

Federal Trade Commission
Supporting Statement for Proposed Amendments to
the Children’s Online Privacy Protection Rule
16 C.F.R. Part 312
(OMB Control No. 3084-0117)

(1) Necessity for Collecting the Information

The Children’s Online Privacy Protection Act (“COPPA” or “Act”), 15 U.S.C. § 6501 *et seq.*, prohibits unfair and deceptive acts and practices in connection with the collection and use of personally identifiable information from and about children¹ on the Internet. The underlying goals of the Act are to: (1) enhance parental involvement in children’s online activities in order to protect the privacy of children in the online environment; (2) limit the collection of personal information from children without parental consent; (3) help protect the safety of children in online fora that permit users to publicly post identifying information online; and (4) maintain the security of children’s personal information collected online. *See* 144 Cong. Rec. S11657 (Oct. 7, 1998) (statement of Sen. Bryan).

The COPPA Rule (“Rule”), 16 C.F.R. Part 312, imposes requirements on operators of websites or online services directed to children under 13 years of age or that have actual knowledge that they are collecting personal information online from children under age 13. Among other things, the Rule:

- (1) requires operators to provide notice to parents of the specific types of personal information sought to be collected from children and their uses (Section 312.3);
- (2) specifies the placement and content of the required online notice and describes the contents of the direct notice to parents (Section 312.4);
- (3) requires operators to obtain “verifiable parental consent” prior to collecting, using, or disclosing children’s personal information (Section 312.5);
- (4) requires operators to provide reasonable means to enable a parent to review the information (Section 312.6);
- (5) requires operators to establish procedures that protect the confidentiality, security, and integrity of personal information collected from children (Section 312.8).

In addition to the disclosure requirements imposed on covered operators, the Rule contains reporting requirements for entities voluntarily seeking approval as a COPPA safe harbor self-regulatory program (Section 312.10).

The Rule’s requirements are necessary because they expressly implement the Act’s requirements and goals.

The proposed amendments to the Rule would, among other things:

¹ A “child” is defined under the Act as an individual under 13 years of age. 15 U.S.C. 6501(2).

- (1) expand the definition of “personal information,” potentially increasing the number of operators subject to the Rule, pursuant to the proposed revised 312.2;
- (2) eliminate the sliding scale “email plus” method² for obtaining parental consent, pursuant to the proposed revised Section 312.5;
- (3) require that operators’ direct notices to parents contain more detailed information about their information collection practices, pursuant to the proposed revised Section 312.4(c);
- (4) require a safe harbor applicant to submit a more detailed proposal than what the current Rule mandates, pursuant to the proposed revised Section 312.11(b);
- (5) require approved safe harbors to conduct a comprehensive review of all member operators’ information policies, practices, and representations at least annually, pursuant to the proposed new Section 312.11(d).

The objectives of the proposed amendments are to modernize the Rule to ensure that children’s online privacy continues to be protected, as directed by Congress, as new online technologies evolve, and to clarify existing obligations for operators under the Rule. The COPPA provides the authority for the amendments proposed.

(2) Use of the Information

The proposed amendment to Section 312.4(c), requiring operators to provide parents with a more detailed direct notice, will better enable parents to determine whether to: permit their children to provide personal information online; seek access from a website or online service operator to review their children’s personal information; and/or object to any further collection, maintenance, or use of such information.

(3) Consideration to Use Improved Information Technology to Reduce Burden

By their terms and the very nature of the regulated industry, the Rule’s notice requirements make use of improved information technology (*i.e.*, electronic communications over the Internet) to reduce the burdens imposed by the Rule, consistent with the aims of the Government Paperwork Elimination Act, 44 U.S.C. § 3504 note. In particular, Section 312.4(b)

