

COMPARISON OF STATE EXECUTIVE ORDERS ON ARTIFICIAL INTELLIGENCE

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SUMMARY: Since July 2023, the White House and eight states have published executive orders (EOs) or policy memos directing their agencies to study, create reports, and develop policies and procedures on the responsible and ethical use of artificial intelligence (AI) and generative AI. Each EO has different requirements, with most focusing on creating task forces or assigning agencies to study AI and offer recommendations. *Although the EOs are not primarily targeted towards regulation of private entities, there are potential effects on industry, including how government regulators may view AI compliance with data privacy, security, civil rights, and consumer protection laws.*

	FOCUS	REQUIREMENTS	ANALYSIS
WHITE HOUSE Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence	Government and Contractor Use of Artificial Intelligence and Generative Artificial Intelligence	<p>Federal agencies*</p> <ul style="list-style-type: none"> • Develop coordinated guidance and best practices for general and federal agency AI use (Sec. 4.1(a)(i), 10.1, 12(a)) • Enforcement Authority: Coordinate across agencies to assess authority to address algorithmic discrimination (Sec. 7.1(a)(ii)) • Critical Infrastructure: Provide risk assessments, develop relevant tools, and incorporate the AI Risk Management Framework into relevant safety and security guidelines (Sec. 4.1(b), 4.3(a)) • Security: Assess cyber and biosecurity tools, and provide guidance on national security and AI governance (Sec. 4.1 - 4.4, 4.6 - 4.8) • Authentication: Create guidance for detecting AI-generated content and authenticating digital content (Sec. 4.5) • Innovation and Competition: Facilitate visa/work opportunities for foreign AI experts, implement a national AI research resource, and prioritize the AI talent pool and funding (Sec. 5.1 - 5.3, 10.2) • Labor: Submit report on market effects of AI, publish best practices for employers, and provide guidance for contractors regarding non-discrimination in hiring with AI (Sec. 6, 7.3(a)) • Civil Rights: Assess AI use and potential bias in the criminal justice system, public benefit system, housing markets, and hiring process; and publish guidance for contractors regarding non-discrimination in hiring (Sec. 7.1 - 7.3) • Contracting: Ensure agency contracts for AI systems and services align with this EO and applicable laws (Sec. 10.1(d)(ii)) • Healthcare and Education: Develop a strategic plan on deploying AI in healthcare and in education (Sec. 8(b), 8(d)) • Privacy: Review opportunities to use relevant privacy tools (Sec. 9) • International Development: Coordinate AI standards with stakeholders (Sec. 11) • AI Expert: Each agency must designate one individual as the Chief Artificial Intelligence Officer (Sec. 10.1(b)(i)) 	<p>As noted in the FPF Policy Brief, the executive order’s mandate for federal agencies to clarify how AI fits into their existing authority and enforcement priorities to mitigate discrimination builds upon previous work by the White House and a coalition of federal agencies, but could face challenges to agencies’ authority under the “major questions doctrine” – a recently-reinvigorated limit on executive power.</p> <p>Rather than creating a new agency or regulator (as proposed by other federal policymakers), the EO leans heavily on the Department of Commerce and the Office of Management and Budget to lead and coordinate with other agencies, as well as the National Institute of Science and Technology to create baseline testing standards. The EO emphasizes cybersecurity, privacy, civil rights, education, healthcare, and workforce development issues.</p> <p>Of the AI/generative AI EOs discussed here, the White House EO is the most prescriptive and includes virtually all the requirements discussed at the state level. The EO’s scope speaks to the Biden administration’s broad legal, regulatory, and policy vision for AI, including a call for bipartisan privacy legislation. The White House EO is the most similar to California, as it includes</p>

