

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

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.

(1) Necessity for Collecting the Information

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 such as chat rooms, home pages, and pen-pal services in which children may make public postings of identifying information; 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, 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 of such age. Among other things, the Rule:

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

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

The Rule’s requirements are necessary because: (a) they are expressly mandated by the Act; and (b) they ensure that parents know what personal information operators seek to collect from their children online and how it will be used or disclosed, thereby facilitating parental decision-making whether to consent to the collection of such information.

The Rule additionally contains reporting requirements for entities voluntarily seeking approval as a COPPA safe harbor self-regulatory program, and reporting and recordkeeping requirements for all approved safe harbor programs. Section 312.11(c) requires that applicants for safe harbor status submit to the Federal Trade Commission (“Commission”) certain specific documents and information, including, among other things, a copy of the guidelines for which approval is sought and a statement explaining how the guidelines and related assessment mechanism meet the Rule’s requirements. Section 312.11(d) requires that approved safe harbor programs keep records of consumer complaints (alleging violations of the guidelines), disciplinary actions taken against subject operators, and results of independent assessments of operators’ compliance with the guidelines for 3 years.

(2) Use of the Information

Providing the online disclosure information described above enables parents to determine whether: to permit their children to provide personal information online; to seek access from a website or online service operator to review their children’s personal information; and whether to 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(d) of the Rule requires that notices be posted online on the operators’ website or online service, and Section 312.4(b) expressly contemplates that operators shall “tak[e] into account available technology” in ensuring that parents receive direct notice of their information practices. Section 312.5(b)(1) requires operators to “make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology” in designing consent mechanisms. Section 312.5(b)(2), which contains a non-exclusive list of acceptable methods for obtaining consent, identifies methods for obtaining consent that take advantage of new technologies. The notice provisions in Sections 312.5(c)(2), 312.5(c)(4), and 312.5(c)(5) also require consideration of available technology. 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 Rule to minimize the compliance burden of these requirements as much as possible. The notice requirements are expressly mandated by the Act, as described above. The Commission’s Rule implements these requirements by providing guidance on the contents of such notices while allowing operators (including small businesses) to determine the most cost-effective means of disseminating such notices.

(6) Consequences of Conducting Collection Less Frequently

A less frequent “collection” would violate the express statutory language and intent of the Act. The statute requires both that notice be given online and that separate notice regarding the operator’s information practices be given to parents.² Parental notice under the Rule works in tandem with the statute’s mandated parental consent requirement.³ Thus, the Rule does 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.

(7) Special Circumstances Requiring Collection Inconsistent With Guidelines

The “collection of information” under the final amendments is consistent with all applicable OMB PRA guidelines under 5 C.F.R. § 1320.10.

(8) Consultation Outside the Agency

As required by the PRA, the FTC provided opportunity for public comment before requesting that OMB extend its existing clearance for subpart N. See 83 Fed. Reg. 49,557 (Oct. 2, 2018). Of the comments received, two commenters appear to support strengthening the

² See 15 U.S.C. § 6502(b)(1)(A) (requiring website notice), (B) (notice to parents upon request). These requirements are reflected in the Rule at Sections 312.3(a) (online notice), 312.4(c) (content of direct notice to parent), and 312.6(a) (notice to parents upon their request).

³ See 15 U.S.C. § 6502(b)(1)(A)(ii) (requiring verifiable parental consent), § 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 (content of notices) and 312.5 (parental consent and exceptions).

Rule's substantive requirements for covered operators. The Electronic Privacy Information Center (EPIC) observed, among other things, that "[t]he quality, utility, and clarity of disclosure requirements would be improved by adding restrictions on the personal data collected" and that the Commission "should consider additional use limitations for children's data." An individual commented: "There ought not be any exception to requiring prior notice to the parents nor the need for [sic] limiting those exceptions. Disclosure of information is not a negotiable Reality. Who, Why, When, How...infinitem." In essence, these comments suggest that the required disclosures would be more valuable if the Rule's substantive requirements were changed to add additional requirements (and added corresponding disclosure requirements) or to remove exceptions to the notice requirements. The Commission periodically reviews the Rule to ensure that it effectively protects children's online privacy, as directed by Congress, as new online technologies evolve, and to clarify existing obligations for operators under the Rule. As noted below, the Commission recently revised the Rule in 2013.⁴ The Commission will take these comments under advisement in evaluating the Rule's continued effectiveness. The other comments were non-germane.

Pursuant to PRA implementing regulations under 5 C.F.R. Part 1320, the Commission is providing a second opportunity for public comment on the instant burden analysis contemporaneous with this submission.

(9) Payments or Gifts to Respondents

Not applicable.

(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 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.

⁴ See note 6 and accompanying text.