² “Email plus” is the mechanism available under a “sliding scale,” which allows for less reliable methods of obtaining parental consent where the collection is for internal purposes only. Under the current Rule, operators collecting personal information only for internal use may use the “email plus” method of obtaining verifiable parental consent. Through this method, operators obtain consent through an email from the parent, provided that the email is coupled with an additional step to provide greater assurance that the person providing consent is the parent. This includes, for example, obtaining a postal address or telephone number from the parent and confirming the parent’s consent by letter or telephone call, or sending a delayed confirmatory email to the parent after receiving consent. As discussed further in the associated Notice of Proposed Rulemaking, the Commission believes that the continued reliance on email plus has inhibited the development of more reliable methods of obtaining verifiable parental consent and that this method has outlived its usefulness. To encourage development of new consent mechanisms, and to provide transparency regarding consent mechanisms that may be proposed, the Commission proposes to establish a process in the Rule through which parties may, on a voluntary basis, seek Commission approval of a particular consent mechanism.

of the Rule requires that notices be posted online on the operators' website or online service, and Section 312.4(c) expressly contemplates that operators shall "tak[e] into account available technology" in ensuring that parents receive direct notice of their information practices. Notice under Section 312.4(c) incorporates by reference the requirement of Section 312.5(b) that operators obtain a parent's consent through methods "reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent."

The proposed amendments to Section 312.5 would permit operators to use electronic scans, video conferencing, and identity verification using government issued forms of identification as approved methods of parental consent. Each of these methods offers operators additional means to reduce their burden of compliance with the Rule. In addition, the proposed amendments create two new processes for recognition and approval of parental consent mechanisms that will enable operators to develop new consent methods that take into account technological advancements in the industry.

Thus, the Rule provides operators with the flexibility to employ appropriate, reasonable information technologies to comply with the notice and consent requirements.

(4) Efforts to Identify Duplication

The notice requirements of the Rule do not duplicate any other requirements of the Commission or, to its knowledge, the requirements of other federal or state government agencies.

(5) Efforts to Minimize Burden on Small Businesses

The Commission has designed the proposed Rule to minimize the compliance burden of these requirements as much as possible. The proposed revisions to the Rule's notice provisions streamline the requirements for the online notice. *See* Section 312.4(b). The proposed amendments to the direct notice requirements, while requiring operators to disclose additional information to parents, provide explicit, easy-to-follow requirements for operators dependent upon their particular information collection practices. *See* Section 312.4(c). This guidance will help eliminate much of the administrative and legal costs that might be incurred by a small or other business trying to determine how to comply with the Rule's notice requirements in connection with their own information practices. The Commission's adoption of these "performance" standards allows regulated entities to meet the Rule's requirements in ways suited to their particular businesses.

(6) Consequences of Conducting Collection Less Frequently

A less frequent “collection” would violate the express statutory language and intent of the COPPA.³ Parental notice under the proposed amended Rule works in tandem with the statute’s mandated parental consent requirement.⁴ Thus, the proposed Rule amendments do not require notices any more frequently than necessary for operators to comply with the statute and to enable parents to make an informed decision about an operator’s collection, maintenance, use, or disclosure of their children’s personal information. Moreover, safe harbor applications continue to be filed solely upon the initiative of the filer.

(7) Special Circumstances Requiring Collection Inconsistent With Guidelines

The proposed “collection” is consistent with all applicable OMB PRA guidelines under 5 C.F.R. § 1320.11. No collection inconsistent with such guidelines is being proposed.

(8) Consultation Outside the Agency

The Commission sought public comment on its associated PRA burden analysis during the original rulemaking process. 64 Fed. Reg. 22,750, 22,261 (April 27, 1999). In addition, when crafting the Rule, staff informally consulted with members of the website and online service industry and also met with federal, state, and local law enforcement agencies. Staff balanced the need for requiring compliance in accordance with the statute against the need to minimize the burden associated with such compliance.⁵ The Commission again seeks public comment on the PRA burdens in connection with the proposed Rule amendments.

(9) Payments or Gifts to Respondents

Not applicable. The Commission makes no payments or gifts to respondents in connection with the proposed requirements.

³ See 15 U.S.C. §§ 6502(b)(1)(A) (requiring website notice) and (B) (notice to parents upon request). These requirements are reflected in the Commission’s Rule at Sections 312.3(a) (online notice), proposed 312.4(b) and (c) (form and content of online and direct to parent notices), and 312.6(a) (notice to parents upon their request).

