

Executive Orders Lesson

Unit	2 Interactions Among Branches of Government (CED p. 53)
Content	2.4 Roles and Powers of the President 2.6 Expansion of Presidential Powers
Skills	Describe political principles, institutions, processes, politics, and behaviors
Materials	Executive Orders Executive Orders Teacher Resources
Big ?s	- I thought only congress could make laws, but President Trump has used executive authority to direct the federal government's policy in many different areas including immigration and regulations on the environment. And he's not the first president to use executive orders. President Obama, before him, issued executive orders regarding stem cell research, immigration, accelerating investment in energy efficiency, restoring ecosystems in the gulf coast, and authorizing sanctions on Iran, just to name a few. And just about every recent president before him did the same thing! How can it be legal for the President to make rules and decisions using executive orders? - How has the use of the executive order added to the expansion of presidential powers?
Procedure	- Give each student an Executive Orders handout. Ask them to fill in the sheet as you share information. Share any information about executive orders your knowledge of U.S. government and politics, your textbook, readings, this short TED-Ed short video on Executive Orders or this super short Canadian video on Executive Orders and your Executive Orders Teacher Resource. - Check in with the class to go over the answers to the first few cells of the table to make sure everyone is on the same page. Have students work alone, or in breakout rooms/teams to complete the cells of the table and to complete the Venn diagram on a large paper or poster board. Individual students share their answers/team answers with the entire class while you make sure the information is correct and students are getting the information into their own handouts. Have students share venn diagrams with the entire class and post the best examples in your classroom. - Have individuals complete the graph of executive orders activity. - Have individuals complete the activity on Joe Biden's Executive Order. - Have students share their favorite/least favorite Trump or Biden E.O. with class. - Have students write their own executive order about something of great importance to them. Share. Discuss. - Watch SNL's, I'm just an executive order and discuss how it is correct and incorrect.

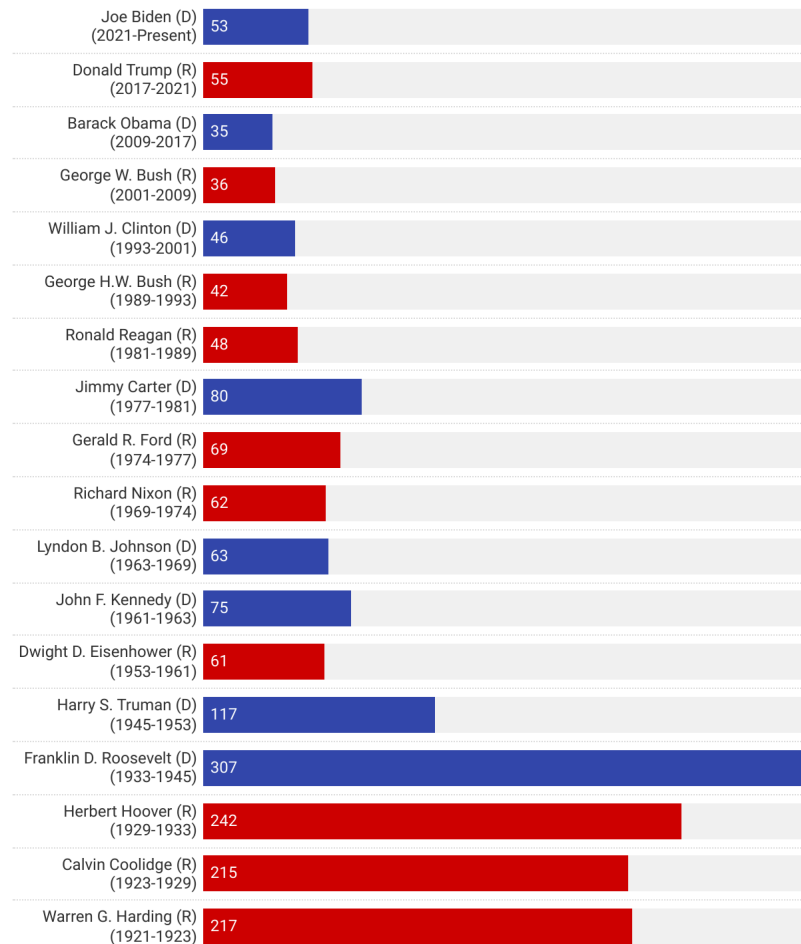
On January 1, 1863, Abraham Lincoln legally changed the status of over 3 million people from “slave” to “free.” But his emancipation proclamation wasn’t a law — it was an executive order. The framers of the American Constitution made this power available to the executive branch. But what exactly is this tool, how does it work, and what’s the extent of its power?