(12) Estimated Annual Hours Burden and Associated Labor Cost

1. Estimated annual hours burden: 17,700 hours⁵

(a) New entrant web operators' disclosure burden

Based on public comments on the Commission's 2013 final amendments to the COPPA Rule,⁶ FTC staff estimates that the Rule affects approximately 280 new operators per year.⁷ Staff maintains its longstanding estimate that new web operators will require, on average, approximately 60 hours crafting a privacy policy, designing mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.⁸ Applied to the estimated number of new operators per year, this yields a cumulative yearly total of 16,800 hours (280 new operators x 60 hours each).

(b) Safe harbor applicant reporting requirements

Operators can comply with the COPPA Rule by meeting the terms of industry self-regulatory guidelines that the Commission approves after notice and comment.⁹ While the submission of industry self-regulatory guidelines to the agency is voluntary, the COPPA Rule sets out the criteria for approval of guidelines and the materials that must be submitted as part of a safe harbor application. Staff estimates that it would require, on average, 265 hours per new safe harbor program applicant to prepare and submit its safe harbor proposal in accordance with Section 312.11(c) of the Rule. In the past, industry sources have confirmed that this estimate is reasonable and advised that all of this time would be attributable to the efforts of lawyers. Given that several safe harbor programs are already available to website operators, FTC staff believes that it is unlikely that more than one additional safe harbor applicant will submit a request within the next three years of PRA clearance sought. Thus, annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷ 3 years) or, roughly, 100 hours, for the estimated one additional safe harbor applicant.

⁵ This discussion and the associated burden estimates concern strictly recurring compliance obligations under the COPPA Rule. Details underlying the estimates within this Burden Statement can be found in the October 2, 2018 Federal Register Notice. However, this cumulative total corrects the 17,500 hours estimate that appeared in the FTC's associated *Federal Register* Notice of October 2, 2018 (83 Fed. Reg. 49557) as the aggregation of the associated burden estimate that appeared in 1. (a)-(c) of that document.

⁶ 78 Fed. Reg. 3972, 4005 (Jan. 17, 2013).

⁷ This consists of, for example, certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

⁸ See, e.g., 80 Fed. Reg. 57818 (Sept. 25, 2015); 80 Fed. Reg. 76491 (Dec. 9, 2015); 78 Fed. Reg. at 4005; 76 Fed. Reg. 31334 (May 31, 2011); 73 Fed. Reg. 35689 (June 24, 2008); 70 Fed. Reg. 21107 (Apr. 22, 2005).

⁹ See Section 312.11(c). Approved self-regulatory guidelines can be found on the FTC's website at http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.

Staff believes that most of the records submitted with a safe harbor request would be those that these entities have kept in the ordinary course of business, and that any incremental effort associated with maintaining the results of independent assessments or other records under Section 312.11(d)(3) also would be in the normal course of business. Under 5 CFR 1320.3(b)(2), OMB excludes from the definition of PRA burden the time and financial resources needed to comply with agency-imposed recordkeeping, disclosure, or reporting requirements that customarily would be undertaken independently in the normal course of business.

(c) Annual audit and report for safe harbor programs

The COPPA Rule requires safe harbor programs to audit their members at least annually and to submit annual reports to the Commission on the aggregate results of these member audits. The burden for conducting member audits and preparing these reports likely will vary for each safe harbor program depending on the number of members. Commission staff estimates that conducting audits and preparing reports will require approximately 100 hours per program per year. Aggregated for one new safe harbor (100 hours) and seven existing (700 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 800 hours per year.

(d) Safe harbor program recordkeeping requirements

FTC staff believes that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that such parties have kept in the ordinary course of business irrespective of the COPPA Rule. As noted above, OMB excludes from the definition of PRA burden, among other things, recordkeeping requirements that customarily would be undertaken independently in the normal course of business. In staff's view, any incremental burden, such as that for maintaining the results of independent assessments under section 312.11(d), would be marginal.

2. Estimated annual labor costs: \$5,768,900

(a) New entrant web operators' disclosure burden

Consistent with its past estimates and based on its 2013 rulemaking record, FTC staff assumes that the time spent on compliance for new operators covered by the COPPA Rule would be apportioned five to one between legal (outside counsel lawyers or similar professionals) and technical (e.g., computer programmers, software developers, and information security analysts) personnel. Staff therefore estimates that outside counsel costs will account for 14,000 of the estimated 16,800 hours required as estimated in 1(a) above. Regarding outside counsel costs, FTC staff believes it reasonable to assume that the workload among law firm partners and associates for COPPA compliance questions would be distributed among attorneys at varying levels of seniority, and be weighted most heavily to junior attorneys. Assuming two-thirds of such work is done by junior associates at a rate of approximately \$300 per hour, and one-third by senior partners at approximately \$600 per hour, the weighted average of outside counsel costs

would be about \$400 per hour.¹⁰ Computer programmers responsible for posting privacy policies and implementing direct notices and parental consent mechanisms would account for the remaining 2,800 hours. FTC staff estimates an hourly wage of \$44 for technical assistance, based on Bureau of Labor Statistics (“BLS”) data.¹¹ Accordingly, associated annual labor costs would be \$5,723,200 [(14,000 hours x \$400/hour) + (2,800 hours x \$44/hour)] for the estimated 280 new operators.

