Executive Order 6102

Executive Order 6102 is an Executive Order signed on April 5, 1933 by U.S. President Franklin D. Roosevelt "forbidding the Hoarding of Gold Coin, Gold Bullion, and Gold Certificates" by U.S. citizens.

POSTMASTER: PLEASE POST IN A CONSPICUOUS PLACE .- JAMES A. FARLEY, Postmaster Gameral

UNDER EXECUTIVE ORDER OF THE PRESIDENT

Issued April 5, 1933

all persons are required to deliver

ON OR BEFORE MAY 1, 1933

all GOLD COIN, GOLD BULLION, AND GOLD CERTIFICATES now owned by them to a Federal Reserve Bank, branch or agency, or to any member bank of the Federal Reserve System.

Executive Order

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For Further Information Comult Your Local Bank

GOLD CERTIFICATES may be identified by the words "GOLD CERTIFICATE" appearing thereon. The serial number and the Treasury seal on the face of a GOLD CERTIFICATE are printed in YELLOW. Be careful not to confuse GOLD CERTIFICATES with other issues which are redeemable in gold but which are not GOLD CERTIFICATES. Federal Reserve Notes and United States Notes are

"redeemable in gold" but are not "GOLD CERTIFICATES" and are not required to be surrendered

Special attention is directed to the exceptions allowed under Section 2 of the Executive Order

CRIMINAL PENALTIES FOR VIOLATION OF EXECUTIVE ORDER \$10,000 fine or 10 years imprisonment, or both, as provided in Section 9 of the order

Secretary of the Treasury.

S. Government Printing Office: 1555-2-15564

Executive Order 6102 required U.S. citizens to deliver on or before May 1, 1933 all but a small amount of gold coin, gold bullion, and gold certificates owned by them to the Federal Reserve, in exchange for \$20.67 per troy ounce. Under the Trading With the Enemy Act of October 6, 1917, as amended on March 9, 1933, violation of the order was punishable by fine up to \$10,000 (\$167,700 if adjusted for inflation as of 2010) or up to ten years in prison, or both. Most citizens who owned large amounts of gold had it transferred to countries such as Switzerland. [citation needed]

Order 6102 specifically exempted "customary use in industry, profession or art"—a provision that covered artists, jewelers, dentists, and sign makers among others. The order further permitted any person to own up to \$100 in gold coins (\$1,677 if adjusted for inflation as of 2010; a face value equivalent to 5 troy ounces (160 g) of Gold valued at about \$6200 as of 2010). The same paragraph also exempted "gold coins having recognized special value to collectors of rare and unusual coins." This protected gold coin collections from legal seizure and likely melting.

The price of gold from the Treasury for international transactions was thereafter <u>raised</u> to \$35 an ounce (\$587 in 2010 dollars). The resulting profit that the government realized funded the <u>Exchange Stabilization Fund</u> established by the <u>Gold Reserve Act</u> in 1934.

The regulations prescribed within Executive Order <u>6102</u> were modified by Executive Order <u>6111</u> of April 20, 1933, both of which were ultimately revoked and superseded by Executive Orders <u>6260</u> and 6261 of August 28 and 29, 1933, respectively. [11]

Invalidation and reissue

There was only one prosecution under the order, and in that case the order was ruled invalid by federal judge John M. Woolsey, on the technical grounds that the order was signed by the President, not the Secretary of the Treasury as required. [2]

The circumstances of the case were that a New York attorney, Frederick Barber Campbell had on deposit at Chase National over 5,000 troy ounces (160 kg) of gold. When Campbell attempted to withdraw the gold Chase refused and Campbell sued Chase. A federal prosecutor then indicted Campbell on the following day (September 27, 1933) for failing to surrender his gold. Ultimately the prosecution of Campbell failed but the authority of federal government to seize gold was upheld.