Use your knowledge of U.S. government and politics, your textbook, readings, this short [TED-Ed short video on Executive Orders](#) or this super short Canadian video [on Executive Orders](#) and your teacher’s resources to help you complete the following:

Questions	Answers
Your own Question:	
What is an executive order?	
What do executive orders do?	
Where does the Executive order power come from?	
What is the difference between a law and an executive order?	
How can the other branches impact executive orders?	
How does federalism relate to executive orders?	
How many executive orders have there been?	
What are some historically notable executive orders?	
What president made the most executive orders?	
Why do presidents make executive orders?	
Notes:	

Use the chart below to answer the following questions about executive orders:

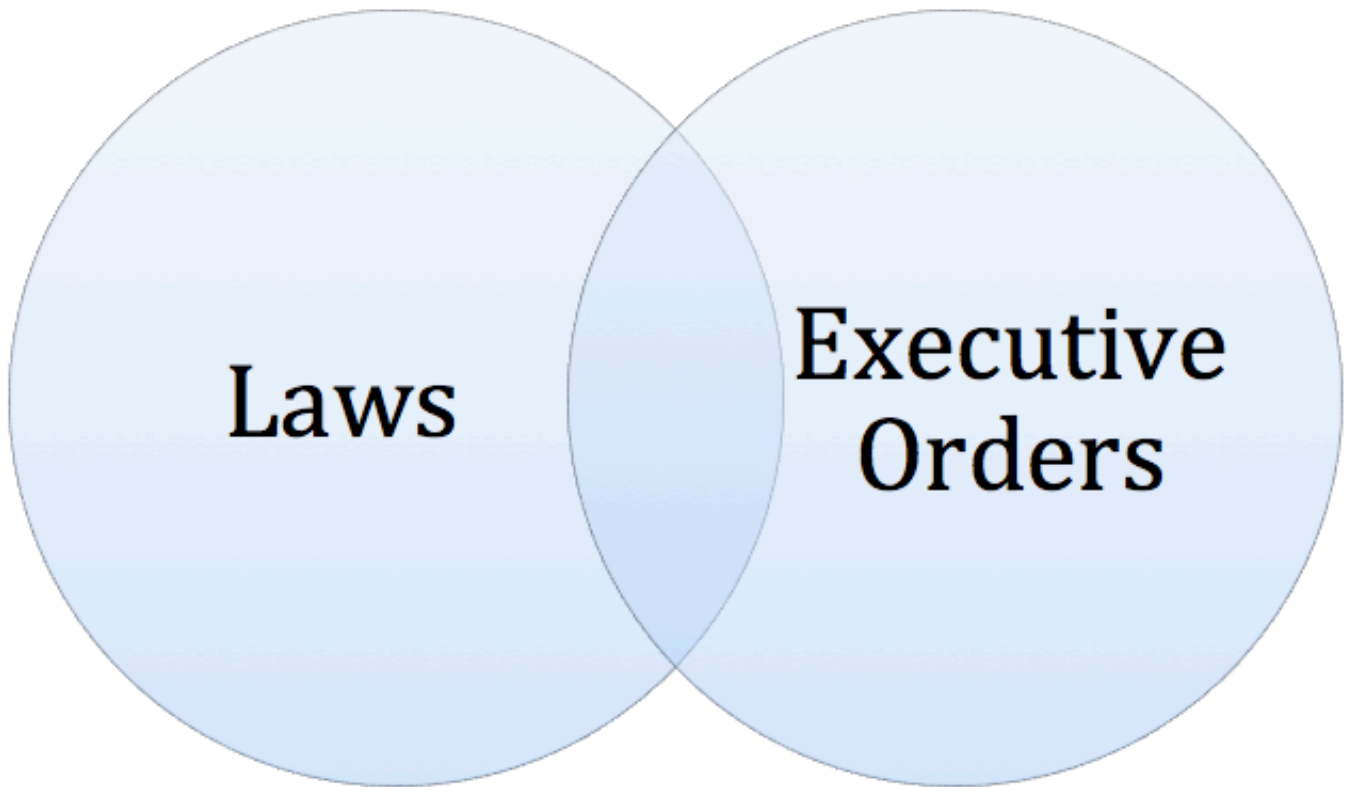
Average number of executive orders issued each year by president, 1921-2022



BALLOTEDIA

1. Identify the president who averaged the most executive orders per year.
2. Describe one trend in the use of executive orders over time.
3. What do you think best explains that trend?
4. Describe the impact of the president's political party affiliation on the use of executive orders.

