assist with the planning and coordination of federal efforts to combat terrorism and maintain the domestic security of the United States. On October 29, 2001, the President issued the first instrument in a new series denominated Homeland Security Presidential Directives (HSPDs) “that shall record and communicate presidential decisions about the homeland security policies of the United States.” Additional details about the issuance of HSPDs were not immediately available, but they apparently are not being published in the *Federal Register*. The initial directive concerned the organization and operation of the Homeland Security Council. By the end of 2004, 11 of these directives had been issued.

Interpretations

Only two presidential interpretations, denominated as such, have appeared in the *Federal Register* and *CFR* Title 3 compilations. The first, dated May 20, 1942, and signed by President Roosevelt, was a clarification and interpretation of E.O. 9128 of April 13, 1942, concerning functions of the Department of State and the Board of Economic Warfare.²⁸ The second, dated November 5, 1943, was actually a letter to Attorney General Francis Biddle from President Roosevelt. It concerned the construction of E.O. 9346 of May 27, 1943, regarding the insertion in government contracts of a provision obligating signatory contractors not to discriminate against any employee or applicant for employment on account of race, creed, color, or national origin.²⁹ Neither instrument was actually a presidential directive, but both did interpret previously issued directives. Furthermore, it could be argued that the President might have asked the Attorney General to prepare and issue these interpretations on his behalf, but apparently wished to offer his own viewpoint in these two instances.³⁰

Letters on Tariffs and International Trade

Presidential letters on tariffs and international trade have appeared in the *Federal Register* and the *CFR* since the beginning of their publication. The earliest, dated March 20, 1936, and addressed to the Secretary of the Treasury, directs the continuation of duties on imported goods produced by certain specified countries.³¹ Indeed, the Secretary of the Treasury appears to be the recipient of all such published letters appearing in *CFR* Title 3 compilations through 1978. The last such letter to date to appear in these compilations was sent jointly to the Speaker of the House and the President Pro Tempore of the Senate on January 4, 1979. Presidential letters and memoranda on matters other than tariffs and international trade are sometimes

²⁸Ibid., 1938-1943 Comp., pp. 1329-1330.

²⁹Ibid., 1943-1948 Comp., p. 1084.

³⁰The published legal interpretations of the Attorneys General appear in periodical volumes of the *Official Opinions of the Attorney General of the United States* for the years 1789-1974 and in the succeeding *Opinions of the Office of Legal Counsel of the United States Department of Justice* for the years 1977 to date.

³¹See 3 C.F.R., 1936-1938 Comp., p. 419.

denominated as administrative orders and appear as such in *CFR* Title 3 compilations (see above).

Military Orders

CFR Title 3 compilations for the 1938-1943 and 1943-1948 periods contain the texts of 12 presidential directives denominated as military orders.³² The first of these was issued on July 5, 1939, and the last on October 18, 1948. Ten of them bear the signature of President Roosevelt; the other two were signed by President Truman. These directives appear to have been issued by the President in conjunction with the execution of his duties as Commander-in-Chief and pertain to matters concerning armed forces administration and personnel. Indeed, half of them bear the Commander-in-Chief title below the President's signature. Moreover, while all of them make reference to "the authority vested in me as President of the United States and as Commander-in-Chief of the Army and Navy of the United States," two also cite a specific Article of War and six also cite explicit statutory authority for their issuance. No directives of this designation were subsequently produced in the *Federal Register* or *CFR* Title compilations until November 2001, when President George W. Bush issued a controversial military order on the detention, treatment, and trial, by military tribunals, of noncitizens alleged to be terrorists.³³

National Security Instruments

Shortly after the creation of the National Security Council (NSC) in 1947, supporting staff began producing four types of policy papers: basic comprehensive policy statements on a broad variety of national security problems, together with pertinent political, economic, and military implementation strategies; situation profiles of large geographic areas or specific countries; assessments of mobilization, arms control, atomic energy, and other functional matters; and organizational statements on NSC, foreign intelligence, and internal security structure and activities. The initial products in the series reportedly were of the geographical type; the first comprehensive policy statement was completed and given NSC approval in November 1948.³⁴