The case forced the Roosevelt administration to issue a new order under the signature of the Secretary of the Treasury, <u>Henry Morgenthau</u>, <u>Jr.</u>, which was in force for a few months until the passage of the <u>Gold Reserve Act</u> on January 30, 1934.

Abrogation and subsequent events

The <u>Gold Reserve Act</u> of 1934 made <u>gold clauses</u> unenforceable, and changed the value of the dollar in gold from \$20.67 to \$35 per ounce. This price remained in effect until August 15, 1971 when President <u>Richard Nixon</u> announced that the United States would no longer convert dollars to gold at a fixed value, thus abandoning the <u>gold standard</u> for foreign exchange (see <u>Nixon Shock</u>).

The limitation on gold ownership in the U.S. was repealed after President <u>Gerald Ford</u> signed a bill legalizing private ownership of gold coins, bars and certificates by an act of Congress codified in <u>Pub.L.</u> 93-373 which went into effect December 31, 1974. P.L. 93-373 did not repeal the <u>Gold Repeal Joint Resolution</u>, which made unlawful any contracts which specified payment in a fixed amount of money *or* a fixed amount of gold.

That is, contracts remained unenforceable if they used gold monetarily rather than as a commodity of trade. However, Act of Oct. 28, 1977, Pub. L. No. 95-147, § 4(c), 91 Stat. 1227, 1229 (originally codified at 31 U.S.C. § 463 note, recodified as amended at 31 U.S.C. § 5118(d)(2)) amended the 1933 Joint Resolution and made it clear that parties could again include so-called gold clauses in contracts formed after 1977. [8]

Safe deposit box seizures

According to a folk rumor on the internet President Roosevelt ordered all the safe deposit boxes in the country seized and searched for gold by an I.R.S. official. A typical example reads:

By Executive Order Of The President of The United States, March 9, 1933.

By virtue of the authority vested in me by Section 5 (b) of the Act of October 6, 1917, as amended by Section 2 of the Act of March 9, 1933, in which Congress declared that a serious emergency exists, I as President, do declare that the national emergency still exists; that the continued private hoarding of gold and silver by subjects of the United States poses a grave threat to the peace, equal justice, and well-being of the United States; and that appropriate measures must be taken immediately to protect the interests of our people.

Therefore, pursuant to the above authority, I hereby proclaim that such gold and silver holdings are prohibited, and that all such coin, bullion or other possessions of gold and silver be tendered within fourteen days to agents of the Government of the United States for compensation at the official price, in the legal tender of the Government.

All safe deposit boxes in banks or financial institutions have been sealed, pending action in the due course of the law. All sales or purchases or movements of such gold and silver within the borders of the United States and its territories and all foreign exchange transactions or movements of such metals across the border are hereby prohibited.

Your possession of these proscribed metals and/or your maintenance of a safe deposit box to store them is known by the government from bank and insurance records. Therefore, be advised that your vault box must remain sealed, and may only be opened in the presence of an agent of the Internal Revenue Service.

By lawful order given this day, the President of the United States.

Franklin Roosevelt – March 9, 1933

Examination of the actual Executive Order as issued shows that this text never appears in it. In fact, safe deposit boxes held by individuals were not forcibly searched or seized under the order, and the few prosecutions that occurred in the 1930s for gold hoarding were executed under different statutes. One of the few such cases occurred in 1936 when the safe deposit box of Zelik Josefowitz, who was not a U.S. citizen, containing over 10,000 troy ounces (310 kg) of gold was seized with a search warrant as part of a tax evasion prosecution. ^[9] In 1933 approximately 500 tonnes of gold were turned in to the Treasury "voluntarily" at the exchange rate of \$20.67 per troy ounce. ^[10]

The U.S. Treasury came into possession of a large number of safe deposit boxes due to bank failures. During the 1930s over 3,000 banks failed and the contents of their safe deposit boxes were remanded to the custody of the Treasury. If no one claimed the box it remained in the possession of the Treasury. As of October, 1981, there were 1605 cardboard cartons in the basement of the Treasury each containing the contents of an unclaimed safe deposit box. [11]

Similar laws in other countries

In <u>Australia</u> part IV of the *Banking act 1959* allows the government to seize private citizens' gold in return for paper money where the <u>Governor-General</u> "is satisfied that it is expedient so to do, for the protection of the currency or of the public credit of the Commonwealth. As of January 30 1976, this part's operation is "suspended".