Complete this venn diagram about executive orders:



After you complete the diagram. Write the name and details of a specific historical example of a law and of an executive order on this sheet.

Take a look at Joe Biden's [Executive Order 14004](#) (below) and answer the following:

- Describe what the order is about?
- Explain why the President made this order.
- Describe one consequence of this order.
- Make a claim about this order (what is your opinion: good, bad, other?):

Choose any one of Joe Biden's Executive Orders from [2021](#) or go back in time and pick any of Donald Trump's Executive Orders from [2020](#), [2019](#), [2018](#), or [2017](#). Answer the questions below about your executive order and share your answers with colleagues.

- Describe what the order is about?
- Explain why the President made this order.
- Describe one consequence of this order.
- Make a claim about this order (what is your opinion: good, bad, other?):

You are the president!!!! Write an executive order in the official language of an executive order. Use a copy of one of Joe Biden's Executive Orders from [2021](#) as an example of the official language of an Executive order. Be prepared to share your order with your colleagues.

Watch SNL's, [I'm just an executive order](#) and discuss how it is correct and incorrect.

As a creative extension: write a script for your own *I'm Just an Executive order* about the Biden Presidency. You don't need to make an actual video, just write the script.

Enabling All Qualified Americans To Serve Their Country in Uniform

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. Policy. All Americans who are qualified to serve in the Armed Forces of the United States (“Armed Forces”) should be able to serve. The All-Volunteer Force thrives when it is composed of diverse Americans who can meet the rigorous standards for military service, and an inclusive military strengthens our national security.

It is my conviction as Commander in Chief of the Armed Forces that gender identity should not be a bar to military service. Moreover, there is substantial evidence that allowing transgender individuals to serve in the military does not have any meaningful negative impact on the Armed Forces. To that end, in 2016, a meticulous, comprehensive study requested by the Department of Defense found that enabling transgender individuals to serve openly in the United States military would have only a minimal impact on military readiness and healthcare costs. The study also concluded that open transgender service has had no significant impact on operational effectiveness or unit cohesion in foreign militaries.

On the basis of this information, the Secretary of Defense concluded in 2016 that permitting transgender individuals to serve openly in the military was consistent with military readiness and with strength through diversity, such that transgender service members who could meet the required standards and procedures should be permitted to serve openly. The Secretary of Defense also concluded that it was appropriate to create a process that would enable service members to take steps to transition gender while serving.

The previous administration chose to alter that policy to bar transgender persons, in almost all circumstances, from joining the Armed Forces and from being able to take steps to transition gender while serving. Rather than relying on the comprehensive study by a nonpartisan federally funded research center, the previous administration relied on a review that resulted in a policy that set unnecessary barriers to military service. It is my judgment that the Secretary of Defense's 2016 conclusions remain valid, as further demonstrated by the fact that, in 2018, the then-serving Chief of Staff of the Army, Chief of Naval Operations, Commandant of the Marine Corps, and Chief of Staff of the Air Force all testified publicly to the Congress that they were not aware of any issues of unit cohesion, disciplinary problems, or issues of morale resulting from open transgender service. A group of former United States Surgeons General, who collectively served under Democratic and Republican Presidents, echoed this point, stating in 2018 that

“transgender troops are as medically fit as their non-transgender peers and that there is no medically valid reason—including a diagnosis of gender dysphoria—to exclude them from military service or to limit their access to medically necessary care.”

Therefore, it shall be the policy of the United States to ensure that all transgender individuals who wish to serve in the United States military and can meet the appropriate standards shall be able to do so openly and free from discrimination. Start Printed Page 7472

Sec. 2. *Revocation.* The Presidential Memorandum of March 23, 2018 (Military Service by Transgender Individuals), is hereby revoked, and the Presidential Memorandum of August 25, 2017 (Military Service by Transgender Individuals), remains revoked.

Sec. 3. *Agency Roles and Responsibilities.* In furtherance of the policy described in section 1 of this order, I hereby direct the following:

(a) The Secretary of Defense, and Secretary of Homeland Security with respect to the Coast Guard, shall, after consultation with the Joint Chiefs of Staff about how best to implement this policy and consistent with applicable law, take all necessary steps to ensure that all directives, orders, regulations, and policies of their respective departments are consistent with this order. These steps shall include establishing a process by which transgender service members may transition gender while serving, along with any further steps that the Secretary of Defense and Secretary of Homeland Security deem appropriate to advance the policy described in section 1 of this order.