		<p><u>Companies</u></p> <ul style="list-style-type: none"> ● Provide federal government information on potential dual-use foundation models and large computing clusters (Sec. 4.2(i)) ● Submit a report when foreign individuals train large AI models with potential malicious cyber capability (Sec. 4.2(c)(i)) <p><i>*Specific federal agencies subject to each EO requirement are omitted for brevity</i></p>	<p>specific mandates and compliance timelines.</p>
<p><u>CALIFORNIA</u> Executive Order N-12-23</p>	<p>Government Use of Generative Artificial Intelligence</p>	<p><u>State agencies*</u></p> <ul style="list-style-type: none"> ● Reports/Assessments: <ul style="list-style-type: none"> ○ Draft a risk-benefit report on relevant generative AI use cases (Sec. 1) ○ Perform a joint risk analysis and draft recommendations to mitigate the effects of generative AI on infrastructure (Sec. 2) ○ Develop guidelines for state agencies to analyze generative AI’s impact on vulnerable communities (Sec. 3b) ○ Inventory generative AI use (Sec. 3d) ○ Engage with the Legislature and relevant stakeholders to develop generative AI guidelines, criteria, reports, and trainings (Sec. 4) ● Procurement: <ul style="list-style-type: none"> ○ Issue guidelines for public sector procurement, update state procurement/contract terms, and consider procurement and enterprise use opportunities to improve the efficiency and accessibility of government operations (Sec. 3a, 3c, 3e) ● Agencies should conduct pilots of generative AI projects (Sec. 3f, 3g) ● Maintenance: <ul style="list-style-type: none"> ○ Make generative AI trainings available to state government workers; evaluate impact, and provide guidelines on generative AI tools (Sec. 5) ○ Periodically evaluate generative AI’s impact on regulatory issues (Sec. 7) ● Partner with academic institutions to host a California-specific summit about the impacts of generative AI (Sec. 6) <p><i>*Specific state agencies subject to each EO requirement are omitted for brevity</i></p>	<p>California’s executive order is the most prescriptive of the state EOs – with specific mandates tailored to each agency and specific timelines for compliance. The California EO also requires the heaviest lift of its state agencies and departments by requiring not only impact assessments, risk analysis, and public guidelines, but also requires agencies to update procurement and contract terms.</p> <p>Like California AB 302 and SB 331, many of the reports and assessments are mandated to focus on “high-risk” use cases, such as where the system is used to make a “consequential decision” affecting individuals’ access to essential goods and services.</p>
<p><u>KANSAS</u> Office of Information Technology Services Policy Memo (as directed by the Governor to apply to the executive branch)</p>	<p>Government Use of Generative Artificial Intelligence</p>	<p><u>State agencies</u></p> <ul style="list-style-type: none"> ● Human Review: <ul style="list-style-type: none"> ○ Human operators must review generative AI responses (Sec. 9.2.1) ● Prohibitions: <ul style="list-style-type: none"> ○ Use of generative AI responses, e.g., as a sole source of reference or solely relied upon for making final decisions (Sec. 9.2.2) ○ Use of confidential state data for generative AI queries (Sec. 9.2.3) ○ Use of copyrighted materials for generative AI inputs (Sec. 9.2.5) ○ Use of generative AI in a manner that is harmful, illegal, or in violation of state policy (Sec. 9.2.6) ● Software code generated by generative AI can only be implemented after 	<p>The Kansas policy memo includes more requirements than most of the state executive orders, with the exception of California.</p> <p>Like California, it references agency contracts but goes even further by noting specific requirements, such as prohibiting contractors from using confidential state data in generative AI queries).</p> <p>Along with Pennsylvania, Kansas is one of the</p>

		<p>potential risks have been addressed (Sec. 9.3)</p> <p><u>Contractors</u></p> <ul style="list-style-type: none"> ● Disclose when generative AI is used (Sec. 9.2.7) ● Prohibited from using confidential state data in generative AI queries, unless prior approval is received (Sec. 9.2.8) ● Must demonstrate positive control over all data input (Sec. 9.2.9) 	<p>few states to explicitly define generative AI in its policy memo. This definition is slightly more narrow, noting both the types of technologies that produce content and the actual content produced, such as text, images, and other types of media.</p> <p><i>Definition:</i> <i>Generative AI uses advanced technologies such as predictive algorithms, machine learning, and large language models to process natural language and produce content in the form of text, images, or other types of media.</i></p>
<p><u>NEW JERSEY</u> Executive Order 346</p>	<p>Government and State-Wide Use of Generative Artificial Intelligence</p>	<p><u>AI Task Force</u></p> <ul style="list-style-type: none"> ● Study AI technologies, issue findings, and offer recommendations for appropriate government action regarding generative AI (Sec. 1) ● Consult with private and public sector subject matter experts and elicit public input (Sec. 8) <p><u>State agencies</u> (Sec. 10)</p> <ul style="list-style-type: none"> ● Explore AI in: <ul style="list-style-type: none"> ○ Economic development ○ University research opportunities ● Develop AI policy for Executive Branch departments and agencies ● Develop AI training for Executive Branch staff ● Evaluate AI tools and strategies to improve government services ● Support the Executive Branch in deploying AI to improve government services 	<p>The New Jersey executive order has authorized specific agencies to delve into relevant AI issues. Similar to Wisconsin, the task force’s role is solely advisory.</p> <p>Like most of the other states on this list, New Jersey’s state agencies are directed to develop AI policies and training to support the Executive Branch.</p>
<p><u>OKLAHOMA</u> Executive Order 2023-24</p>	<p>Government and State-Wide Use of Artificial Intelligence and Generative Artificial Intelligence</p>	<p><u>Task Force</u></p> <ul style="list-style-type: none"> ● Develop principles and values for using and developing AI and generative AI within state government ● Implement a governance framework that outlines policies, procedures, and processes, with a particular emphasis on data management, model development, and model monitoring ● Determine how to educate and train Oklahoma’s workforce ● Improve government services and efficiencies <p><u>State agencies</u></p> <ul style="list-style-type: none"> ● Directors must choose an individual on their team as the AI and generative AI expert 	<p>The Oklahoma executive order is broader than the others by covering both AI and generative AI. Its requirement for a governance framework is also more detailed than others, requesting that “special attention” is paid to data management, model development, model monitoring, and human oversight.</p> <p>It is the only state to require each state agency or department director to “charge one person on their team with becoming an AI and generative AI expert.”</p>
<p><u>OREGON</u> Executive Order 23-26</p>	<p>Government Use of Artificial</p>	<p><u>Task Force</u></p> <ul style="list-style-type: none"> ● Develop an advisory action plan to guide AI use and institute policy solutions including concrete executive actions, policies, and investments. The task force 	<p>Oregon’s executive order mandates only the creation of a task force to study the impacts of AI and to recommend policy solutions that support</p>

