

Algorithmic Accountability Act of 2023 Section-by-Section

SECTION 1. SHORT TITLE.

Section 1 designates the act as the “Algorithmic Accountability Act of 2023.”

SECTION 2. SELECT DEFINITIONS.

Section 2 defines terms such as “augmented critical decision process,” “automated decision system,” “critical decision,” “covered entity,” “deploy,” “develop,” “identifying information,” “impact assessment,” “passive computing infrastructure,” and “summary report” as they are used in the Algorithmic Accountability Act of 2023.

“Augmented critical decision process” (ACDP) means a process, procedure, or other activity that employs an automated decision system to make a critical decision.

“Automated decision system” (ADS) means any system, software, or process (including one derived from machine learning, statistics, or other data processing or artificial intelligence techniques and excluding passive computing infrastructure) that uses computation, the result of which serves as a basis for a decision or judgment.

“Critical decision” means a decision or judgment relating to consumers’ access to or the cost, terms, or availability of education and vocational training, employment, essential utilities, family planning, financial services, healthcare, housing or lodging, legal services, or any other service, program, or opportunity that has a comparably legal or similarly significant effect on a consumer’s life as determined by the Commission through rulemaking.

“Covered entity” means any person, partnership, or corporation over which the Commission has jurisdiction that either (1) meets certain minimum conditions on annual gross receipts, equity value, or data about consumers and deploys any ACDP, (2) meets lower threshold conditions on annual gross receipts or equity value and is an entity that deploys (including making available for license or sale) any ADS for use in ACDPs, or (3) met the criteria described in (1) or (2) within the previous 3 years.

“Deploy” means to implement, use, or make available for sale, license, or other commercial relationship.

“Develop” means to design, code, produce, customize, or otherwise create or modify.

“Identifying information” means any information, regardless of how the information is collected, inferred, predicted, or obtained that identifies or represents a consumer, household, or consumer device through data elements or attributes, such as name, postal address, telephone number, biometrics, email address, internet protocol address, social security number, or any other identifying number, identifier, or code.

“Impact assessment” means the ongoing study and evaluation of an automated decision system or augmented critical decision process and its impact on consumers.

“Passive computing infrastructure” means any intermediary technology that does not influence or determine the outcome of a decision, including web hosting, domain registration, networking, caching, data storage, or cybersecurity.

“Summary report” means documentation of a subset of information required to be addressed by impact assessment as described in this Act or determined appropriate by the Commission.

SEC. 3. ASSESSING THE IMPACT OF AUGMENTED CRITICAL DECISION PROCESSES.

Section 3 requires the FTC to promulgate regulations that require companies to conduct impact assessment, on an ongoing basis, of any critical decisions being automated that impact consumers lives and any ADS deployed for use by other entities to make critical decisions with. It also requires companies to maintain documentation of such impact assessment for 5 years after deployment ends.

The regulations will require companies to:

- Disclose their status as a covered entity to any partner organizations that develop ADS for the covered entity;
- Submit formatted summary reports to the FTC about any impact assessment;
- Meaningfully consult with both internal stakeholders and independent external stakeholders to the extent possible; and
- Attempt to eliminate or mitigate impacts with a likely material negative impact.

During the promulgation of these regulations the FTC will consider different factors, including how the technology development life cycle will allow certain assessment only at particular stages of development and deployment, the administrative burden placed on both the covered entity and the Commission, how much to standardize the summary reporting, existing privacy and other regulations, and whether information sharing between covered entities and other entities who develop ADS for them might be needed.

In addition, the FTC may tailor requirements for the different categories of critical decision and the stages of development and deployment of an ACDP or ADS.

SEC. 4. REQUIREMENTS FOR COVERED ENTITY INTERNAL IMPACT ASSESSMENT.

Section 4 provides details on the impact assessment process, which is an internal process within a covered entity, including what types of assessment, documentation, and analysis should be considered and completed, as applicable to each covered entity.

