



[Billing Code: 6750-01-S]

**FEDERAL TRADE COMMISSION
Agency Information Collection Activities; Proposed Collection;
Comment Request**

AGENCY: Federal Trade Commission (“FTC” or “Commission”).

ACTION: Notice.

SUMMARY: The FTC intends to ask the Office of Management and Budget (“OMB”) to extend for an additional three years the current Paperwork Reduction Act (“PRA”) clearance for information collection requirements contained in the Children’s Online Privacy Protection Act Rule (“COPPA Rule” or “Rule”), which will expire on January 31, 2019.

DATES: Comments must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Write “COPPA Rule: Paperwork Comment, FTC File No. P155408” on your comment, and file your comment online at

<https://ftcpublishcommentworks.com/ftc/coppapra>, by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600

Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Peder Magee, Attorney, (202) 326-3538, Division of Privacy and Identity Protection, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The COPPA Rule, 16 CFR Part 312, requires commercial websites to provide notice and obtain parents' consent before collecting, using, and/or disclosing personal information from children under age 13, with limited exceptions. The COPPA Rule contains certain statutorily required notice, consent, and other requirements that apply to operators of any commercial website or online service directed to children, and operators of any commercial website or online service with actual knowledge of collecting personal information from children. Covered operators must: provide online notice and direct notice to parents of how they collect, use, and disclose children's personal information; obtain the prior consent of the child's parent in order to engage in such collection, use, and disclosure, with limited exceptions; provide reasonable means for the parent to obtain access to the information and to direct its deletion; and, establish procedures that protect the confidentiality, security, and integrity of personal information collected from children.

Burden Statement

1. Estimated annual hours burden: 17,500 hours

(a) New entrant web operators' disclosure burden

Based on public comments received by the Commission during its 2013 COPPA Rule amendments rulemaking,¹ FTC staff estimates that the Rule affects approximately

¹ 78 FR 3971 at 4005 (Jan. 17, 2013).

280 new operators per year.² Staff maintains its longstanding estimate that new operators of websites and online services 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.³ 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.⁴ 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.⁵ In the past, industry sources have confirmed that this estimate is reasonable. 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

² This consists of certain traditional website operators, mobile app developers, plug-in developers, and advertising networks.

³ See, e.g., 78 FR at 4006; 76 FR 31334 (May 31, 2011); 73 FR 35689 (June 24, 2008); 70 FR 21107 (Apr. 22, 2005); 80 FR 57818 (Sept. 25, 2015); 80 FR 76491 (Dec. 9, 2015).

⁴ 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.

⁵ 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.

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.

(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.⁶ 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.⁷ Accordingly, associated

⁶ 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>.

⁷ 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”).

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 for lawyers (\$68.22),⁸ 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.⁹ 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.

(d) Safe harbor program recordkeeping requirements

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

⁸ See BLS Table 1 (attorneys).

⁹ See BLS Table 1 (compliance officers, \$32.69).

3. Estimated annual non-labor costs: \$0

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.

Request for Comments

Under the PRA, 44 U.S.C. 3501-3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. "Collection of information" means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by section 3506(c)(2)(A) of the PRA, the FTC is providing this opportunity for public comment before requesting that OMB extend the existing PRA clearance for the COPPA Rule (OMB Control Number 3084-0117).

Pursuant to Section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the collection of information requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) how to improve the quality, utility, and clarity of the disclosure requirements; and (4) how to minimize the burden of providing the required information to consumers.

You can file a comment online or on paper. For the FTC to consider your comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “COPPA Rule: Paperwork Comment, FTC File No. P155408” on your comment. Your comment -- including your name and your state -- will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission website, at <http://www.ftc.gov/os/publiccomments.shtm>. As a matter of discretion, the Commission tries to remove individuals’ home contact information from comments before placing them on the Commission Website.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at <https://ftcpublic.commentworks.com/ftc/coppapra>, by following the instructions on the web-based form. When this Notice appears at <http://www.regulations.gov/#!/home>, you also may file a comment through that website.

If you file your comment on paper, write “COPPA Rule: Paperwork Comment, FTC File No. P155408” on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW, 5th Floor, Suite 5610 (Annex J),

Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will be placed on the publicly accessible FTC Website at <https://www.ftc.gov/>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential" – as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2) – including in particular competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. See FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once

your comment has been posted on the public FTC Website – as legally required by FTC Rule 4.9(b) – we cannot redact or remove your comment from the FTC Website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Heather Hipsley
Deputy General Counsel
[FR Doc. 2018-21377 Filed: 10/1/2018 8:45 am; Publication Date: 10/2/2018]