See also

Gold Clause Cases

References

- 1. <u>^ Public Papers and Addresses of Franklin D. Roosevelt</u>, Volume II, The Year of Crisis, 1933, Note on page 352.
- 2. <u>http://www.time.com/time/magazine/article/0,9171,746366,00.html</u> Time Magazine, Monday, Nov. 27, 1933
- 3. <u>http://www.time.com/time/magazine/article/0,9171,882486,00.html</u> Time Magazine, Monday, Oct. 09, 1933
- 4. <u>^ http://thomas.loc.gov/cgi-bin/bdquery/z?d093:SN02665:@@@L&summ2=m&|TOM:/bss/d093query.html|</u>
- 5. <u>http://www.fdic.gov/regulations/laws/rules/5000-200.html</u>
- 6. <u>^ Gold Repeal Joint Resolution</u>, 48 Stat. 112, Chapter 48, H.J.Res. 192, enacted June 5, 1933
- 7. <u>^ Gold Repeal Joint Resolution</u> as cited in Norman v. Baltimore & Ohio Railroad Co., 294 U.S. 240 (1935)
- 8. ^[1]
- 9. <u>^ Josefowitz Gold</u>, *Time Magazine*, April, 1936.
- 10. ^ Time Magazine, Monday, Nov. 27, 1933.
- 11. \(\triangle Wall Street Journal\), October 15, 1981.
- 12. <mark>^ [2]</mark>
- 13. ^ [3]

External links



- PDF of Executive Order 6102 distributed by the Postmaster General.
- Text of Executive Order 6102 from The American Presidency Project.
- 1933 **Audio** of FDR's Banking Crisis Fireside Chat

$[\underline{\text{hide}}]_{\mathbf{v}} \Box \cdot \Box \underline{\mathbf{d}} \Box \cdot \Box \underline{\text{eNew Deal}}$

Causes and legacy

Great Depression • New Deal Coalition • Brain Trust • American Liberty League • Criticism

Emergency Banking Act • Economy Act • Agricultural Adjustment Act • Civilian Conservation

Corps-CCC • Civil Works Administration • Communications Act • Executive Order 6102 • Homeowners Refinancing Act • Farm Credit Administration • Federal Deposit Insurance

Corporation-FDIC • Federal Emergency Relief Administration • Frazier-Lemke Farm Bankruptcy

Act • Glass-Steagall Act • National Industrial Recovery Act • National Housing Act • National

Recovery Administration • Public Works Administration-PWA • Public Works of Art Project •

Reciprocal Tariff Act • Railroad Retirement Act • Securities Act • Tennessee Valley Authority-TVA

Second New Deal Works Progress Administration-WPA • Federal Art Project • Federal Energy Regulatory

Commission • Federal Project Number One • Farm Security Administration • Judiciary

Reorganization Bill • National Bituminous Coal Conservation Act • National Labor Relations Board

(Act) • Rural Electrification Act • Rural Electrification Administration • Social Security • United

States Housing Authority

Individuals

Franklin D. Roosevelt • Harold L. Ickes • Harry Hopkins • Henry Morgenthau, Jr. • Huey Long • Herbert Hoover • Robert F. Wagner

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An **executive order** in the <u>United States</u> is an order issued by the <u>President</u>, the head of the <u>executive branch</u> of the <u>federal government</u>. Executive Orders are generally orders to staff of the executive branch and not to the citizens of the country. Article I, Section 1 of the US Constitution specifically reserves all federal legislative authority to Congress, not the president. In other countries, executive edicts can serve a legislative function. Such edicts may be known as <u>decrees</u>, or <u>orders-in-council</u>.

