

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 children¹ on the Internet. The COPPA Rule, 16 C.F.R. Part 312, implements this mandate by requiring commercial websites to, among other things, provide notice and obtain parental consent before collecting, using, or disclosing personal information from children under age thirteen, with limited exceptions.

(1) Necessity for Collecting the Information

The underlying goals of the COPPA 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, 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 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 disclosures 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 industry regulated, the Rule's notice requirements make use of information technology 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 Rule's notice requirements 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 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

Less frequent disclosures would violate the express statutory language and intent of the Act. The statute requires both that notice be given online and that notice regarding the operator's information practices be given to parents upon request.² Parental notice under the Rule works in tandem with the COPPA'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

The Commission periodically reviews the Rule to obtain public input and ensure it continues to effectively protect children's online privacy. The Commission initiated a retrospective review of the Rule in 2019.⁴

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).

⁴ 84 FR 35842 (July 25, 2019).

As required by the PRA, the FTC provided opportunity for public comment before requesting that OMB extend its existing clearance. *See* 86 Fed. Reg. 55609 (Oct. 6, 2021). No relevant comments were received. Pursuant to PRA implementing regulations under 5 C.F.R. Part 1320, the Commission is providing a second opportunity for public comment 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.

(12) Estimated Annual Hours Burden and Associated Labor Cost

1. Annual hours burden: 17,600 hours

(a) New entrant web operators' disclosure burden

FTC staff estimates that the Rule affects approximately 280 new operators per year.⁵ Staff maintains its longstanding estimate that new operators of websites and online services will require, on average, approximately 60 hours to draft a privacy policy, design mechanisms to provide the required online privacy notice and, where applicable, the direct notice to parents.⁶ This yields an estimated annual hours burden 16,800 hours (280 respondents × 60 hours).

(b) Safe harbor applicant reporting requirements

Operators can comply with the COPPA Rule by meeting the terms of Commission-approved self-regulatory program guidelines.⁷ 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. Based on industry input, 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

⁵ This consists of certain traditional website and online service operators, mobile app developers, plug-in developers, and advertising networks.

⁶ *See, e.g.*, 80 FR 76491 (Dec. 9, 2015); 84 FR 1466 (Feb. 4, 2019).

⁷ *See* Section 312.11(c), (g). Approved self-regulatory guidelines can be found on the FTC's website at http://www.ftc.gov/privacy/privacyinitiatives/childrens_shp.html.

312.11(c) of the Rule.⁸ Given that several safe harbor programs are already available to website and online service operators, FTC staff anticipates that no more than one additional safe harbor applicant is likely submit a request within the next three years of PRA clearance. Thus, FTC staff estimates that annualized burden attributable to this requirement would be approximately 88 hours per year (265 hours ÷ 3 years), which is rounded to 100 hours.

(c) Annual audit and report for safe harbor programs

The COPPA Rule requires safe harbor programs to audit their members and 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 varies by 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 six existing (600 hours) safe harbor programs, this amounts to an estimated cumulative reporting burden of 700 hours per year (7 respondents × 100 hours).

(d) Safe harbor program recordkeeping requirements

FTC staff understands that most of the records listed in the COPPA Rule's safe harbor recordkeeping provisions consist of documentation that covered entities retain 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: \$5,783,700

(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 Section 1(a) above. FTC anticipates that the workload among law firm partners and associates for assisting with COPPA compliance would be distributed among attorneys at varying levels of seniority. 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

⁸ 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. 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.

approximately \$400 per hour.⁹ FTC staff anticipates that 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 \$49 (rounded to the nearest dollar) for technical assistance, based on Bureau of Labor Statistics (“BLS”) data.¹⁰ Accordingly, associated annual labor costs would be \$5,737,200 [(14,000 hours × \$400/hour) + (2,800 hours × \$49/hour)] for the estimated 280 new operators.

(b) Safe harbor applicant reporting requirements

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 for lawyers (\$69.86),¹¹ and estimated in-house hourly attorney rates (\$300) that are likely to reflect the costs associated with some safe harbor applicant costs. This yields an approximate hourly rate of \$185. Applying this hourly labor cost estimate to the hours burden associated with approval for a new safe harbor application yields an estimated annual labor cost burden of \$18,500 (100 hours × \$185).

(c) Annual audit and report for safe harbor programs

Commission staff assumes that compliance officers at a mean hourly wage of \$35, will prepare annual reports.¹² Applying this hourly labor cost estimate to the hours burden associated with preparing annual audit reports yields an estimated annual labor cost burden of \$24,500 (700 hours × \$35).

(d) Safe harbor program recordkeeping requirements

For the reasons stated in Section 1(d) above, FTC staff anticipates that the labor costs associated with safe harbor program recordkeeping are *de minimis*.

9 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 2020-2021, rates in table range from \$333 per hour for most junior associates to \$665 per hour for the 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 2015-2021, *available at* <https://www.justice.gov/usao-dc/page/file/1305941/download>.

10 The estimated mean hourly wages for technical labor support (\$44) is based on an average of the mean hourly wage 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 2020*, Table 1 (National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2020), *available at* <https://www.bls.gov/news.release/ocwage.t01.htm> (hereinafter, “BLS Table 1”).

11 See BLS Table 1 (attorneys).

12 See BLS Table 1 (compliance officers, \$35.03).

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

FTC staff understands that covered website and online service operators already have in place the computer equipment and software necessary to comply with the Rule's notice requirements. Accordingly, the predominant costs incurred by website and online service operators are the aforementioned labor costs. Similarly, FTC staff anticipates that covered entities 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 retain such records independent of the Rule. Accordingly, FTC staff estimates that the capital and non-labor costs associated with Rule compliance are *de minimis*.

(14) Cost to the Federal Government

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 undertake business and consumer education activities and participate in panels and other presentations regarding the Rule.

These activities and other enforcement and compliance monitoring for the COPPA Rule will require approximately 4 attorney/investigator work years for a total cost of approximately \$800,000 per year. In addition, travel costs or other expenses associated with enforcing and administering the Rule are anticipated to total 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

There are no program changes or adjustments. The overall burden estimates for the COPPA Rule's information collection requirements has decreased by 100 hours for this renewal period because one participant in the agency's COPPA Safe Harbor Program left the program during the previous renewal period. As required by COPPA, the Safe Harbor Program allows industry participants to submit for Commission approval self-regulatory guidelines that implement the protections of the COPPA Rule. As a result of this change, the overall burden estimate for the IC titled "Annual audit and report for existing and one new safe harbor(s)" has decreased by 1 respondent (from 8 respondents to 7) and by 100 hours (from 800 hours to 700 hours). In addition, for this clearance renewal period, staff has updated their labor cost estimates to take into account updated BLS wage data.

(16) Plans for Tabulation and Publication

There are no plans to publish tabulations of information associated with the Rule's requirements.

17) Display of Expiration Date for OMB Approval

Not applicable.

(18) Exceptions to Certification

The FTC certifies that this collection of information is consistent with the requirements of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8(b)(3), and is not seeking an exemption to these certification requirements.