(b) The Secretary of Defense shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance to the Secretaries of each military department regarding the correction of the military records of individuals described in subsection (b)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) direct the Secretaries of each military department to provide supplemental guidance, subject to the approval of the Secretary, to the boards for the correction of military records, instructing such boards on how to review applications for the correction of records of individuals described in subsection (b)(ii) of this section. Where appropriate, the department concerned shall offer such individuals an opportunity to rejoin the military should they wish to do so and meet the current entry standards.

(c) The Secretary of Homeland Security with respect to the Coast Guard shall:

(i) immediately prohibit involuntary separations, discharges, and denials of reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(ii) identify and examine the records of service members who have been involuntarily separated, discharged, or denied reenlistment or continuation of service, on the basis of gender identity or under circumstances relating to their gender identity;

(iii) issue guidance regarding the correction of the military records of individuals described in subsection (c)(ii) of this section as necessary to remove an injustice, pursuant to section 1552(a) of title 10, United States Code, to the extent permitted by law; and

(iv) provide supplemental guidance to the Board for Correction of Military Records of the Coast Guard, instructing the Board on how to review applications for the correction of records of individuals described in subsection (c)(ii) of this section. Where appropriate, the Secretary of Homeland Security shall offer such individuals an opportunity to rejoin the Coast Guard should they wish to do so and meet the current entry standards.

(d) The Secretary of Defense and the Secretary of Homeland Security shall report to me within 60 days of the date of this order on their progress in implementing the directives in this order and the policy described in section 1 of this order.Start Printed Page 7473

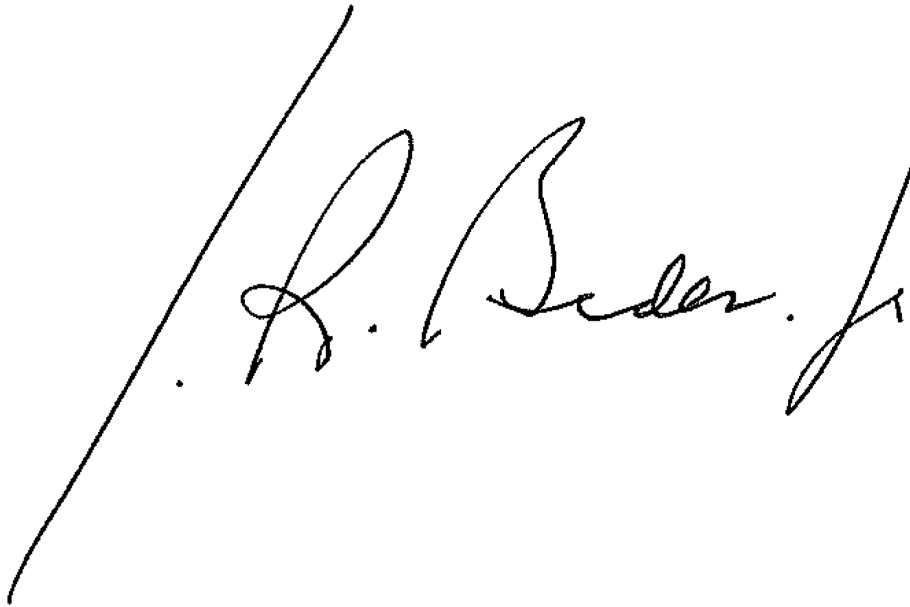
Sec. 4. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

A handwritten signature in black ink, appearing to read "R. Beder." followed by a stylized flourish.

THE WHITE HOUSE, January 25, 2021. Filed 1-27-21; 11:15 am]

[FR Doc. [2021-02034](#)

Billing code 3295-F1-P

TEACHER RESOURCES

On January 1, 1863, Abraham Lincoln legally changed the status of over 3 million people from “slave” to “free.” But his emancipation proclamation wasn’t a law — it was an executive order. The framers of the American Constitution made this power available to the executive branch. But what exactly is this tool, how does it work, and what’s the extent of its power?