Executive orders may also be issued at the <u>state</u> level by a state's <u>Governor</u> or at the local level by the city's <u>Mayor</u>. The term "Executive Orders" and the numbered list of them were created in 1907, but U.S. Presidents have issued instructions that are retroactively labeled Executive Orders since 1789, usually to guide officers and agencies of the Executive branch in managing the operations within the Federal Government itself. Executive orders can have the full force of law if they are made in pursuance of certain <u>Acts of Congress</u>, some of which specifically delegate to the President some degree of discretionary power (<u>delegated legislation</u>). Other Executive Orders not authorized by Congress are claimed to have their authority for issuances based in a power inherently granted to the Executive by the Constitution. It is these cited or perceived justifications made by a President when authoring Executive Orders that have come under criticism for exceeding Executive authority and have been subject to legal proceedings even at various times throughout U.S. history concerning the legal validity or justification behind an order's issuance.

Basis in U.S. Constitution

Although there is no <u>Constitutional</u> provision or statute that explicitly permits Executive Orders, there is a vague grant of "executive power" given in <u>Article II</u>, Section 2, <u>Clause 1</u> of the Constitution, and furthered by the declaration "take Care that the Laws be faithfully executed" made in Article II, Section 3, <u>Clause 4</u>, that has been construed as justification for the legal weight of Executive orders. Presidents have used this Constitutional reasoning as a basis for an authorization that allows for the issuance of Executive orders as part of carrying out the President's sworn duties, ^[1] the intent typically being to help direct officers of the US Executive carry out

their delegated duties as well as for compliance with current statute in the regulating of normal operations of the Federal Government -- in spite of the fact, <u>Article I, Clause 1</u> specifically grants all federal legislative authority to the United States Congress:

"All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

For this reason, many Executive Orders cite authorization from specific acts of Congress rather than vague or perceived powers somehow granted to the Executive without explicitly saying so in the Constitution. Those Executive Orders that are not authorized through Congressional acts frequently contain some other purported justification such as the reference above to "executive power" in Article II, Section 1. These justifications have largely gone untested by the Courts for their validity however.

The President does, of course, have the authority to issue orders to officers and employees of the executive branch and to penalize non-compliance by removing such officers and employees from office. This is much the same power that the president of a private company has over his employees to dismiss them if they do not follow his instructions. Such authority may be proper and Constitutional provided that the President does not order executive branch employees to carry out unlawful or unconstitutional acts. [2]

Other types of orders issued by 'the Executive' are generally classified simply as administrative orders rather than Executive Orders. [3] These are typically:

- Presidential Determination
- (Presidential) Memorandum
- (Presidential) Notice

Presidential directives are considered a form of executive order issued by the President of the United States with the advice and consent of a major agency or department found within the Executive branch of government. [4] Some types of Directives are:

- National Security Directives
- Homeland Security Presidential Directives (presidential decision directives)

History and use

Until the early 1900s, the term "Executive Orders" had not even been invented. Presidential instructions to executive branch staff that would later be characterized as "Executive Orders" went mostly unannounced and undocumented, seen only by the agencies to which they were directed. However, the <u>Department of State</u> instituted a <u>numbering scheme</u> for Executive Orders in 1907, starting retroactively with an <u>order issued on October 20, 1862</u>, by President <u>Abraham Lincoln</u>. The documents that later came to be known as "Executive Orders" probably gained their name from this document, captioned "Executive Order Establishing a Provisional Court in Louisiana." [3]

Until the 1950s, there were no rules or guidelines outlining what the president could or could not do through an Executive Order other than, of course, the <u>US Constitution</u> which reserved all federal legislative authority to Congress. This issue was paramount in the <u>Supreme Court</u> ruling in <u>Youngstown Sheet & Tube Co. v. Sawyer</u>, 343 US 579 (1952) that <u>Executive Order 10340</u> from President <u>Harry S. Truman</u> placing all <u>steel mills</u> in the country under federal control was invalid because it attempted to make law, rather than clarify or act to further a law put forth by the Congress or the Constitution. Presidents since this decision have generally been careful to cite which specific laws under which they are acting when issuing new Executive Orders.

