

Artificial Intelligence

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Executive Order Establishes National Policy Framework for Artificial Intelligence; Sets Up New Federal-State Flashpoints

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Background

On December 11, the President issued an executive order establishing a national policy framework for artificial intelligence (AI), with the stated objective of promoting U.S. leadership and maintaining global competitiveness in AI. This executive action follows an unsuccessful push to secure federal legislation that would have curtailed states' ability to enact their own AI rules. In the absence of a federal statute, states have proceeded apace: Over the past several years, dozens of states have enacted more than 100 AI-related statutes and regulations, with many more proposed measures pending. AI companies (and the White House) argue that this patchwork of state regulation has produced diverging and, in some cases, conflicting obligations for entities that develop, procure, or deploy AI tools across state lines.

Importantly, the executive order does not purport to invalidate state AI laws on its face. Instead, it establishes a federal policy framework and directs executive-branch actors to pursue a mixture of litigation, administrative standards-setting, and funding conditions to limit or displace state requirements deemed inconsistent with such federal framework. As a practical matter, state AI statutes and rules remain operable and enforceable unless and until a court holds they are preempted or a federal agency action with lawful preemptive effect displaces them.

Several of the more comprehensive state laws, including several significant regulations out of California, are scheduled to take effect in 2026 and would impose significant governance, testing, disclosure, and recordkeeping obligations on model developers and deployers. Industry stakeholders have argued that the proliferation of divergent state standards risks fragmenting compliance, raising costs, and slowing innovation, while state officials have defended these measures as necessary to address risks in consumer protection, discrimination, safety, alignment, and transparency.

Key Provisions and Policy Initiatives

1. **Federal Preemption and Litigation.** The order directs the U.S. Attorney General to establish the AI Litigation Task Force within 30 days to identify and challenge state AI laws that are asserted to conflict with the federal framework. Potential grounds to challenge state laws include constitutional challenges (e.g., dormant commerce clause limits on state regulation of interstate markets) and federal preemption theories (e.g., conflict or obstacle preemption), as well as other constitutional or statutory arguments. The task force is empowered to coordinate across federal agencies and with senior White House advisors to prioritize targets for challenge.
2. **Evaluation of State AI Laws.** Within 90 days, the Secretary of Commerce is to publish an evaluation of existing state AI laws, identifying provisions that purportedly conflict with federal policy objectives. The evaluation is expected to flag state requirements that, in the administration's view, compel AI systems to alter truthful outputs, impose ideologically inflected content standards, or mandate disclosures that raise constitutional concerns. The evaluation may also spotlight state provisions that the administration views as promoting innovation or aligning with federal goals.
3. **Restrictions on State Funding.** The order conditions eligibility for certain federal funds—identified to include, among others, programs such as the Broadband Equity, Access, and Deployment (BEAD) program—on adherence to the federal AI policy to the extent consistent with law. Federal agencies are directed to review discretionary grant programs and, where legally permissible, condition awards on states' refraining from enforcing AI laws the administration deems inconsistent with federal policy. The order contemplates excluding states with "onerous" AI rules from receipt of specific non-deployment funds and directs agencies to incorporate AI policy compliance conditions into grant terms.

4. **Federal Reporting and Disclosure Standards.** The Chair of the Federal Communications Commission (FCC) is instructed to initiate a proceeding to consider adopting federal reporting and disclosure standards for AI models and AI-enabled services within the FCC's jurisdiction. The stated objective is to promote uniformity and, where lawful, to preempt conflicting state requirements that would impose divergent labeling, reporting, or disclosure obligations in covered communications services and platforms.
5. **Preemption of State Laws Mandating Deceptive AI Conduct.** The Chair of the Federal Trade Commission (FTC) is directed to issue a policy statement clarifying that state laws requiring alterations to truthful AI outputs or the adoption of certain content outputs may be preempted by the Federal Trade Commission Act's prohibition on unfair or deceptive acts or practices, insofar as such state requirements would compel practices that the FTC deems deceptive or otherwise unlawful.
6. **Legislative Recommendations.** The order calls for the development of legislative proposals to establish a uniform national framework for AI that would expressly preempt conflicting state requirements. The order indicates that preemption would not extend to certain state prerogatives, including areas such as child safety protections, some aspects of infrastructure permitting for data centers and energy, state procurement choices, and other specified domains.

