



## Presidential Proclamations: Questions and Answers

### **Q: What is a presidential proclamation?**

A: A proclamation is a kind of presidential document.<sup>1</sup> Other kinds of presidential documents include executive orders, memoranda, administrative memos, and other communications from the president.<sup>2</sup> Proclamations, like executive orders, are published in the Federal Register.<sup>3</sup> Most proclamations are used for purely ceremonial purposes, such as declaring a holiday.<sup>4</sup> Other proclamations are substantive, and usually deal with issues within the executive purview, such as tariffs, pardons, or sanctions against a foreign country.<sup>5</sup>

### **Q: How is a proclamation different from an executive order?**

A: There is no clear line between an executive order and a proclamation.<sup>6</sup> Both serve the same functions and are subject to the same checks and balances.<sup>7</sup> They are also treated rather interchangeably by courts. One significant difference is that an executive order is usually directed at people within the government (such as the members of a federal agency) whereas a proclamation is usually directed at people outside the government, such as the public.<sup>8</sup> Because of this, proclamations are legally “weaker” than executive orders, and thus are more often used for ceremonial rather than legal purposes.<sup>9</sup> A proclamation can be directed at the entire nation (e.g. when declaring a federal holiday) or at specific individuals (e.g. when granting a presidential pardon).<sup>10</sup> In that sense it is broader than the usual executive order.

### **Q: Do presidential proclamations have the force of law?**

A: Yes. Presidential proclamations have the force of law, though only with appropriate statutory backing.<sup>11</sup>

### **Q: Must proclamations be published in the Federal Register?**

A: Yes. It is mandatory that proclamations and executive orders be published in the Federal Register.<sup>12</sup> Other executive actions, such as memoranda, may be published, but it is not required.

### **Q: Can presidential proclamations be challenged in federal court?**

A: Yes. In some cases, proclamations, like executive orders, are subject to review in a federal court.<sup>13</sup>

This document was last updated September 27, 2017 and does not constitute legal advice.

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<sup>1</sup> Amy Bunk, *Federal Register 101*, The Federal Register, [https://www.federalregister.gov/uploads/2011/01/fr\\_101.pdf](https://www.federalregister.gov/uploads/2011/01/fr_101.pdf) (last visited Sept. 26, 2017)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

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<sup>6</sup> Don Duncan, *A Critical Consideration of Executive Orders: Glimmerings of Autopoeiesis in the Executive Role*, 35 VT. L. REV. 333, 355.

<sup>7</sup> *Id.*

<sup>8</sup> Staff of House Comm. on Government Operations, 85th Cong., 1st Sess., *Executive Orders and Proclamations: A Study on the Use of Presidential Powers* (Comm. Print 1957), cited in *United States v. Juarez-Escobar*, 25 F. Supp. 3d 774, 782 (W.D. Pa. 2014).

<sup>9</sup> *See* Duncan, *supra* note 8.

<sup>10</sup> *Id.*

<sup>11</sup> *Juarez-Escobar*, 25 F. Supp. 3d. at 782.

<sup>12</sup> *See* Bunk, *supra* note 1.

<sup>13</sup> *Transp. Ass'n of Am. v. FAA*, 335 U.S. App. D.C. 85, 169 F.3d 1, 8 (1999)