

Regulatory Dark Matter: Presidential Executive Orders and Memoranda

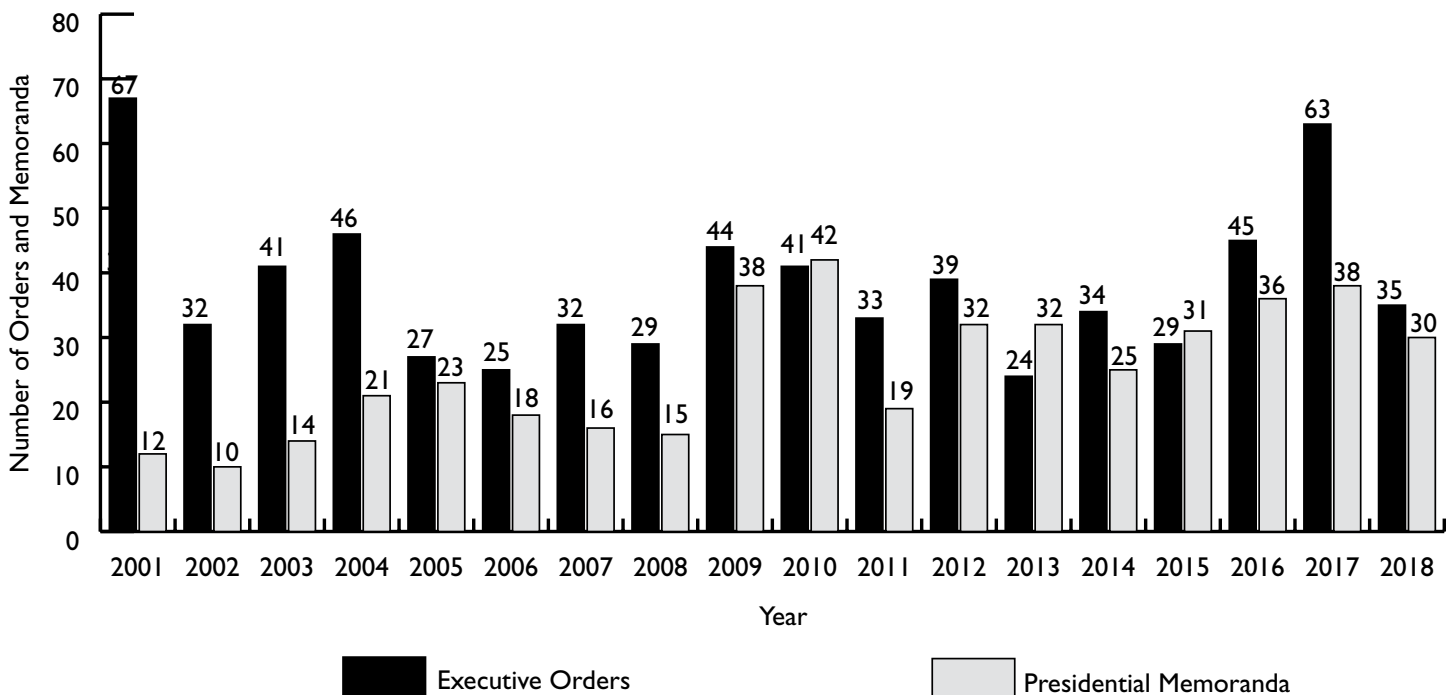
Executive orders, presidential memoranda, and other executive actions make up a large component of executive “lawmaking.” They merit heightened attention from lawmakers, since they can have binding effect.²²⁵

Executive orders ostensibly deal with the internal workings and operations of the federal government. Subsequent presidents have traditionally been presumed able to overturn them. Their use is not new, dating back to President George Washington’s administration.²²⁶ However, their reporting has not been consistent until recent decades. President Obama’s

executive order totals were not high compared with those of other presidents. At the end of his term, Obama had issued 276 executive orders, whereas President George W. Bush’s final tally was 291, and that of President Bill Clinton was 364 (see Figure 15). Trump issued 63 orders in 2017, far outstripping anyone since Bush’s 2001 high-water mark, and 35 in 2018.²²⁷ Among these 35 executive orders and 30 memoranda of the past year are some intended to reduce burdens (see Box 1).

Memoranda are trickier to tally. They may or may not be published, depending on the

Figure 15. Number of Executive Orders and Presidential Memoranda, 2001–2018



Source: National Archives and Records Administration, Office of the Federal Register.

administration’s own determination of “general applicability and legal effect.”²²⁸ George W. Bush published 131 memoranda during his entire presidency, whereas Barack Obama issued 257 that were published in the *Federal Register*. Bill Clinton published just 14 during his presidency.²²⁹ Donald Trump issued 38 memoranda in 2017, the highest level since 2010, and 30 in 2018.