⁴ See 15 U.S.C. § 6502(b)(1)(A)(ii) (requiring verifiable parental consent) and § 6501(9) (defining “verifiable parental consent” to mean, in relevant part, any reasonable efforts, taking into consideration available technology, to ensure parental notice of the operator’s personal information collection, use, and disclosure practices). These requirements are reflected in the Commission’s Rule at Sections 312.4 (form and contents of notices) and 312.5 (parental consent and exceptions).

⁵ Most recently, the Commission again sought public comment on PRA aspects of the Rule, as required by 5 C.F.R. 1320.8(d). See 76 Fed. Reg. 31,334 (May 31, 2011). No comments were received. OMB has approved the Rule’s existing information collection requirements through July 31, 2014.

(10) & (11) Assurances of Confidentiality/Matters of a Sensitive Nature

The requirements for which the Commission is seeking OMB approval do not involve collection or disclosure of confidential information but, rather, notice (*i.e.*, disclosure) of information practices by website and online service operators to the public and specifically to parents of children from whom personal information is sought to be collected.⁶

(12) Hours Burden

Number of Respondents:

An estimated 2,000 existing operators; 100 new operators per year
4 existing safe harbor programs; an estimated 1 new applicant per year

The Commission is unaware of any empirical evidence concerning the number of operators subject to the Rule. Commission staff, however, estimates that approximately 2,000 operators may be subject to the Rule's requirements. This estimate is based on the Commission's compliance monitoring efforts in the area of children's privacy, data received by the Commission in preparing its most recent studies of food marketing to children and marketing of violent entertainment to children, and the recent growth in interactive mobile applications that may be directed to children.

For this burden analysis, the Commission retains its recently published estimate of 100 new operators per year⁷ for a prospective three-year PRA clearance period. The Commission also retains its estimate that no more than one additional safe harbor applicant will submit a request within the next three years.

The proposed changes to the definition of "personal information" would expand the definition to encompass additional types of information and thereby potentially increase the number of operators subject to the Rule. The Commission believes, however, that the number of operators subject to the Rule's requirements will not change significantly as a result of the

⁶ Although not applicable to the "information collection" requirements for which the Commission is seeking OMB approval, the COPPA and the Rule do contain provisions to ensure the confidentiality, security, and integrity of personal information collected from children by website and online service operators. *See* 15 U.S.C. § 6502(b)(1)(D); 16 C.F.R. § 312.8 (confidentiality, security, and integrity). In addition, the proposed amendments to the Rule include new language to Section 312.8 that would require an operator to "take reasonable measures to ensure that any service provider or any third party to whom it releases children's personal information has in place reasonable procedures to protect the confidentiality, security, and integrity of such personal information." Moreover, under proposed Section 312.10, the Commission would add a data retention and deletion requirement that would further ensure the confidentiality, security, and integrity of the personal information collected from children.

⁷ *See* Agency Information Collection Activities; Submission for OMB Review; Comment Request; Extension, 76 FR 31334 (May 31, 2011) ("FTC COPPA PRA Extension").

proposed definitional revisions. Even though altering the definition of personal information potentially expands the pool of covered operators, other proposed changes in the Rule should offset much of this potential expansion. Specifically, these offsets include provisions allowing the use of persistent identifiers to support the internal operations of a website or online service, and permitting the use of reasonable measures such as automated filtering to strip out personal information before posting children's content in interactive venues. The Commission also anticipates many of these potentially new operators will make adjustments to their information collection practices so that they will not be collecting personal information from children, as defined by the Rule.

Estimated annual hours burden: 40,770 hours

(a) Recordkeeping Requirements: 170 hours

The proposed Rule amendments do not impose any new significant recordkeeping requirements on operators. The proposed amendments do impose additional recordkeeping requirements on voluntary safe harbor programs, however. Commission staff estimates that in the year of implementation (“Year 1”), the four existing safe harbor programs will require no more than 100 hours to set up and implement a new recordkeeping system to comply with the proposed amendments.⁸ In later years, once compliant systems are established, the burden for these entities should be negligible – no more than one hour each year.⁹ Thus, annualized burden per year for a prospective three-year clearance for existing safe harbor programs is 34 hours per safe harbor program ($100 + 1 + 1 = 102$ hours; $102 \text{ hours} \div 3 = 34$ hour per year). Accordingly, for the four existing safe harbor programs, cumulative annualized recordkeeping burden would be 136 hours.