The early NSC policy papers were initiated by the council's members, executive secretary, and supporting staff. Some ideas were also drawn from studies and reports prepared by the State-Army-Navy-Air Force Coordinating Committee, which was subsequently dissolved in 1949. The Department of State "was the most important single source of project requests, with the Defense Department a close second." Moreover, the early council papers were drafted primarily by the policy planning staff of the Department of State.³⁵ Some of these papers came before the NSC for

³²See *Ibid.*, 1938-1943 Comp., pp. 1306-1308; *Ibid.*, 1943-1948 Comp., pp. 1074-1075.

³³*Federal Register*, vol. 66, Nov.16, 2001, pp. 57833-57836.

³⁴Stanley L. Falk, "The National Security Council Under Truman, Eisenhower, and Kennedy," *Political Science Quarterly*, vol. 79, Sept. 1964, pp. 409-410.

³⁵*Ibid.*; Sidney W. Souers, "Policy Formulation for National Security," *American Political* (continued...)

information or served solely as a basis for discussion. However, others, containing policy recommendations, eventually reached the President. His signature indicated approval of the proposed policy.³⁶ Also, according to the first NSC executive secretary, if implementing legislation was required for the new policy, it was prepared by the appropriate department(s) and cleared in the usual way through the Bureau of the Budget before submission to Congress.³⁷ Nonetheless, a new type of presidential directive was in the making. By the time President Dwight D. Eisenhower took office, approximately 100 NSC papers mandated operative policy.³⁸

With each succeeding President, national security instruments of varying denominations and character evolved from the NSC policy papers. In general, they were not required to be published in the *Federal Register*, were usually security classified at the highest level of protection, and were available to the public after a great many years had elapsed, usually at the official library of the President who had approved them. Many of the more recent ones remain officially secret. The national security instruments of the past several administrations are briefly profiled.

NSC Policy Papers. The production of NSC policy papers continued under President Eisenhower. Almost any official in the NSC system, from the President on downward, could suggest topics for policy papers. In response, a preliminary staff study might be prepared within the NSC Planning Board, a new body composed of assistant secretary-level officers representing agencies having statutory or presidentially designated membership on the council. A first draft, drawn from the preliminary staff study, would be produced by the agency having primary policy interest, followed by various reviews, revisions, and, ultimately, presentation to the President. A new component of the NSC policy papers during this period was a “financial appendix” indicating the fiscal implications of proposed policy.³⁹ The sequential numbering system for NSC papers that had been begun by the Truman Administration was continued by the Eisenhower Administration. About 270-300 NSC policy papers were accounted for at the end of President Eisenhower’s second term. Many of them went through major revisions after their initial issuance, some undergoing three or four such overhauls. Indeed, in their preparations for their successors, Eisenhower Administration officials updated almost every operative NSC paper, approving no fewer than 18 revamped policies during Eisenhower’s last month in office.⁴⁰

³⁵(...continued)

Science Review, vol. 43, June 1949, pp. 539-540.

³⁶Falk, “The National Security Council Under Truman, Eisenhower, and Kennedy,” pp. 410-411.

³⁷ Souers, “Policy Formulation for National Security,” p. 541.

³⁸Robert Cutler, “The Development of the National Security Council,” *Foreign Affairs*, vol. 34, Apr. 1956, p. 449.

³⁹Falk, “The National Security Council Under Truman, Eisenhower, and Kennedy,” pp. 421-422; Cutler, “The Development of the National Security Council,” p. 450.

⁴⁰I. M. Destler, “The Presidency and National Organization,” in Norman A. Graebner, ed., *The National Security: Its Theory and Practice, 1945-1960* (New York: Oxford University Press, 1961), pp. 10-11. (continued...)

