

Regulatory dark matter

Although executive actions are typically supposed to deal with the internal operations of the federal government, they increasingly can have binding effect and influence private behavior. Executive orders, presidential memoranda, notices, “fact sheets,” and other proclamations make up a substantial component of policymaking. This may explain some of the counterintuitive decline in rule counts even as federal scope expands in spending, contracting and procurement, greater economic intervention, public-private partnerships, supply chains,⁸³ hydrogen hubs,⁸⁴ and blueprints for artificial intelligence. Presidents of both parties routinely threaten unilateral executive actions if Congress fails to act on their agenda.

Executive orders

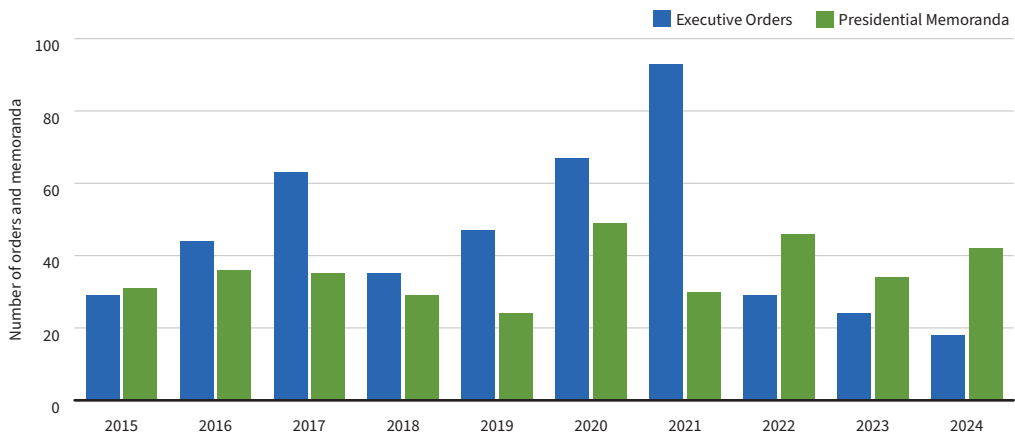
Executive orders (EOs) date back to George Washington’s administration,

but their numerical cataloging and archiving has not been consistent until recent decades. Since the nation’s founding, presidents have issued at least 15,661 of them (see Appendix G).

The United States was several decades old before a president issued more than two dozen executive orders as did President Franklin Pierce (1853–1857). Orders numbered in the single digits or teens until President Abraham Lincoln’s federal consolidations and the subsequent Reconstruction period. President Ulysses S. Grant’s total of 217 set a 19th-century record.

From the 20th century onward, executive orders have numbered over 100 during every presidency and have sometimes soared into the thousands. President Franklin D. Roosevelt—the longest-serving president in history,

Figure 15. Number of executive orders and presidential memoranda



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

elected to four terms and serving a full three—issued 3,467 executive orders.

The 93 executive orders in 2021 stand out in Figure 15. Joe Biden issued 77 of that total, whereas Trump issued 16. Biden’s total fell to 24 in 2023 and 18 in 2024. Recognizing that overlap occurs in transition years (Biden issued 14 in 2025 before Trump’s inauguration), the following are calendar-year breakdowns of total and average annual executive orders published in the *Federal Register* during recent administrations. (Calendar-year counts are provided to preserve comparisons with annual rules counts. Full dispositions in Appendix G will differ slightly.)

- ▶ Bill Clinton years (1993–2000): 364 executive orders, average 46 per year
- ▶ George W. Bush years (2001–2008): 302 executive orders, average 38 per year

- ▶ Barack Obama years (2009–2016): 291 executive orders, average 36 per year
- ▶ Donald Trump years (2017–2020): 212 executive orders, average 53 per year
- ▶ Joe Biden’s years (2021–2024): 164 executive orders, average 41 per year

Biden’s 18 executive orders from 2024 reflect the his whole-of-government efforts and include the following:

- ▶ Adjustments of Certain Rates of Pay, 12/30/2024
- ▶ Amendments to Executive Orders Relating to Certain Certificates and Badges, 12/27/2024
- ▶ Combating Emerging Firearms Threats and Improving School-Based Active-Shooter Drills, 10/02/2024
- ▶ Investing in America and Investing in American Workers, 09/11/2024
- ▶ Establishing an Emergency Board to Investigate a Dispute Between New

