

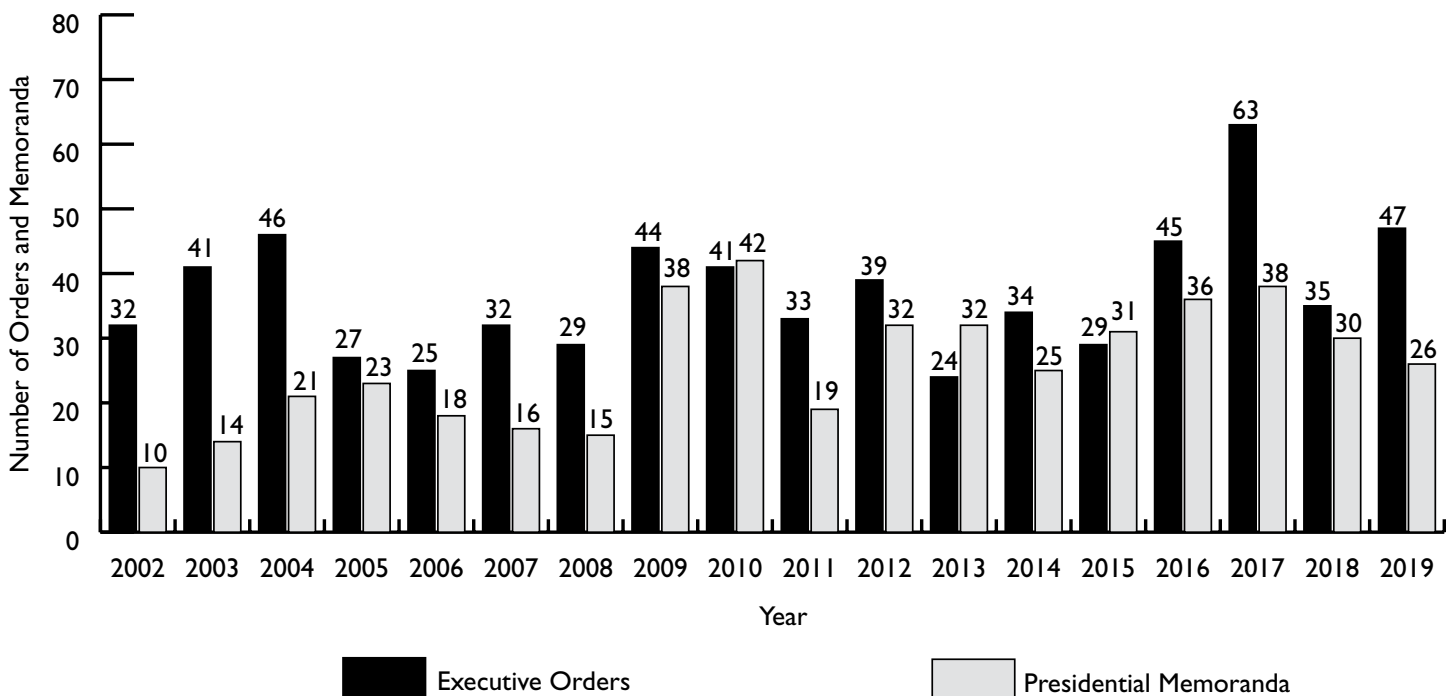
# The Presidential Dimension of Regulatory Dark Matter: Executive Orders and Memoranda

Executive orders, presidential memoranda, and other executive actions make up a large component of executive “lawmaking.” They merit attention from lawmakers, since they can have, or appear to have, binding effect.<sup>551</sup>

Executive orders ostensibly deal with the internal workings and operations of the federal government, and presidents have traditionally been presumed able to overturn those issued by their predecessors. Their use is not new, dating back to President George Washington’s administration.<sup>552</sup> However, their reporting and numbering have not

been consistent until recent decades. President Obama’s executive order totals, “pen and phone” notwithstanding, 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 Table 4 and Figure 15). Trump issued 69 executive orders in 2020, the highest level in 25 years. That number outstrips anything since Bush’s 2001 high-water mark of 67 (as a transition year, this includes some Clinton orders) and Trump’s own 63 in 2017. There had been 47 in 2019 and 35 in 2018.<sup>553</sup>

Figure 15. Number of Executive Orders and Presidential Memoranda, 2002–2019



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

Memoranda are trickier to tally.<sup>554</sup> They may or may not be published, depending on each administration’s own determination of “general applicability and legal effect.”<sup>555</sup> George W. Bush published 131 memoranda during his entire presidency, whereas Barack Obama issued 257 that were published in the *Federal Register* (Figure 15). Bill Clinton published 78 during his presidency.<sup>556</sup> Donald Trump issued 38 memoranda in 2017, the highest level in at least 20 years and more than double 2019’s number. Among the 69 executive orders and 59 memoranda of 2020 under Trump are some intended to reduce burdens (see Box 1), but some such proposals are regulatory. In 2021, before Biden’s inauguration, Trump issued another 16 executive orders and five additional memoranda.