Use your knowledge of U.S. government and politics, your textbook, readings, this short [TED-Ed short video on Executive Orders](#) or this super short Canadian video [on Executive Orders](#) and your teacher’s resources to help you complete the following:

Possible Answers Include:

Questions	Answers
Your own Question:	Why doesn't Joe Biden make an executive order making me the person of the year?
What is an executive order?	Executive order - A rule or regulation issued to the executive branch of the US government by the president that has the effect of law and tells the bureaucracy what to do. Executive orders direct the operations of the executive branch and order members of the executive branch such as the FBI, Defense department, or EPA to act in a certain way.
What do executive orders do?	1) Enforce legislative statutes (2) Enforce the Constitution or treaties with foreign nations (3) Establish or modify rules and practices of executive administrative agencies Executive orders can be retracted by successor, nullified by Congress or ruled unconstitutional by a federal court. U.S. presidents have issued over 14,050 of them.
Where does the Executive order power come from?	The constitutional basis for the executive order is the President's broad power to issue executive directives. According to the Congressional Research Service , there is no direct “definition of executive orders, presidential memoranda, and proclamations in the U.S. Constitution, there is, likewise, no specific provision authorizing their issuance.” But Article II of the U.S. Constitution vests executive powers in the President, makes him the commander

	in chief, and requires that the President “shall take Care that the Laws be faithfully executed.
What is the difference between a law and an executive order?	See venn diagram below.* Congress enacts laws which have jurisdiction over all. POTUS enacts Executive orders which have jurisdiction over the executive branch.
How can the other branches impact executive orders?	Judiciary can overturn them. Legislature can pass laws preempting and overriding them. They can be used to enforce laws made by congress or rulings made by judiciary.
How does federalism relate to executive orders?	Executive orders only apply to the national (federal) government, not states. Governors have their own ability to pass state level executive orders.
How many executive orders have there been?	Over 14,050
What are some historically notable executive orders?	• <u>Lincoln</u> suspended the writ of habeas corpus during the Civil War and issued emancipation proclamation freeing slaves. • <u>Truman</u> integrated the military by mandating equal treatment of all members of the armed forces through executive orders. • Etc...
What president made the most executive orders?	FDR, duh.
Why do presidents make executive orders?	They are quick and effective. They do not require any slowdown from other branches. They sometimes are used for Presidents to achieve their goals when they are unable to work with Congress to make laws to advance their presidential agenda.
Notes:	Executive Orders are so cool!

What is an executive order?

Executive order - A rule or regulation issued by the president that has the effect of law.

Executive orders are issued to:

- (1) Enforce legislative statutes
- (2) Enforce the Constitution or treaties with foreign nations
- (3) Establish or modify rules and practices of executive administrative agencies

Executive orders can be retracted by successor, nullified by Congress or ruled unconstitutional by a federal court. U.S. presidents have issued over 14,050 of them.

The President of the United States manages the operations of the Executive branch of Government through Executive orders. After the President signs an Executive order, the White House sends it to the Office of the Federal Register (OFR).

The OFR numbers each order consecutively as part of a series and publishes it in the daily Federal Register shortly after receipt. For a table of Executive orders that are specific to federal agency rulemaking, see <https://go.usa.gov/xv9cZ>.

What do executive orders do?

Executive orders direct the operations of the executive branch and order members of the executive branch such as the FBI, Defense department, or EPA to act in a certain way

Where does the Executive order power come from?

The constitutional basis for the executive order is the President's broad power to issue executive directives. According to [the Congressional Research Service](#), there is no direct "definition of executive orders, presidential memoranda, and proclamations in the U.S. Constitution, there is, likewise, no specific provision authorizing their issuance."

But [Article II of the U.S. Constitution](#) vests executive powers in the President, makes him the commander in chief, and requires that the President "shall take Care that the Laws be faithfully executed." Laws can also give additional powers to the President.

How can Checks and Balances impact executive orders?

While an executive order can have the same effect as a federal law under certain circumstances, Congress can pass a new law to override an executive order, subject to a presidential veto.

What is the difference between a law and an executive order?

A law is created by Congress and has power over all people within Congressional jurisdiction. An executive order is created and issued by the president and has power over all members of the executive branch to whom it is issued.

How can the other branches impact executive orders?

Judiciary can declare an executive order unconstitutional, Congress can pass its own law superseding the executive order.

How does federalism relate to executive orders?

Executive orders only apply to federal agencies and departments and workers in the federal government. Governors may issue executive orders to state executive branches.

How many executive orders have there been?

Over 14,050

What are some historically notable executive orders?

Every President since George Washington has used the executive order power in various ways. Washington's first orders were for executive departments to prepare reports for his inspection, and a proclamation about the Thanksgiving holiday. After Washington, other Presidents made significant decisions via executive orders and presidential proclamations.