National Security Action Memoranda. During the Presidency of John F. Kennedy, NSC policy papers were superseded by a new type of instrument denominated National Security Action Memoranda (NSAM). Their generation began with a Cabinet official or a senior presidential assistant. This manager coordinated development of a draft position paper with other responsible individuals, often through the use of ad hoc interdepartmental working groups. Fiscal considerations were integrated into the body of the document and no longer appeared in a separate “financial appendix.” Discussion of and debate over the final text continued all the way to and into the Oval Office. Once the President approved the recommendations of the position paper, his decision was recorded by responsible agency or NSC staff in a brief NSAM.⁴¹ President Lyndon B. Johnson largely continued these arrangements, and approximately 370 NSAMs were produced during the Kennedy-Johnson years.

National Security Study Memoranda and National Security Decision Memoranda. When Richard Nixon became President, he appointed Henry Kissinger as his national security adviser. Kissinger recruited a substantial and influential NSC staff, and they produced national security position papers which were designated National Security Study Memoranda (NSSM). They were developed through the use of various interdepartmental working groups composed of high level representatives from pertinent agencies.⁴² Beginning with a study answering 26 questions on Vietnam, multiple NSSMs were immediately assigned.⁴³ During his first hundred days, Kissinger reportedly called for the preparation of 55 such study memoranda, with a total of 85 inaugurated in 1969, another 26 initiated in 1970, and 27 apportioned during the first nine months of 1971.⁴⁴

The NSSMs were among the resources used by the President when determining national security policy, which he would express in National Security Decision Memoranda (NSDM). However, according to a Kissinger biographer, “the most important decisions were made without informing the bureaucracy, and without the use of NSSMs or NSDMs.”⁴⁵ Both types of instruments continued to be produced during the presidential tenure of Gerald Ford. Almost 250 NSSMs were generated during the Nixon-Ford years, and, perhaps more important, at least 318 presidentially approved NSDMs were issued.

⁴⁰(...continued)

Press, 1986), p. 239.

⁴¹ Falk, “The National Security Council Under Truman, Eisenhower, and Kennedy,” pp. 430-431.

⁴²John P. Leacacos, “Kissinger’s Apparatus,” *Foreign Policy*, Winter 1971-1972, pp. 5-6; I. M. Destler, *Presidents, Bureaucrats, and Foreign Policy* (Princeton, NJ: Princeton University Press, 1974), pp. 132-142.

⁴³The text of NSSM-1 appears in *Congressional Record*, vol. 118, May 10, 1972, pp. 16748-16836.

⁴⁴Leacacos, “Kissinger’s Apparatus,” p. 13.

⁴⁵Seymour M. Hersh, *The Price of Power: Kissinger in the Nixon White House* (New York: Summit Books, 1983), p. 35.

Presidential Review Memoranda and Presidential Directives. The presidential national security studies and dicta emanating from the NSC system during the administration of President Jimmy Carter were called Presidential Review Memoranda (PRM) and Presidential Directives (PDs). Approximately 30 PRMs reportedly “were issued in the first half of 1977, over half of them during the President’s first week in office.”⁴⁶ President Carter issued at least 54 PDs during his tenure.⁴⁷

National Security Study Memoranda and National Security Decision Directives. President Ronald Reagan designated his instruments in the national security series as National Security Study Memoranda (NSSM) and National Security Decision Directives (NSDD). As of August 1988, at least 298 NSDDs had been issued by President Reagan.⁴⁸

National Security Reviews and National Security Directives. National security studies apparently were called National Security Reviews (NSRs) by President George H. W. Bush, and his policy instruments were denominated as National Security Directives (NSDs).⁴⁹ While the number of NSDs issued by President Bush remains officially secret, an October 21, 1991, directive concerning single scope security background investigations was designated NSD-63.