The pertinent question regarding regulatory burdens 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 do not necessarily means small effects. On the one hand, in 2014 alone, Obama administration memoranda (not among the presidential ones shown here) created a new financial investment instrument and implemented new positive rights regarding work hours and employment preferences for federal contractors.<sup>557</sup> On the other hand, four of Obama’s executive orders addressed overregulation and rollbacks.<sup>558</sup> Obama’s Executive Order 13563 concerning regulatory review and reform, for example, sought to roll back regulation.<sup>559</sup> It amounted to a few billion dollars

in cuts, which were swamped by other, newly issued rules and guidance. As with the *Federal Register*, counts are interesting but do not tell the full story.

Other key executive orders directed at regulatory restraint were President Bill Clinton’s 1993 Executive Order 12866<sup>560</sup> and President Ronald Reagan’s Executive Order 12291, which formalized central regulatory review at OMB.<sup>561</sup> 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.”<sup>562</sup> In Trump’s case, a handful of his executive orders and memoranda itemized at the beginning of this report constitute perhaps the most aggressive attempt by the executive branch to streamline regulation.

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.<sup>563</sup> Table 5 provides a look at executive order counts by administration since the nation’s founding through the Obama presidency.<sup>564</sup>

---

*The United States existed for many decades before a president issued more than two dozen executive orders.*

---

**Table 5. Executive Orders by Administration**

|                   | Sequence Number |           | Total Number of Executive Orders |
|-------------------|-----------------|-----------|----------------------------------|
|                   | Ending          | Beginning |                                  |
| George Washington | n/a             | n/a       | 8                                |
| John Adams        | n/a             | n/a       | 1                                |
| Thomas Jefferson  | n/a             | n/a       | 4                                |
| James Madison     | n/a             | n/a       | 1                                |
| James Monroe      | n/a             | n/a       | 1                                |
| John Quincy Adams | n/a             | n/a       | 3                                |
| Andrew Jackson    | n/a             | n/a       | 12                               |

|   | Sequence Number |           | Total Number of Executive Orders |
|---|-----------------|-----------|----------------------------------|
|   | Ending          | Beginning |                                  |
| Martin van Buren                        | n/a             | n/a       | 10                               |
| William Henry Harrison                  | n/a             | n/a       | 0                                |
| John Tyler                              | n/a             | n/a       | 17                               |
| James K. Polk                           | n/a             | n/a       | 18                               |
| Zachary Taylor                          | n/a             | n/a       | 5                                |
| Millard Fillmore                        | n/a             | n/a       | 12                               |
| Franklin Pierce                         | n/a             | n/a       | 35                               |
| James Buchanan                          | n/a             | n/a       | 16                               |
| Abraham Lincoln                         | n/a             | n/a       | 48                               |
| Andrew Johnson                          | n/a             | n/a       | 79                               |
| Ulysses S. Grant                        | n/a             | n/a       | 217                              |
| Rutherford B. Hayes                     | n/a             | n/a       | 92                               |
| James Garfield                          | n/a             | n/a       | 6                                |
| Chester Arthur                          | n/a             | n/a       | 96                               |
| Grover Cleveland - I                    | n/a             | n/a       | 113                              |
| Benjamin Harrison                       | n/a             | n/a       | 143                              |
| Grover Cleveland - II                   | n/a             | n/a       | 140                              |
| William McKinley                        | n/a             | n/a       | 185                              |
| Theodore Roosevelt                      | n/a             | n/a       | 1,081                            |
| William Howard Taft                     | n/a             | n/a       | 724                              |
| Woodrow Wilson                          | n/a             | n/a       | 1,803                            |
| Warren G. Harding                       | n/a             | n/a       | 522                              |
| Calvin Coolidge                         | n/a             | n/a       | 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                            | 13,984          | 13,765    | 219                              |
| <b>Total Number of Executive Orders</b> |                 |           | <b>15,504</b>                    |

Source: Author'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 March 26, 2020.