For a new entrant, the initial burden of establishing recordkeeping systems and the burden of maintenance thereafter should be no more than for the existing safe harbors. Assuming, as noted above, that there will be one new safe harbor entrant per a given three-year PRA clearance period, the incremental annualized recordkeeping burden for the entrant under the proposed amendments would be 34 hours.

Thus, cumulative annualized recordkeeping burden for new and existing safe harbor applicants would be 170 hours.

⁸ See, e.g., Telemarketing Sales Rule (“TSR”), Notice of Proposed Rulemaking, 74 FR 41988, 42013 (Aug. 19, 2009). Arguably, this estimate conservatively errs upward in the instant context.

⁹ *Id.*

(b) Disclosure Requirements: 40,000 hours

(1) New Operators

Under the existing OMB clearance for the Rule, the Commission has already accounted for the time that new operators will spend to craft a privacy policy (approximately 60 hours per operator), design mechanisms to provide the required online privacy notice and, where applicable, direct notice to parents in order to obtain verifiable consent. The proposed amendments should no more than minimally add to, if at all, the time required to accomplish this task because their effect primarily is to transfer required information from the privacy policy to the direct notice.

(2) Existing Operators

In Year 1, operators would have a one-time burden to re-design their existing privacy policies and direct notice procedures that would not carry over to the second and third years of prospective PRA clearance. In addition, existing operators that currently use the email plus method would incur burden in Year 1 for converting to a more reliable method of obtaining verifiable parental consent. The Commission estimates that an existing operator's time to make these changes would be no more than that for a new entrant crafting its online and direct notices for the first time, *i.e.*, 60 hours. Annualized over three years of PRA clearance, this amounts to 20 hours $((60 \text{ hours} + 0 + 0) \div 3)$ per year. Aggregated for the estimated 2,000 existing operators, annualized disclosure burden would be 40,000 hours.

(c) Voluntary Reporting Requirements for Safe Harbor Programs: 600 hours

In order to apply to the Commission for approval as a safe harbor program, the Rule includes specific reporting requirements that all safe harbor applicants must provide in their applications.¹⁰ The Commission previously has estimated that a prospective safe harbor organization requires 265 hours to prepare and submit its safe harbor proposal.¹¹ The proposed Rule amendments, however, require a safe harbor applicant to submit a more detailed proposal than what the current Rule mandates. Existing safe harbor programs will thus need to submit a revised application and new safe harbor applicants will have to provide greater detail than they would under the current Rule. The Commission estimates this added information would entail approximately 60 additional hours for safe harbor applicants to prepare. Accordingly, the aggregate incremental burden for this added one-time preparation is 300 hours (60 hours x 5 safe harbors) or, annualized for an average single year per three-year PRA clearance, 100 hours.

¹⁰ See Section 312.10(c). Approved self-regulatory guidelines can be found on the FTC's website at http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.

¹¹ For PRA purposes, annualized over the course of three years of clearance, this averages roughly 100 hours per year given that the 265 hours is a one-time, not recurring, expenditure of time for an applicant.

The proposed amendments to the Rule require approved safe harbor programs to audit their members at least annually and to submit periodic reports to the Commission on the results of their audits of members. As such, this will increase currently cleared burden estimates pertaining to approved safe harbors. The burden for conducting member audits and preparing the reports will likely vary for each safe harbor program depending on the number of members. The Commission estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for five safe harbor programs, this amounts to an increased disclosure burden of 500 hours per year. The cumulative yearly reporting burden for five safe harbor applicants to provide the proposed added information and to conduct and prepare the proposed audits and reports is 600 hours.