Presidential Review Directives and Presidential Decision Directives. NSC executive secretary William H. Itoh indicated that, for President William Clinton, Presidential Review Directives (PRDs) were the equivalent of the NSSMs of the Reagan Administration and the NSRs of the Bush Administration. Also, the Presidential Decision Directives (PDDs) of the Clinton Administration were equivalent to the NSDDs of the Reagan Administration and the NSDs of the George H. W. Bush Administration.⁵⁰ While the number of PDDs issued by President Clinton remains officially secret, his directive of February 24, 2000, concerning the strengthening of criminal justice systems in support of peace operations, was designated PDD-71. Also, between January 25, 1994, and September 19, 1996, President Clinton signed eight separate and distinct PDDs arising from National Science and Technology Council deliberations.⁵¹

⁴⁶Philip A. Odeen, “Organizing for National Security,” *International Security*, vol. 5, Summer 1980, p. 114.

⁴⁷U.S. General Accounting Office, *National Security: The Use of Presidential Directives to Make and Implement U.S. Policy*, GAO Report GAO/NSIAD-89-31 (Washington: Dec. 1988), p. 4.

⁴⁸*Ibid.*, pp. 4-5.

⁴⁹U.S. General Accounting Office, *National Security: The Use of Presidential Directives to Make and Implement U.S. Policy*, GAO Report GAO/NSIAD-92-72 (Washington: Jan. 1992).

⁵⁰Letter to the author, May 5, 1993, with accompanying full text of PDD-1 establishing the Clinton Administration’s national security instruments.

⁵¹Established by E.O. 12881 of Nov. 23, 1993, the National Science and Technology Council, composed of relevant department and agency heads, functioned as a forum for (continued...)

National Security Presidential Directives. Although President George W. Bush and his national security advisers have provided little detail about his directives in this series, the first such instrument, dated February 13, 2001, and approved for public release by the National Security Council staff on March 13, indicates that they are denominated National Security Presidential Directives (NSPDs) and may serve double duty for both decision and review purposes. The initial NSPD pertained to the organization of National Security Council policy and coordination subgroups. By April 2004, about 33 of these directives had been issued.

Presidential Announcements

An oral presidential directive oftentimes is captured in an announcement which records what the President has prescribed or instructed. For example, President Richard Nixon established his Advisory Council on Executive Organization in this manner, with a April 5, 1969, announcement,⁵² as did President William Clinton when he inaugurated his National Performance Review task force on March 3, 1993.⁵³ By contrast, such temporary government reform study panels were mandated on various occasions during the first half of the twentieth century and during the Reagan Administration with written charters expressed in statutes or executive orders. Such presidential announcements, as in the examples cited, often are recorded in the *Weekly Compilation of Presidential Documents*, a presidential gazette launched in the summer of 1965 and published 52 times a year. However, they do not appear in the *Federal Register* or in the *Public Papers of the Presidents of the United States*, produced by the National Archives for Presidents Herbert Hoover, Harry S. Truman, and the Chief Executives succeeding Truman.⁵⁴

Presidential Findings

Presidential findings, as such, initially appeared in the *Federal Register* and *CFR* Title 3 compilations as instruments determining that certain conditions of the Agricultural Trade Development and Assistance Act of 1954, as amended, had been satisfied and, therefore, sales of agricultural commodities could proceed. Presidential findings of this type were reproduced in *CFR* Title compilations as administrative orders.⁵⁵ In 1974, the reference to a presidential finding took on its current popular meaning when Congress adopted the so-called Hughes-Ryan amendment to the Foreign Assistance Act of that year. Set out in section 662 of the statute, it prohibited the expenditure of appropriated funds by or on behalf of the Central Intelligence Agency for intelligence activities “unless and until the President finds that each such operation is important to the national security of the United States and

⁵¹(...continued)

formulating, coordinating, and integrating science and technology policy.

⁵²See *Weekly Compilation of Presidential Documents*, vol. 5, Apr. 14, 1969, pp. 530-531.

⁵³*Ibid.*, vol. 29, Mar. 8, 1993, pp. 350-352.

⁵⁴See Warren R. Reid, “Public Papers of the Presidents,” *American Archivist*, vol. 25, Oct. 1962, pp. 435-439.