- President Abraham Lincoln [suspended the writ of habeas corpus](#) during the Civil War using executive orders in 1861. Lincoln cited his powers under the Constitution's Suspension Clause, which states, "the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion and invasion the public safety may require it." Supreme Court Chief Justice Roger Taney, in his role as a federal circuit judge, ruled that Lincoln's executive order was unconstitutional in a decision called [Ex Parte Merryman](#). Lincoln and the Union army ignored Taney, and Congress didn't contest Lincoln's habeas corpus decisions.
- Two other executive orders comprised Lincoln's Emancipation Proclamation. Lincoln was fearful that the Emancipation Proclamation would be overturned by Congress or the courts after the war's end, since he justified the proclamation under his wartime powers. The ratification of the 13th Amendment ended that potential controversy.
- President Franklin Roosevelt established internment camps during World War II using Executive Order 9066. Roosevelt also used an executive order to create the Works Progress Administration.
- And President Harry Truman mandated equal treatment of all members of the armed forces through executive orders. However, Truman also saw one of his key executive orders invalidated by the Supreme Court in 1952, in a watershed moment for the Court that saw it define presidential powers in relation to Congress. The Court ruled in *Youngstown Sheet and Tube Co. v. Sawyer* that an executive order putting steel mills during the Korean War under [federal control during a strike was invalid](#). "The President's power to see that the laws are faithfully executed refutes the idea that he is to be a lawmaker," Justice Hugo Black said in his majority opinion. It was Justice Robert Jackson's concurring opinion that stated a three-part test of presidential powers that has since been used in arguments involving the executive's

overreach of powers. Jackson said the President's powers were at their height when he had the direct or implied authorization from Congress to act; at their middle ground – the Zone of Twilight, as he put it, when it was unsure which branch could act; and at their “lowest ebb” when a President acted against the expressed wishes of Congress.

- The use of executive orders also played a key role in the Civil Rights movement. In 1957, President Dwight Eisenhower used an executive order to put the Arkansas National Guard under federal control and to enforce desegregation in Little Rock. Affirmative action and equal employment opportunity actions were also taken by Presidents Kennedy and Johnson using executive orders.
- President Roosevelt issued the most executive orders, [according to records at the National Archives](#). He issued 3,728 orders between 1933 and 1945, as the country dealt with the Great Depression and World War II.
- President Truman issued a robust 896 executive orders over almost eight years in office. President Barack Obama [issued 277 orders](#) during his presidency. His predecessor, President George W. Bush, issued 291 orders over eight years, while President Bill Clinton had 364 executive orders during his two terms in office.
- The most-active President in the post-World War II era, in terms of executive orders, was Jimmy Carter, who averaged 80 orders per year during his four-year term.

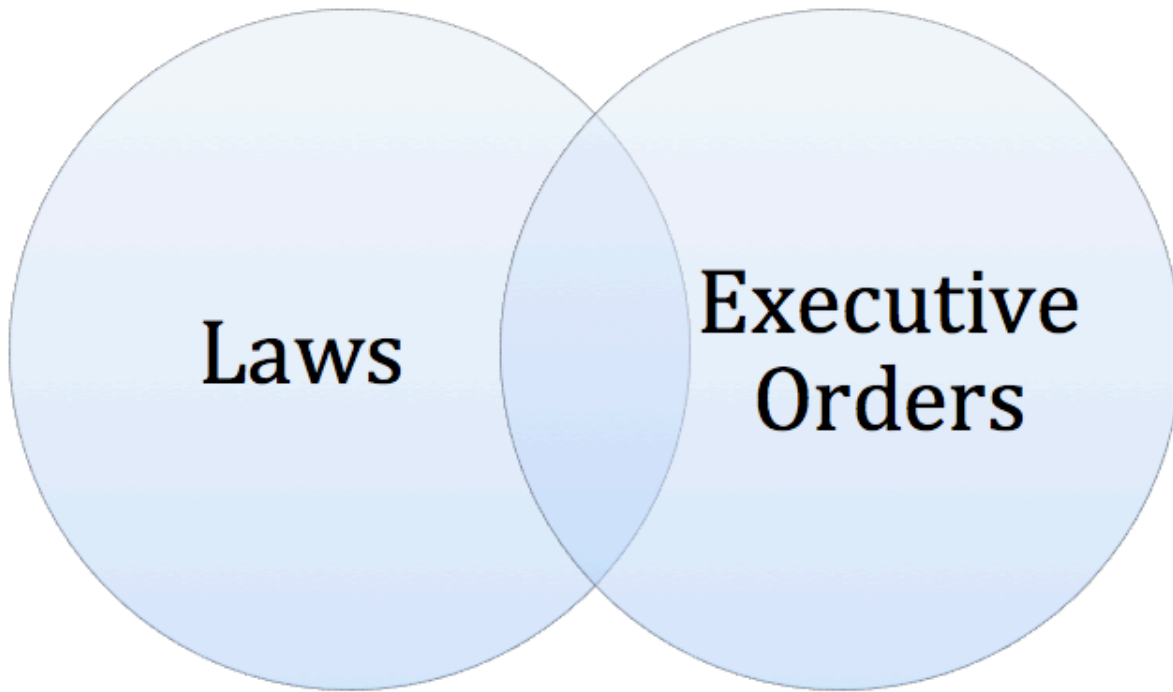
What president made the most executive orders?

