1 big thing: What's in Biden's order — and what's not

Illustration: Maura Losch/Axios

Ina here, hoping you found the candy you really wanted in your kid's stash. (Really, just me?) Today's AI+ is 1312 words, a 5-minute read.

The Biden administration's [AI executive order](#) has injected a degree of certainty into a chaotic year of debate about what legal guardrails are needed for powerful AI systems, R*yan Heath reports*.

Why it matters: The U.S. will have some measure of government oversight of the most advanced AI projects. It won't have licensing requirements or rules requiring that companies disclose training data sources, model size and other important details.

The big picture: Biden's approach is more carrot than stick, but it could be enough to move the U.S. ahead of overseas rivals in the race to regulate AI.

- The EU is set to finalize comprehensive AI regulations this year, including fines to enforce compliance, but they won't be in effect until 2025.

Yes, but: Executive orders are more unstable than legislation as they can be reversed by future administrations — and this one depends in large part of on the goodwill of tech companies.

Between the lines: Any effective global governance will require constructive dialogue with China.

- That challenge is now in the lap of Vice President Kamala Harris, Biden's point person on AI policy, starting at an AI safety summit outside London that begins Wednesday.

Biden's plan tasks government agencies with examining the application of AI to their areas of responsibility and leaves them to work out the details.

- Its provisions won't just apply to the generative AI programs that captured public imagination over the past year, but to "any machine-based system that makes predictions, recommendations or decisions," per an [EY analysis](#).

Testing requirements are the most significant and most stringent provision of the executive order.

- Developers of new "dual-use foundation models" that could pose risks to "national security, national economic security, or national public health and safety" will need to provide updates to the federal government before and after deployment — including testing that is

"robust, reliable, repeatable and standardized."

- The National Institute of Standards and Technology will develop standards for red-team testing of these models by August 2024, while the Defense Production Act will be used to compel AI developers to share the results.
- The testing rules will apply to AI models whose training used "a quantity of computing power greater than 10 to the power of 26 integer or floating-point operations." Experts say that will exclude nearly all AI services that are currently available.

Yes, but: It's not clear what action, if any, the government could take if it's not happy with the test results a company provides.

Other key provisions of the order:

- The Department of Commerce will develop standards for detecting and labeling AI-generated content.
- Every federal agency will designate a Chief AI Officer within 60 days and an interagency AI Council will coordinate federal action.
- The order promises to enforce consumer protection laws to prevent discrimination through AI and enact unspecified "appropriate safeguards" in fields such as housing and financial services.
- The order commits to "ease AI professionals' path into the Federal Government" and offer expanded AI training to bureaucrats. It also asks the secretaries of state and homeland security to make it easier for AI talent to apply for and renew visas.

The order leaves out a number of rules that have featured in this year's public debates.

- There's no licensing regime for the most advanced models, a proposal [embraced](#) by OpenAI CEO Sam Altman — and there are no bans on the

highest-risk uses of the technology.

- The order does not mandate the release of details about training data and model size, which many experts and critics argue is essential for understanding the technology and anticipating its potential harms.
- There's no guidance around how copyright or other forms of intellectual property law will apply to works created with or by AI — that is now left to courts to decide.

The bottom line: Unless a fractious Congress can somehow unite on this contentious issue — perhaps around a narrowly defined problem, like AI use in elections and campaign materials — Biden's order is likely to be the only AI law of the land in the U.S. for a long time.