Estimated annual cost burden: \$5,333,420

(a) Recordkeeping

Based on an estimate of 170 hours for existing and new safe harbor programs, annualized per year (*i.e.*, when averaged over a three-year PRA clearance span), and applying a skilled labor rate of \$26/hour,¹² associated labor costs are \$4,420 per year.

(b) Disclosure

The Commission assumes that the time spent on compliance for operators would be apportioned five to one between legal (lawyers or similar professionals) and technical (*e.g.*, computer programmers) personnel.¹³ As noted above, the Commission estimates a total of 40,000 hours disclosure burden, annualized, for 2,000 existing operators. Thus, apportioned five to one, this amounts to, rounded, 33,333 hours of legal, and 6,667 hours of technical, assistance. Applying hourly rates of \$150 and \$36, respectively, for these personnel categories,¹⁴ associated labor costs would total approximately \$5,240,000.

(c) Reporting

The Commission assumes that the task to prepare safe harbor program applications will

¹² This rounded figure is derived from the mean hourly earnings shown for computer support specialists found in the Bureau of Labor Statistics National Compensation Survey: Occupational Earnings in the United States, 2010, at Table 3, *available at* <http://www.bls.gov/ncs/ocs/sp/nctb1477.pdf> (“National Compensation Survey Table 3”).

¹³ *See* FTC COPPA PRA Extension, 76 FR at 31335 n. 1.

¹⁴ The estimated rate of \$150 per hour is roughly midway between Bureau of Labor Statistics (BLS) mean hourly wages for lawyers (approximately \$54) in the most recent whole-year data (2010) available online and what Commission staff believes more generally reflects hourly attorney costs (\$250) associated with Commission information collection activities. The \$36 estimate of mean hourly wages for computer programmers also is based on the most recent whole-year BLS data. *See* National Compensation Survey Table 3.

be performed primarily by lawyers at a mean labor rate of \$150 an hour. Thus, applied to an assumed industry total of 500 hours per year for this task, associated yearly labor costs would total \$75,000.

The Commission assumes reports will be prepared by compliance officers, at a labor rate of \$28.¹⁵ Applied to an assumed industry total of 500 hours per year for this task, associated yearly labor costs would be \$14,000. Cumulatively, labor costs for the above-noted reporting requirements total approximately \$89,000 per year.

(13) Estimated Capital/Other Non-Labor Costs Burden

Capital and start-up costs associated with the Rule are minimal. Because websites will already be substantially equipped with the computer equipment and software necessary to comply with the Rule's proposed notice requirements, the primary costs incurred by the websites are the aforementioned estimated labor costs.

(14) Cost to the Federal Government

Because Commission staff anticipates that the incremental cost to the FTC to administer the proposed amendments will be de minimis, it retains the FTC's most recently cleared estimates of costs to the agency to implement the Rule: \$425,000. This consists of approximately 3 attorney/investigator work years at approximately \$415,000 per year and travel costs or other expenses associated with enforcing and administering the Rule of approximately \$10,000. Clerical and other support services are included in these estimates.

(15) Program Changes or Adjustments

The proposed changes to the definition of "personal information" would expand the definition to encompass additional types of information and thereby potentially increase the number of operators subject to the Rule. As explained under item (12) above, however, FTC staff believes there other proposed changes to the Rule will offset much of that potential increase.

The proposed amendment to eliminate the sliding scale "email plus" method for obtaining parental consent may increase the burden for the limited category of operators whose information collection practices to date have enabled them to use this relatively low cost method of obtaining parental consent. Existing operators that currently use the email plus method would incur burden in the first year of implementation to convert to a more reliable method of obtaining verifiable parental consent.

The proposed Rule amendments require a safe harbor applicant to submit a more detailed proposal than what the current Rule mandates. Existing safe harbor programs will thus need to

¹⁵ See National Compensation Survey Table 3.

submit a revised application and new safe harbor applicants will have to provide greater detail than they would under the current Rule.

Burden estimates for these effects, where applicable, are detailed above in response to item (12).

(16) Statistical Use of Information

There are no plans to publish information associated with the proposed requirements for statistical use.

(17) Display of Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

Not applicable.