⁵⁵See 3 C.F.R., 1966-1970, pp. 1006-1008.

reports, in a timely fashion, a description and scope of such operation to the appropriate committees of Congress.”⁵⁶ The requirements of this provision subsequently went through a series of transformations, the vestiges of which were recently codified in the Intelligence Authorization Act, Fiscal Year 1991, but this act still requires a written presidential finding satisfying certain conditions set forth in the statute for covert actions to occur.⁵⁷ Such presidential findings, which are security classified, are to be “reported to the intelligence committees as soon as possible” after being approved “and before the initiation of the covert action authorized by the finding.” Thus, these findings are not published in the *Federal Register* or reproduced in *CFR* Title 3 compilations.

Presidential Reorganization Plans

Congress first authorized the President to propose plans for the reorganization of the executive departments and agencies in a 1939 statute.⁵⁸ The objective of such reconfigurations was to achieve efficiency and economy in administration. A presidential reorganization plan, submitted to Congress, became effective after 60 days unless both houses of Congress adopted a concurrent resolution of disapproval. Such reorganization authority, renewed periodically a dozen times between 1945 and 1984, with slight variations remained available to the President for nearly half a century. At different junctures, qualifications were placed upon its exercise. For example, reorganization plans could not abolish or create an entire department, or deal with more than one logically consistent subject matter. Also, the President was prohibited from submitting more than one plan within a 30-day period and was required to include a clear statement on the projected economic savings expected to result from a reorganization.

Reorganization plans not disapproved by Congress were published in the *Federal Register* prior to being implemented, and also in the *Statutes at Large* and the *CFR* (Title 3) for the year in which they became effective.

Modification of the President’s reorganization plan authority was made necessary in 1983, when the Supreme Court effectively invalidated continued congressional reliance upon a concurrent resolution to disapprove a proposed plan.⁵⁹ Under the Reorganization Act Amendments of 1984, several significant changes were made in the reorganization plan law. Any time during the period of 60 calendar days of continuous session of Congress following the submission of a reorganization plan, the President might make amendments or modifications to it. Within 90 calendar days of continuous session of Congress following the submission of a reorganization plan, both houses must adopt a joint resolution (which, unlike a concurrent resolution, becomes law with the President’s signature) for a plan to be approved. This amendment, however, continued the President’s reorganization plan

⁵⁶88 Stat. 1795, at 1804.

⁵⁷See 105 Stat. 429, at 442.

⁵⁸53 Stat. 561.

⁵⁹See *INS v. Chadha*, 462 U.S. 919 (1983).

authority only to the end of 1984, when it automatically expired.⁶⁰ Although Presidents Ronald Reagan, George H. W. Bush, and William Clinton did not request the reestablishment of reorganization plan authority, President George W. Bush indicated an interest in pursuing its restoration in his FY2003 budget message.

Proclamations

Proclamations are also one of the oldest types of presidential directive, the earliest appearing in October 1789, when President Washington declared Thursday, November 26, to be “a day of public thanksgiving.” Like most proclamations, it affected primarily the activities and interests of private individuals and, like many proclamations, it was at best hortative. However, some proclamations, declaring emergency situations and invoking the President’s constitutional authority as Commander-in-Chief or powers statutorily delegated to him by Congress to respond to exigencies, were of a more profound character. An early proclamation, promulgated by President Washington on August 7, 1794, exemplified this latter use of such instruments. Responding to rebellious activities in western Pennsylvania and Virginia in protest of a federal excise tax on whiskey, the President called forth the militia and personally took command. This was done pursuant to statutory arrangements.⁶¹

The issuance of proclamations by the President followed a tradition established by British monarchs and practiced by royal governors in the North American colonies and by their elected successors after the Revolution.⁶² Under the new federal government, the Department of State was responsible for preserving presidential proclamations. Numerous examples of the early proclamations may be found in Richardson’s *A Compilation of the Messages and Papers of the Presidents*. In 1907, the Department of State began to assign identification numbers to both proclamations and executive orders, making a determined, but not totally successful, effort to include previously issued instruments of both types in this accounting.⁶³ The Federal Register Act of 1935 effectively required that both proclamations and executive orders be published in the *Register*.⁶⁴ The first proclamation so published was Proc. 2161 of March 19, 1936, concerning contributions to the American Red Cross for flood relief. Beginning with this instrument, all subsequent presidential proclamations have been reproduced in *CFR* Title 3 compilations. For the past 20 years, proclamations have been largely hortative, often being used to declare commemorative occasions. Regulations governing the preparation, presentation, filing, and publication of proclamations and executive orders are prescribed in E.O. 11030, as amended.