The answer to this is the same as to almost any question about which president made the most of anything: FDR!

Why do presidents make executive orders?

They are quick and effective. They do not require any slowdown from other branches. They sometimes are used for Presidents to achieve their goals when they are unable to work with Congress to make laws to advance their presidential agenda.

Complete this venn diagram about executive orders:



Answers will vary. Possible Answers Include:*

Laws

Laws are made by congress
Laws regulate all people
Take longer to enact
More permanent

Executive Orders

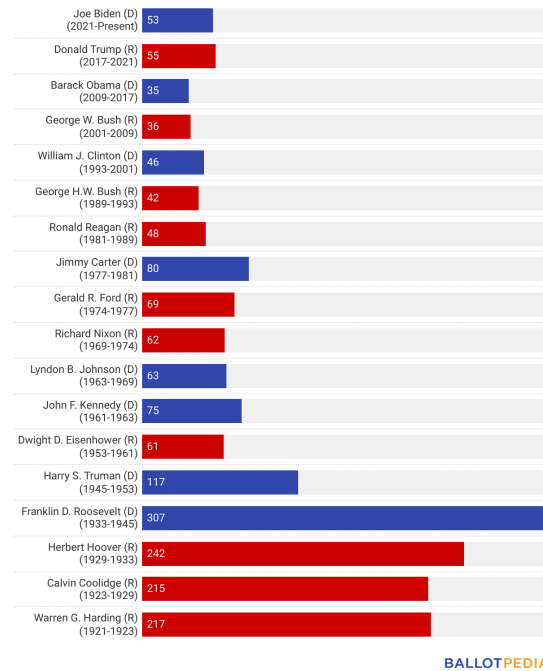
Executive orders are made by POTUS
E.O.s regulate members of executive branch
Faster to enact
Can be easily overturned by successor

Middle

Made by government
Used to assert control
Can be overturned by Judiciary

Use the chart below to answer the following questions about executive orders:

Average number of executive orders issued each year by president, 1921-2022



Possible Answers Include:

- Identify the president who averaged the most executive orders.
Franklin D. Roosevelt (of course)
- Describe one trend in the use of executive orders over time.
Used sparingly in the 18th and 19th century. Use increased dramatically in the 20th century, especially through the New Deal and WWII then decreased. Still used much more today than in the 18th or 19th century.
- What explains that trend?
Executive branch was much smaller and less complex in the early years of government. Scope of government was much smaller. In the Mid 20th century FDR issued 3,721 orders to tackle the Great Depression, implement New Deal programs and wage World War II. Now with more often divided governments presidents use executive orders regularly to get past congressional gridlock.
- Describe the impact of the president's political party affiliation on the use of executive orders.
When the US government is a divided government (different branches controlled by different parties), the use of executive orders generally increases.

Take a look at Joe Biden's [Executive Order 14004](#) and answer the following:

Possible Answers Include:

- Describe what the order is about?
Allows qualified transgender individuals to serve in the U.S. military.
- Explain why the President made this order.
He might have philosophically agreed with it.
He might have known it would energize his base of support.
He might have felt that he owed it to his supporters.
He could not have passed this through the congress.
He needed this to happen quickly.
- Describe one consequence of this order.
New members of the military were allowed immediately.
- Make a claim about this order (what is your opinion: good, bad, other?):
Subjective Answers. There are no wrong answers except for blank answers or answers that are off topic.

Choose any one of Joe Biden's Executive Orders from [2021](#) or go back in time and pick any of Donald Trump's Executive Orders from [2020](#), [2019](#), [2018](#), or [2017](#). Answer the questions below about your executive order and share your answers with colleagues.

Answers will vary widely. Answers will be subjective. There are no wrong answers except for blank answers or answers that are off topic.