(b) Safe harbor applicant reporting requirements

Previously, industry sources have advised that all of the labor to comply with new safe harbor applicant requirements would be attributable to the efforts of in-house lawyers. To determine in-house legal costs, FTC staff applied an approximate average between the BLS reported mean hourly wage of \$68 for lawyers,¹² and a rough approximation of in-house hourly attorney rates (\$300) that staff believes more generally reflects the costs associated with Commission information collection activities, which yields an approximate hourly rate of \$185. Accordingly, applying the estimated time for these tasks (100 hours) for the one new safe harbor applicant estimated in 1(b) above to the assumed hourly wage for in-house counsel (\$185) yields \$18,500 in labor costs per year.

(c) Annual audit and report for safe harbor programs

Commission staff assumes that compliance officers, at a labor rate of \$34, will prepare annual reports.¹³ Accordingly, applied to the 800 hours estimated per year in 1(c) above for all safe harbor programs, this amounts to \$27,200 in aggregate yearly labor costs.

¹⁰ These estimates are drawn from the “Laffey Matrix.” The Laffey Matrix is a fee schedule used by many United States courts for determining the reasonable hourly rates in the District of Columbia for attorneys’ fee awards under federal fee-shifting statutes. It is used here as a proxy for market rates for litigation counsel in the Washington, DC area. For 2018, rates in table range from \$302 per hour for most junior associates to \$602 per hour for most senior partners. See Laffey Matrix, Civil Division of the United States Attorney’s Office for the District of Columbia, United States Attorney’s Office, District of Columbia, Laffey Matrix B 2015-2018, available at <https://www.justice.gov/usao-dc/file/796471/download>.

¹¹ The estimated mean hourly wages for technical labor support (\$44) is based on an average of the salaries for computer programmers, software developers, information security analysts, and web developers as reported by the Bureau of Labor statistics. See *Occupational Employment and Wages – May 2017*, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2017), available at <http://www.bls.gov/news.release/ocwage.nr0.htm> (hereinafter, “BLS Table 1”).

¹² See BLS Table 1 (lawyers, \$68.22).

¹³ See BLS Table 1 (compliance officers, \$34.39). The rounding to \$34 per hour was also incorporated into the calculations published in the FTC’s Oct. 2, 2018 *Federal Register* Notice, but had there been parenthetically shown incorrectly as \$32.69. That was a prior BLS figure that had informed the FTC’s corresponding estimate in 2015, when it had last pursued renewed OMB clearance under the instant OMB control number.

(d) Safe harbor program recordkeeping requirements

For the reasons stated in 1.(d) above, associated labor costs, for PRA purposes, would be nil or marginal.

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

Because websites will already be equipped with the computer equipment and software necessary to comply with the Rule's notice requirements, the predominant costs incurred by the websites are the aforementioned estimated labor costs. Similarly, industry members should already have in place the means to retain and store the records that must be kept under the Rule's safe harbor recordkeeping provisions, because they are likely to have been keeping these records independent of the Rule. Capital and start-up costs associated with the Rule are minimal.

(14) Cost to the Federal Government

Enforcing and monitoring compliance of the COPPA Rule will require approximately 4 attorney/investigator work years at approximately \$800,000 per year. The Rule allows companies to apply for approval of parental consent methods not currently enumerated in Section 312.5(b), for additional activities to be included within the definition of support for internal operations, and for approval to become a COPPA Safe Harbor program. Staff will be required to evaluate these applications and make recommendations to the Commission. The Rule also requires existing safe harbor programs to provide annual reports to the Commission that FTC staff will be required to evaluate. Moreover, FTC staff will be necessary for educational activities and participating in panels and other presentations regarding the Rule. In addition, travel costs or other expenses associated with enforcing and administering the Rule will be approximately \$18,000. Thus, the approximate total cost to the FTC in connection with these cumulative enforcement and monitoring activities will be \$818,000. Clerical and other support services are included in these estimates.

(15) Program Changes or Adjustments

The population estimates affected are corrected upward as is the total estimated burden hours for the activities covered above and in the FTC's *Federal Register* Notices associated with this clearance request.¹⁴ As with prior clearance submissions for the COPPA Rule, FTC staff

¹⁴ Although then, as now, the FTC narratively accounted for seven existing COPPA safe harbor programs and an estimated one new entrant (for a total of eight safe harbors), staff had not updated in the associated information collection worksheet in ROCIS prior estimates that had accounted for six total safe harbors (five existing and an estimated one new entrant). A list of existing safe harbors appear at <https://www.ftc.gov/safe-harbor-program>. Moreover, as noted *supra* footnote 5 and accompanying text, total current estimated burden hours is 17,700 hours (16,800 + 100 + 800), not 17,500 hours as had been misstated

believes that associated capital and start-up costs are minimal. Labor costs increase, however, for updated hourly wage inputs and for the appropriately increased population affected.

(16) Plans for Tabulation and Publication

Not applicable.

17) Display of Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

Not applicable.