A majority of this section focuses on the elements of assessment of the ADS or ACDP, and includes requirements for:

- Description of any current process being replaced by a new ACDP;
- Documentation of any data or other input information used for development, testing, maintaining, or updating;

- Testing and evaluation of the privacy risks and privacy-enhancing measures;
- Testing and evaluation of the current and historical performance including testing both prior to and after deployment;
- Documentation of significant dates of development and deployment and key points of contact;
- Information about the stakeholder engagement;
- Evaluation of the rights of consumers, including the degree to which a consumer may contest, correct, or appeal a decision or opt out of such system or process; and
- Identification of likely material negative impacts on consumers and assessment of applicable mitigation strategies;

Along with assessment of the ADS or ACDP, this section also requires covered entities to:

- Train relevant employees, contractors, or other agents regarding likely material negative impacts on consumers and methods for assessing impacts;
- Determine whether they should place any limitations on certain uses of their ADS or ACDP; and
- Identify opportunities for improvements to the development and deployment of ADS and ACDP or the process of impact assessment for which funding, datasets, and other resources from the government could be necessary or beneficial.

As the practice of impact assessment is still an emerging one, there are not yet settled norms or standards on what is “good enough” and some of the requirements are not applicable to or possible for certain covered entities. To capture this reality the final requirement of the impact assessment is for covered entities to document which of the requirements of impact assessment were not possible to conduct, as well as the corresponding rationale for not being able to conduct such requirements.

SEC. 5. REQUIREMENTS FOR SUMMARY REPORTS TO THE COMMISSION.

Section 5 requires a subset of the assessment process described in Section 4 to be documented in a summary report format and submitted regularly to the FTC. This includes documentation about:

- The critical decision being made and the purpose of (and need for) the ADS or ACDP;
- The data and other inputs used and their sourcing;
- The performance of the ADS or ACDP;
- Stakeholders consulted;
- The transparency, explainability, and degree to which a consumer may contest, correct, or appeal a decision or opt out of such system or process;
- Any likely material negative impacts identified and the steps taken to remediate or mitigate, including any publicly stated limitations placed on certain uses of the ADS or ACDP;
- Which requirements of impact assessment were and were not completed and the rationale for those not completed;
- Any requests to the Commission for new capabilities, tools, standards, and resources to improve any ADS, any ACDP, or the impact assessment process.

SEC. 6. REPORTING; REGISTRY.

Section 6 requires the FTC to annually publish a report on the trends and lessons learned from impact assessment summary reporting.

In addition, it requires the FTC to develop a public registry of information on augmented critical decision processes and automated decision systems based on the summary reporting, with key information for consumers including information about data sources, high level metrics, and where available documentation of any mechanism for a consumer to contest these critical decisions.

SEC. 7. GUIDANCE AND TECHNICAL ASSISTANCE; OTHER REQUIREMENTS.

Section 7 requires the FTC to provide guidance and training materials to help entities determine their covered entity status and conduct impact assessment.

In addition, this section:

- Preserves the rights of covered entities to publish the entirety of the impact assessment documentation at their discretion;
- Requires review of the regulations every 5 years; and
- Requires the Commission to share information with OSTP and NIST for the purpose of standards development.

SEC. 8. RESOURCES AND AUTHORITIES.

Section 8 provides new resources and abilities to the FTC by:

- establishing a Bureau of Technology within the FTC run by a Chief Technologist and staffed by 50 new experts with the purpose of aiding and advising the FTC concerning the technology aspects of all of its functions;
- authorizing the FTC to appoint 25 additional personnel in the Bureau's Enforcement Division; and
- requiring Agreements of Cooperation to be established with key federal agencies that regulate critical decisions.

SEC. 9. ENFORCEMENT.

Section 9 allows the FTC to enforce the new regulations created by this Act. In addition, these regulations may also be enforced by state attorneys general and by other state officials designated by the attorney general.

Specifically this section:

- makes violations of the requirements to assess the impact of augmented critical decisions (Sec. 3) an unfair and deceptive practice;
- requires the FTC to conduct rulemaking as necessary to carry out the Act and provides the powers to enforce the Act based on the FTC Act; and

- allows States to bring civil action on behalf of residents of their states (after required notice to the FTC) based on violations of the requirements to assess the impact of augmented critical decisions.

SEC. 10. COORDINATION.

Section 10 requires coordination with the appropriate federal agencies or state regulators.

SEC. 11. NO PREEMPTION.

Section 11 clarifies that nothing in this Act preempts any state, tribal, city, or local law or ordinance.