Federalism and Preemption Considerations

The order's approach raises significant federalism and separation-of-powers questions that will likely be litigated. Executive orders, standing alone, do not create binding federal law that preempts state statutes; any preemptive effect must rest on valid statutory authority and properly promulgated regulations or on constitutional constraints that independently limit state action.

The administration's contemplated litigation path will likely test several doctrines. First, dormant commerce clause principles limit states' ability to regulate extraterritorially or to impose on interstate commerce any burdens that are clearly excessive in relation to putative local benefits. Second, compelled-speech jurisprudence under the First Amendment may be invoked where state rules require particular content outputs or extensive disclosures that go beyond factual and uncontroversial information in commercial contexts. Third, any attempt by federal agencies to announce preemptive standards must be grounded in statutory authorities that clearly permit preemption or establish a comprehensive federal scheme; agency policy statements, in and of themselves, typically do not carry preemptive force absent notice-and-comment rulemaking and a clear source of authority. Further, the order's use of funding conditions implicates spending clause limits. Although Congress may attach conditions to federal funds, those conditions must be unambiguous, related to the federal interest in particular national projects or programs, and may not be so coercive as to pass the point at which "pressure turns into compulsion."

What This Means for State AI Regimes

States with comprehensive AI measures, like California, will certainly become early targets for federal challenge. The administration's focus on provisions that "compel" alteration of truthful outputs or that mandate viewpoint-specific content standards suggests heightened scrutiny of rules that could be framed as dictating model behavior on contested topics. At the same time, the order explicitly preserves room for state action in certain areas, such as children's privacy and safety and aspects of infrastructure permitting, where state authority remains central.

Until courts clarify the contours of preemption and constitutional limits, organizations should expect parallel federal and state activity. State attorneys general and regulators will likely defend their statutes and, in some cases, accelerate rulemakings or enforcement to entrench existing state frameworks. Industry groups may pursue declaratory and injunctive relief against state provisions flagged by the federal evaluation. The result is likely to be a multi-forum, multi-issue set of challenges with uneven timelines and outcomes across jurisdictions.

Anticipated Agency Processes and Timelines

Near-term milestones include the Department of Justice's (DOJ) establishment of the AI Litigation Task Force within 30 days; the Department of Commerce's issuance of a 90-day evaluation of state AI laws; the FCC's initiation of a rulemaking proceeding to consider standardized reporting and disclosures for AI-enabled communications services; and the FTC's issuance of a policy statement concerning state mandates on AI outputs. Each process carries its own procedural steps, and the DOJ's litigation posture could produce the earliest concrete developments as targeted suits are filed and preliminary injunctions sought.

Practical Considerations for Companies

Organizations that develop, supply, or deploy AI systems should prepare for a continued period of regulatory uncertainty and potential divergence across jurisdictions. Companies should assess their current and planned use of AI against both existing state regimes and the potential federal overlay contemplated by the order, without presuming

the order will provide certainty on the validity of any particular state regulations in the near term. Particular attention should be paid to transparency and disclosure obligations, content- or output-related requirements, risk assessment and testing mandates, and recordkeeping and audit duties. Where state law imposes requirements scheduled to take effect in 2026, companies should continue implementation planning and compliance buildouts while monitoring federal developments that could affect scope or timing.

What To Watch

In light of the foregoing, those impacted by the order are well-advised to follow:

- The composition, responsibility, and early filings of the DOJ AI Litigation Task Force, including the theories advanced and the specific state provisions challenged
- The Commerce Department's 90-day evaluation, especially any lists identifying "conflicting" provisions and any criteria that could be incorporated into subsequent federal rulemakings or guidance
- FCC and FTC actions, including whether the FCC proposes disclosure or labeling standards that purport to preempt conflicting state obligations, and the scope of the FTC's policy statement on compelled outputs
- State legislative and enforcement responses, including efforts to revise statutes to mitigate preemption risk or to accelerate enforcement before federal actions mature

This alert is intended to inform clients about the fast-moving development at the federal and state levels. The legal and practical implications will vary substantially by sector, product type, and jurisdictional footprint. We are monitoring federal agency actions, litigation filings, and state responses. General counsel and policy teams should coordinate with product, compliance, and government affairs stakeholders to evaluate near-term obligations and contingency plans as the federal framework and state regimes converge and collide over the coming months.

This alert provides general information on recent legal developments and does not constitute legal advice. Organizations should consult with counsel regarding the specific implications of the executive order and state AI laws.

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