Despite the provisions of Article I, Section 1 of the US Constitution that reserves all federal legislative authority to congress, Presidents have increasingly used Executive Orders as if they were equivalent to an act of Congress. Presidents have even issued Executive Orders to start entire wars despite the fact that Article I, Section 8 of the US Constitution specifically reserves to Congress the sole authority to declare war.

Wars begun by Executive Order include the 1999 Kosovo War during Bill Clinton's second term in office. However, all such wars have had authorizing resolutions from Congress. The extent to which the president may exercise military power independently of Congress and the scope of the War Powers Resolution remain unresolved constitutional issues, although all Presidents since its passage have complied with the terms of the Resolution while maintaining that they are not constitutionally required to do so. In fact, the US Constitution grants no war-making powers whatsoever to the President, only to Congress. Without the War Powers Resolution or other authorizing resolutions from Congress, Presidents lack any Constitutional war-making powers despite their far-reaching claims to the contrary. Congress has been notably unwilling to press this issue for political reasons, especially when a President has already ordered troops into battle and they have obeyed that order.

Criticisms

Critics have accused presidents of abusing executive orders, of using them to make laws without Congressional approval, and of moving existing laws away from their original mandates. Large policy changes with wideranging effects have been effected through executive order, including the <u>integration</u> of the <u>armed forces</u> under Harry Truman and the <u>desegregation</u> of <u>public schools</u> under <u>Dwight D. Eisenhower</u>.

One extreme example of an executive order is <u>Executive Order 9066</u>, where <u>Franklin D. Roosevelt</u> delegated military authority to remove any or all people (used to target specifically <u>Japanese Americans</u> and <u>German Americans</u>) in a military zone. The authority delegated to <u>General John L. DeWitt</u> subsequently paved the way for all Japanese-Americans to be sent to <u>internment camps</u> for the duration of World War II.

Presidents, however, often cite executive order as the only way to clarify laws passed through Congress that required vague wording to please all parties involved in their creation. In this regard, when the political process of adopting congressional legislation would prevent US ratification of/accession to treaties of importance, Presidents have issued executive orders calling upon federal agencies, such as the US Environmental Protection Agency (EPA) and the United States Department of Energy (DOE), to instead issue administrative regulations. Presidents, furthermore, may use an executive order or a presidential memorandum to ensure that federal courts abide by international tribunal rulings interpreting the provisions of an international treaty.

[edit] Legal conflicts

To date, U.S. courts have overturned only two executive orders: the aforementioned Truman order, and a 1996 order issued by President Clinton that attempted to prevent the U.S. government from contracting with organizations that had <u>strikebreakers</u> on the payroll. Congress may overturn an executive order by passing legislation in conflict with it or by refusing to approve funding to enforce it. In the former, the president retains the power to veto such a decision; however, the Congress may override a veto with a two-thirds majority to end an executive order. It has been argued that a Congressional override of an executive order is a nearly impossible event due to the <u>supermajority</u> vote required and the fact that such a vote leaves individual lawmakers very vulnerable to political criticism. [7]

Governors' executive orders





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Executive orders as issued by the <u>governors</u> of the <u>states</u> are not laws, but do have the same binding nature. Executive orders are usually based on existing constitutional or statutory powers of the Governor and do not require any action by the state legislature to take effect. [citation needed]