	Intelligence and Generative Artificial Intelligence	<p>must address:</p> <ul style="list-style-type: none"> ○ Awareness of AI solutions to support state employees with decisionmaking; and ○ Policies that outline acceptable uses of AI tools. 	<p>state employees with decision-making.</p> <p>Although not as categorical as Pennsylvania's core values, Oregon's EO also emphasizes principles of transparency, privacy, diversity, equity, and inclusion.</p>
PENNSYLVANIA Executive Order 2023-19	Government Use of Generative Artificial Intelligence	<p><u>Governing Board</u> (Sec. 4)</p> <ul style="list-style-type: none"> ● Provide recommendations on policies and procedures for using, developing, and procuring generative AI, including: <ul style="list-style-type: none"> ○ Utilization of the technology ○ Mechanisms for internal and external feedback ○ Exploration of ways to utilize the technology to improve services and administration ○ Procurement guidelines ○ Training from subject-matter experts ● Engage with subject matter experts, encourage agencies to use generative AI to improve governmental services, and serve as a liaison for external stakeholders <p><u>Office of Administration</u></p> <ul style="list-style-type: none"> ● Convene working groups to recommend policy updates and guidelines for agency employees (Sec. 6a, 6b) ● Offer training to government employees who use generative AI (Sec. 6c) 	<p>Similar to the other executive orders, Pennsylvania requires recommended policies and procedures for state use of generative AI. However, unlike other jurisdictions, it sets forth core values that must be considered, including accuracy, adaptability, and equity.</p> <p>Also, along with Kansas, Pennsylvania is one of the few states to define generative AI in its EO. Its definition of AI is more expansive than Kansas' definition, which specifies that generated content must be in the form of text, images, or other types of media. Pennsylvania, on the other hand, holds broadly that generative AI produced content includes, but is not limited to text, images, code, audio, simulations, and video. The EO also defines other key terms such as "bias" and "proportionality."</p> <p><i>Definition:</i> Generative AI refers to technology or tools that use predictive algorithms to create new content including audio, code, images, text, simulations, and videos.</p>
VIRGINIA Executive Directive 5	Government and State-Wide Use of Artificial Intelligence	<p><u>Office of Regulatory Management</u></p> <ul style="list-style-type: none"> ● Assess the legal and regulatory environment and make recommendations for uniform standards across state agencies (Sec. I) ● Develop a plan to promote guidelines for AI tools in education and the workplace (Sec. II) ● Identify and evaluate mechanisms for government operations to improve efficiency through AI (Sec. III) ● Develop guidelines for use of AI in government decision-making with a focus on transparency and accountability (Sec. III(c)) ● Assess risks and opportunities of AI on Virginia's labor market and encourage AI innovation (Sec. IV) 	<p>Like Oklahoma, Virginia's executive order is broader since it includes all types of AI, rather than focusing on generative AI.</p> <p>Similar to Wisconsin and Oregon, Virginia's directive is less strict than the other EOs.</p>
WISCONSIN Executive Order	State-Wide Use of	<p><u>Task Force</u> (Sec. 2)</p> <ul style="list-style-type: none"> ● Develop an advisory action plan that includes information and policy solutions for 	<p>Similar to Oregon, Wisconsin's executive order mandates only the creation of a task force to</p>

211	Generative Artificial Intelligence	<p>workforce development and education systems, including:</p> <ul style="list-style-type: none"> ○ Impact of generative AI on the current and future labor market ○ Effect on key state industries ○ Initiatives to advance equity and economic opportunity ○ Recommendations 	<p>study the impacts of AI and to recommend solutions. Unlike other EOs, it appears more focused on how generative AI will affect the state workforce and industry, than how it should be used by state agencies.</p> <p>It is the least prescriptive of the EOs and does not include a deadline for compliance.</p>
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