The pertinent question as far as regulatory burdens are concerned is what these executive orders and memoranda are used for and what they do. Whether lengthy or brief, orders and memoranda can have significant effects, and a smaller number of them does not necessarily mean small effects. In 2014 alone, Obama memoranda created a new financial investment instrument and implemented new positive rights regarding work hours and employment preferences for federal contractors.²³⁰ However, four of Obama’s executive orders addressed overregulation and rollbacks.²³¹ As with the *Federal Register*, counts are interesting but do not tell the full story. Obama’s Executive Order 13563 concerning regulatory review and reform sought to roll back regulation.²³² It amounted to a few billion dollars in cuts, which were swamped by other, newly issued rules and negated by costly guidance.

In Trump’s case, a handful of his executive orders and memoranda itemized at the

beginning of this report comprise perhaps the most aggressive attempt by the executive branch to streamline regulation. Other key executive orders directed at regulatory restraint were President Clinton’s 1993 Executive Order 12866²³³ and President Ronald Reagan’s Executive Order 12291, which formalized central regulatory review at OMB.²³⁴ Clinton’s was a step back from the stronger oversight of the Reagan order in that it sought “to reaffirm the primacy of Federal agencies in the regulatory decision-making process.”²³⁵

The United States existed for many decades before a president issued more than two dozen executive orders—that was President Franklin Pierce, who served from 1853 to 1857. Orders numbered in the single digits or teens until President Abraham Lincoln and the subsequent Reconstruction period. President Ulysses S. Grant issued 217, then a record. From the 20th century onward, executive orders have numbered over 100 during each presidency and sometimes reached into the thousands. President Franklin D. Roosevelt—the longest-serving president in U.S. history, elected to four terms and having served a full three—issued 3,721 executive orders.²³⁶ Table 4 provides a look at executive order counts by administration since the nation’s founding through Obama.

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Table 4. Executive Orders by Administration

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
George Washington	n/a		8
John Adams	n/a		1
Thomas Jefferson	n/a		4
James Madison	n/a		1
James Monroe	n/a		1
John Quincy Adams	n/a		3
Andrew Jackson	n/a		12
Martin van Buren	n/a		10
William Henry Harrison	n/a		0

(continued)

Table 4. Executive Orders by Administration (*continued*)

	Sequence Number		Total Number of Executive Orders
	Ending	Beginning	
John Tyler	n/a		17
James K. Polk	n/a		18
Zachary Taylor	n/a		5
Millard Fillmore	n/a		12
Franklin Pierce	n/a		35
James Buchanan	n/a		16
Abraham Lincoln	n/a		48
Andrew Johnson	n/a		79
Ulysses S. Grant	n/a		217
Rutherford B. Hayes	n/a		92
James Garfield	n/a		6
Chester Arthur	n/a		96
Grover Cleveland - I	n/a		113
Benjamin Harrison	n/a		143
Grover Cleveland - II	n/a		140
William McKinley	n/a		185
Theodore Roosevelt			1,081
William Howard Taft			724
Woodrow Wilson			1,803
Warren G. Harding			522
Calvin Coolidge			1,203
Herbert Hoover	6,070	5,075	996
Franklin D. Roosevelt	9,537	6,071	3,467
Harry S. Truman	10,431	9,538	894
Dwight D. Eisenhower	10,913	10,432	482
John F. Kennedy	11,127	10,914	214
Lyndon B. Johnson	11,451	11,128	324
Richard Nixon	11,797	11,452	346
Gerald R. Ford	11,966	11,798	169
Jimmy Carter	12,286	11,967	320
Ronald Reagan	12,667	12,287	381
George H.W. Bush	12,833	12,668	166
William J. Clinton	13,197	12,834	364
George W. Bush	13,488	13,198	291
Barack Obama	13,764	13,489	276
Donald Trump	13,802	13,490	38
Total Number of Executive Orders			15,591

Source: W. Crews's tabulations; Executive Orders Disposition Tables Index, Office of the Federal Register; National Archives, <http://www.archives.gov/federal-register/executive-orders/disposition.html>; "Executive Orders," The American Presidency Project, ed. John T. Woolley and Gerhard Peters (Santa Barbara, CA: 1999–2014), <http://www.presidency.ucsb.edu/data/orders.php>. Executive orders for President Trump are as of April 28, 2017.