- Describe what the order is about?
- Explain why the President made this order.
- Describe one consequence of this order.
- Make a claim about this order (what is your opinion: good, bad, other?):

You are the president!!!! Write an executive order in the official language of an executive order. Use a copy of one of Joe Biden's Executive Orders from [2021](#) as an example of the official language of an Executive order. Be prepared to share your order with your colleagues.

Answers will vary. There are no wrong answers except for blank answers or answers that are off topic.

Here are two sample answers:

President Angela Presto

Executive Order 12345 of January 30, 2013

Expanding National Forest Lines/Boundaries

By the power invested in me as President by the Constitution and the laws of the United States of America I hereby declare that all national forests in the United States have their boundaries expanded for the preservation of nature and land for future generations. Section 1. Policy. National forests are essential in the preservation of nature and land. They are safe homes/habitats for numerous wildlife as well. Without national forests there would be larger quantities of deforestation and a loss of species, land, and nature. Expanding these boundaries can help to improve the preservation of land, nature, and wildlife by giving a larger region for the wildlife to grow and expand as well as preserving it for our future generations. Section 2. Expanding National Forest Lines/Boundaries. (a) In order to ensure a consistent approach in expanding national forest boundaries there will be a National Forest Boundary Group established. This group will be co-chaired by representatives designated by the Administrator of General Services. (b) the National Forest Boundary Group shall be composed of: (i) a representative from each of the following agencies, and the Co-Chairs, who all have ownership/responsibility for managing and expanding national forest boundaries. (1) the Department of Agriculture (2) the Department of Natural Resources (3) the Department of Agriculture, Nutrition, and Forestry (4) the Department of Energy and Natural Resources (c) Within 1 year of the date of this order, The National Forest Boundary Group will report to the Steering Committees on the improvements to be made and the progress being made. Section 3. Coordinating Consistent and Efficient Expanding of National Forest Lines/Boundaries Requirements and Policies. (a) Each National Forest Boundary member shall: (i) develop and implement a strategy to facilitate the timely and efficient way of expanding national forest boundaries that: (1) ensures a consistent approach to expanding national forest boundaries by: providing clear notice of how much the boundaries will be expanded, review of the process, and when the boundaries will be expanded. (b) The Co-Chairs, in consultation with the Director, will coordinate, review, and monitor the expansion of the national forest boundaries. Section 4. Contracts, Applications, and Permits.

(a) The National Forest Boundary Group will work to develop and use one or more templates for permit terms to expand national forest boundaries. These templates will allow for the national forests to be expanded safely and justly. Section 5. General Provision. (a) This order will be set into motion while being consistent with all applicable laws, treaties, and trust obligations, and subject to the availability of appropriations. (b) Nothing in this order will impair (i) the authority granted by law to an executive department, agency or the head. (c) independent agencies are encouraged to comply/cooperate with this order. (d) this order is not intended to create a benefit or right enforceable by law or by any party against the United States and its departments, agencies, officers, employees, agents, or any other person. THE WHITE HOUSE, Washington, January 30, 2013.

President Carlie Herron
Executive Order 13547 of March 3, 2010
Reducing Carbon Emissions

By the authority vested in me by the Constitution and the laws of the United States of America, in order to reduce carbon emissions, to set a positive, environmentally friendly example for the United States as a whole, to spread awareness of the need for action against climate change, to improve the state of our environment, and to ensure a cleaner and safer future for the United States, I hereby order as follows:

Section 1. All members of executive departments, independent agencies, and Government corporations, shall trade in any personal automobile which yields fewer than 40 miles per gallon. The vehicle must then be replaced with a fuel-efficient automobile which yields 40 or more miles per gallon.

Section 2. Government funds will be appropriated in order to pay for any discrepancy between the trade-in value of each individual's obsolete vehicle and the price of a new, fuel-efficient automobile. Government funds will also be provided for any individual to pay off the remainder of a leased vehicle, if necessary.

Section 3. Each member has six months (until September 3, 2010) to trade in their vehicle, if necessary.

Section 4. Any individual who fails to comply with the standards outlined in Sections 1-3 will be charged a fine of \$2,000 for each month which passes after September 3, 2010.

THE WHITE HOUSE,
March 3, 2010.

Watch SNL's, [I'm just an executive order](#) and discuss how it is correct and incorrect.

As a creative extension: write a script for your own *I'm Just an Executive order* about the Biden Presidency. You don't need to make an actual video, just write the script.

Answers will vary dramatically. There are no wrong answers except for blank answers or answers that are off topic.