⁶⁰See 5 U.S.C. 901-912.

⁶¹See 1 Stat. 264-265.

⁶²See Hans Aufricht, “Presidential Proclamations and the British Tradition,” *Journal of Politics*, vol. 5, May 1943, pp. 142-161.

⁶³Schmeckebier and Eastin, *Government Publications and Their Use*, p. 341.

⁶⁴See 44 U.S.C. 1505.

Regulations

CFR Title 3 compilations for the 1938-1943 and 1943-1948 periods contain the texts of nine administrative documents denominated as regulations.⁶⁵ The first of these was issued on September 6, 1939, and the last on September 19, 1945. Eight of them bear the signature of President Roosevelt; another one, signed by three commissioners of the U.S. Civil Service Commission, indicates it was approved by President Truman. With the exception of one brief extension item and another relying upon an executive order, all of these documents cite explicit statutory authority for their issuance. The Roosevelt items largely pertained to the allocation of defense materials to nations of Western Europe engaged in war with Germany. The regulations approved by Truman concerned within-grade salary advancements for federal employees. While earlier examples of Presidents issuing regulations can be found, no directives of this designation have appeared in subsequent *CFR* Title 3 compilations.⁶⁶ Current regulations governing the preparation, presentation, filing, and publication of executive orders and proclamations are prescribed in an executive order, E.O. 11030, as amended. Agency regulations appear in other titles of the *CFR*.

Source Tools

Presidential directives published in the *Federal Register* are reproduced in *CFR* Title 3 compilations. Single volume compilations have been published for the 1936-1938, 1938-1943, 1943-1948, 1949-1953, 1954-1958, 1959-1963, 1964-1965, 1966-1970, and 1971-1975 periods. Annual *CFR* Title 3 volumes have been published for the subsequent years. Current full text versions of many primary proclamations and executive orders, as amended, may be found in the periodically produced *Codification of Presidential Proclamations and Executive Orders* prepared by the Office of the Federal Register, National Archives and Records Administration.

More recent executive orders, proclamations, and presidential directives, dating from 1994, may be found at the Office of Federal Register website at [http://www.archives.gov/federal_register/presidential_documents/website_guide.html]. The first 8,030 executive orders (1862-1938) are very briefly profiled in one volume and indexed in a companion volume of *Presidential Executive Orders*, prepared by the Historical Records Survey, New York City, under the editorship of Clifford L. Lord, and published by Archives Publishing Company of New York in 1944.

Some unclassified presidential national security directives may be found at the Federation of American Scientists website at [<http://www.fas.org/irp/offdocs/direct.htm>]. For a published compilation, see Christopher Simpson, ed., *National Security Directives the Reagan & Bush Administrations* (Boulder, CO: Westview,

⁶⁵See 3 C.F.R., 1938-1943 Comp., pp. 1309-1319; *Ibid.*, 1943-1948 Comp., pp. 1076-1077.

⁶⁶James D. Richardson's *A Compilation of the Messages and Papers of the Presidents*, for example, contains executive orders of June 10, 1921 (Alaskan railroad townsites), Sept. 21, 1921 (budget preparation and submission), and Apr. 4, 1924 (commercial research of government officials in foreign lands), setting regulations, as well as an undesignated instrument of Nov. 8, 1921 (budget preparation and submission).

1995). The Homeland Security Presidential Directives of the Bush Administration may be found in the *Weekly Compilation of Presidential Documents* and on the White House website at [<http://www.whitehouse.gov>].