Executive orders may, for example, demand budget cuts from <u>state government</u> when the <u>state legislature</u> is not in session, and economic conditions take a <u>downturn</u>, thereby decreasing tax revenue below what was forecast when the budget was approved. Depending on the <u>state constitution</u>, a governor may specify by what percentage each <u>government agency</u> must reduce by, and may exempt those that are already particularly underfunded, or cannot put long-term expenses (such as <u>capital expenditures</u>) off until a later <u>fiscal year</u>. The governor may in many states also call the legislature into <u>special session</u>. <u>[citation needed]</u>

There are also other uses for gubernatorial executive orders. In 2007 for example, the <u>governor of Georgia</u> made an executive order for all of <u>its state agencies</u> to reduce water use during a major drought. This was also demanded of <u>its counties</u>' water systems, however it is unclear whether this would have the force of law. [citation needed]

Presidential proclamation



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Proclamations generally are defined as "The act of causing some state matters to be published or made generally known. A written or printed document in which are contained such matters, issued by proper authority; as the president's proclamation, the governor's, the mayor's proclamation." [8]

In the United States, a president's proclamation has not the force of law, unless when authorized by congress; such as if congress were to pass an act, which would take effect upon the happening of a contingent event, which was to be declared by the president by proclamation to have happened; in this case the proclamation would give the act the force of law, which, till then, it wanted. Presidential proclamations are also frequently employed in the US to pardon persons who have been accused of crimes or misdemeanors. [citation needed]

Presidential proclamations are often dismissed as a practical presidential tool for policy making because of the perception of proclamations as largely ceremonial or symbolic in nature. However, they can be important. [citation needed]

<u>Abraham Lincoln</u>'s <u>emancipation proclamation</u> (actually consisting of two executive orders) is one of America's most famous presidential proclamations. [citation needed]

See also

- Delegated legislation
- List of United States federal executive orders
- Presidential Proclamation
- Presidential Determination
- Presidential Memorandum
- Presidential Directive

- <u>Signing statement (United States)</u>
- Order-in-Council

References

- 1. <u>^ SCOTUS</u>, <u>Mississippi v. Johnson</u>, 71 U.S. 475 (1866), The Supreme Court's decision held that the President has two kinds of task to perform: ministerial and discretionary. EOs help facilitate the execution of the Executive's ministerial duties.
- 2. <u>^ SCOTUS</u>, *Myers v. United States*, 272 U.S. 52 (1926), Majority Opinion; in which the majority decided that the President had the authority to remove an officer of the executive branch (a postmaster) unilaterally even though the approval of the Senate had been required to appoint that officer.
- 3. ^ a b Harold C. Relyea, <u>Presidential Directives: Background and Overview</u>, CRS Report for Congress #98-611, Nov. 26, 2008.
- 4. <u>^ National Security Directives</u>, San Diego State University, Presidential Documents, Retrieved 2009-12-07
- 5. <u>^</u> Gaziano, Todd F. (2001-02-21). <u>"The Use and Abuse of Executive Orders and Other Presidential Directives"</u>. *Legal Memorandum #2* (<u>Heritage Foundation</u>). http://www.heritage.org/Research/LegalIssues/LM2.cfm. Retrieved 2008-10-11.
- 6. ^ Catherine Edwards, "Emergency Rule, Abuse of Power?," *Insight on the News*, August 23, 1999, Pg. 18
- 7. <u>^</u> Harold Hongju Koh, *The National Security Constitution: Sharing Power after the Iran-Contra Affair*, 1990, pg. 118–19
- 8. <u>^ The 'Lectric Law Library</u>, Lectlaw.com., Retrieved 2010-5-11

Further reading

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- Howell, William G., *Power without Persuasion: The Politics of Direct Presidential Action*, <u>Princeton University Press</u>, 2003.
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External links

- Archive of U.S. Executive Orders
- What is an Executive Order?
- Executive Orders at The American Presidency Project, Searchable Archive of Over 3,600 Executive Orders
- Presidential Proclamations Project, University of Houston, Political Science Dept.

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