Jersey Transit Rail Operations and Its Locomotive Engineers Represented by the Brotherhood of Locomotive Engineers and Trainmen, 07/29/2024

- ▶ White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity Through Hispanic-Serving Institutions, 07/22/2024
- ▶ White House Council on Supply Chain Resilience, 06/21/2024
- ▶ COVID-19 and Public Health Preparedness and Response, 04/17/2024
- ▶ Recognizing and Honoring Women's History, 04/01/2024
- ▶ Advancing Women's Health Research and Innovation, 03/21/2024
- ▶ Scaling and Expanding the Use of Registered Apprenticeships in Industries and the Federal Government and Promoting Labor-Management Forums, 03/11/2024
- ▶ Preventing Access to Americans' Bulk Sensitive Personal Data and United States Government-Related Data by Countries of Concern, 03/01/2024
- ▶ Amending Regulations Relating to the Safeguarding of Vessels, Harbors, Ports, and Waterfront Facilities of the United States, 02/26/2024

Executive orders sometimes aim at regulatory review in addition to their popularity for implementing policy. Bill Clinton's 1993 EO 12866 retained the OMB central regulatory review function established by Ronald Reagan's EO 12291 but sought "to reaffirm the primacy of Federal agencies in the regulatory decision-making

process." Joe Biden's "Modernizing Regulatory Review" (EO 14094) of 2023 eliminated the streamlining of Trump's EO 13771, Reducing Regulation and Controlling Regulatory Costs.⁸⁵

Although superficially retaining the Clinton review structure, Biden's EO 14094 raised the threshold for a significant regulatory action from \$100 million annually to \$200 million, a floor that will ratchet upward alongside increases in GDP. Even more significantly, EO 14094 transformed OMB's Circular A-4 and subsequent guidance on regulatory review to soften oversight and bias OMB's methodology to make it find more regulations net-beneficial. The Trump administration will address these.

Presidential memoranda

Presidential memoranda and notices are trickier to tally than executive orders. They may or may not be published in the *Federal Register* or other readily accessible sources depending on a given administration's own determination of "general applicability and legal effect."⁸⁶ Nor are memoranda, determinations, notices, proclamations, presidential orders, and other documents reliably classified or numbered the way executive orders are.

These decrees can range from minor declarations celebrating events or people to the more consequential, like a 2022 continuation of the national emergency

concerning COVID-19,⁸⁷ proclamations expanding national monuments by hundreds of thousands of acres (thereby prohibiting any form of private industrial or commercial activity in those lands),⁸⁸ or actions affecting gun dealers involving background checks and serial numbers.⁸⁹

As Figure 15 shows, Joe Biden issued 42 memoranda in 2024, compared to 46 in 2022, and 34 in 2023. Apart from Trump's 49 in 2020, 2022 marks the highest single-year count to appear in the *Federal Register* database, which records totals back to 1994. Appendix M (The Unconstitutionality Index), discussed later, depicts annual totals of both executive orders and memoranda over the past two decades.

Recognizing that overlap occurs in transition years, here are calendar-year breakdowns of total and average memoranda published in the *Federal Register* by recent administrations:

- ▶ George W. Bush years (2001–2008): 129 memoranda, average 16 per year.
- ▶ Barack Obama years: (2009–2016): 255 memoranda, average 32 per year.
- ▶ Donald Trump (2017–2020): 137 memoranda, average 34 per year.
- ▶ Joe Biden (2021–2024): 137 memoranda, average 38 per year.

The following are among Biden's 42 memoranda from 2024:

- ▶ Establishment of the China Censorship Monitor and Action Group, 12/17/2024.
- ▶ Establishment of the Countering Economic Coercion Task Force, 12/17/2024.
- ▶ Delegation of Certain Sanctions-Related Authorities Under Public Law 118-50, 09/24/2024.
- ▶ Delegation of Certain Functions and Authorities Under the Rebuilding Economic Prosperity and Opportunity for Ukrainians Act, 07/25/2024.
- ▶ Establishment of the Economic Diplomacy Action Group and Delegation of Certain Functions and Authorities Under the Championing American Business Through Diplomacy Act of 2019, 07/12/2024.
- ▶ Actions by the United States Related to the Statutory 4-Year Review of the Section 301 Investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, 05/20/2024.
- ▶ Delegation of Authority Under the Protecting Americans from Foreign Adversary Controlled Applications Act, 07/29/2024.

The pertinent question regarding federal intervention is what these executive orders and memoranda do, and the authority or lack thereof used to justify them.