

## Old New COPPA Rule

### § 312.1 Scope of regulations in this part.

This part implements the Children's Online Privacy Protection Act of 1998, (15 U.S.C. 6501, et seq.) which prohibits unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet. ~~The effective date of this part is April 21, 2000.~~

### § 312.2 Definitions.

*Child* means an individual under the age of 13.

*Collects* or *collection* means the gathering of any personal information from a child by any means, including but not limited to:

- (a) Requesting ~~that children,~~ prompting, or encouraging a child to submit personal information online;
- (b) Enabling ~~children~~ a child to make personal information publicly available ~~through a chat room, message board, or other means, except where the operator deletes all individually identifiable~~ in identifiable form. An operator shall not be considered to have collected personal information under this paragraph if it takes reasonable measures to delete all or virtually all personal information from a child's postings ~~by children~~ before they are made public, and also ~~deletes~~ to delete such information from ~~the operator's~~ sits records; or
- (c) ~~The passive~~ Passive tracking ~~or use of any identifying code linked to an individual, such as a cookie~~ of a child online.

*Commission* means the Federal Trade Commission.

*Delete* means to remove personal information such that it is not maintained in retrievable form and cannot be retrieved in the normal course of business.

~~Disclosure~~ Disclose or disclosure means, with respect to personal information:

- (a) The release of personal information collected by an operator from a child in identifiable form ~~by an operator~~ for any purpose, except where an operator provides such information to a person who provides support for the internal operations of the website or online service; ~~and who does not disclose or use that information for any other purpose. For purposes of this definition:~~
  - ~~(1) Release of personal information means the sharing, selling, renting, or any other means of providing personal information to any third party, and~~

~~(2) Support for the internal operations of the website or online service means those activities necessary to maintain the technical functioning of the website or online service, or to fulfill a request of a child as permitted by § 312.5(e)(2) and (3); or~~

(b) Making personal information collected ~~from a child~~ by an operator from a child publicly available in identifiable form, by any means, including ~~by~~ but not limited to a public posting through the Internet, or through a personal home page or screen posted on a website or online service; a pen pal service; an electronic mail service; a message board; or a chat room.

*Federal agency* means an agency, as that term is defined in Section 551(1) of title 5, United States Code.

*Internet* means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire, radio, or other methods of transmission.

*Online contact information* means an ~~e-mail~~ email address or any other substantially similar identifier that permits direct contact with a person online, including but not limited to, an instant messaging user identifier, a voice over internet protocol (VOIP) identifier, or a video chat user identifier.

*Operator* means any person who operates a website located on the Internet or an online service and who collects or maintains personal information from or about the users of or visitors to such website or online service, or on whose behalf such information is collected or maintained, ~~where such website or online service is operated for commercial purposes, including any person offering or offers~~ products or services for sale through that website or online service, ~~where such website or online service is operated for commercial purposes~~ involving commerce:

- (a) Among the several States or with 1 or more foreign nations;
- (b) In any territory of the United States or in the District of Columbia, or between any such territory and
  - (1) Another such territory, or
  - (2) Any State or foreign nation; or
- (c) Between the District of Columbia and any State, territory, or foreign nation. This definition does not include any nonprofit entity that would otherwise be

exempt from coverage under Section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

Personal information is collected or maintained on behalf of an operator when: (a) it is collected or maintained by an agent or service provider of the operator; or (b) the operator benefits by allowing another person to collect personal information directly from users of such website or online service.

*Parent* includes a legal guardian.

*Person* means any individual, partnership, corporation, trust, estate, cooperative, association, or other entity.

*Personal information* means individually identifiable information about an individual collected online, including:

- (a) A first and last name;
- (b) A home or other physical address including street name and name of a city or town;
- (c) ~~An e-mail address or other online~~ Online contact information, ~~including but not limited to an instant messaging user identifier, or a screen name that reveals an individual's e-mail address~~ as defined in this section;

(d) A screen or user name where it functions in the same manner as online contact information, as defined in this section;

~~(d)~~ (e) A telephone number;

~~(e)~~ (f) A Social Security number;

~~(f)~~ (g) A persistent identifier, ~~such as that can be used to recognize a user over time and across different websites or online services. Such persistent identifier includes, but is not limited to,~~ a customer number held in a cookie ~~or,~~ an Internet Protocol (IP) address, a processor or device serial number, ~~where such identifier is associated with individually identifiable information; or a combination of a last name or photograph of the individual with other information such that the combination permits physical or online contacting;~~ or unique device identifier;

(h) A photograph, video, or audio file where such file contains a child's image or voice;

(i) Geolocation information sufficient to identify street name and name of a city or town; or

(g) Information concerning the child or the parents of that child that the operator collects online from the child and combines with an identifier described in this definition.

Release of personal information means the sharing, selling, renting, or transfer of personal information to any third party.

Support for the internal operations of the website or online service means those activities necessary to:

(a) maintain or analyze the functioning of the website or online service;

(b) perform network communications;

(c) authenticate users of, or personalize the content on, the website or online service;

(d) serve contextual advertising on the website or online service or cap the frequency of advertising;

(e) protect the security or integrity of the user, website, or online service;

(f) ensure legal or regulatory compliance; or

(g) fulfill a request of a child as permitted by §§ 312.5(c)(3) and (4);

so long as the information collected for the activities listed in paragraphs (a)-(g) is not used or disclosed to contact a specific individual, including through behavioral advertising, to amass a profile on a specific individual, or for any other purpose.

*Third party* means any person who is not:

(a) An operator with respect to the collection or maintenance of personal information on the website or online service; or

(b) A person who provides support for the internal operations of the website or online service and who does not use or disclose information protected under this part for any other purpose.

*Obtaining verifiable consent* means making any reasonable effort (taking into consideration available technology) to ensure that before personal information is collected from a child, a parent of the child:

(a) Receives notice of the operator's personal information collection, use, and disclosure practices; and

(b) Authorizes any collection, use, and/or disclosure of the personal information.

*Website or online service directed to children* means a commercial website or online service, or portion thereof, that is targeted to children. ~~Provided, however, that a commercial website or online service, or a portion thereof, shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.~~

(a) In determining whether a ~~commercial~~ website or online service, or a portion thereof, is ~~targeted~~ directed to children, the Commission will consider its subject matter, visual content, use of animated characters or child-oriented activities and incentives, music or other audio content, age of models, presence of child celebrities or celebrities who appeal to children, language or other characteristics of the website or online service, as well as whether advertising promoting or appearing on the website or online service is directed to children. The Commission will also consider competent and reliable empirical evidence regarding audience ~~composition; evidence regarding the intended audience; and whether a site uses animated characters and/or child-oriented activities and incentives.~~ composition, and evidence regarding the intended audience.

(b) A website or online service shall be deemed directed to children when it has actual knowledge that it is collecting personal information directly from users of another website or online service directed to children.

(c) A website or online service that is directed to children under the criteria set forth in (a) above, but that does not target children as its primary audience, shall not be deemed directed to children if it: (i) does not collect personal information from any visitor prior to collecting age information; and (ii) prevents the collection, use, or disclosure of personal information from visitors who identify themselves as under age 13 without first complying with the notice and parental consent provisions of this part.

(d) A website or online service shall not be deemed directed to children solely because it refers or links to a commercial website or online service directed to children by using information location tools, including a directory, index, reference, pointer, or hypertext link.

**§ 312.3 Regulation of unfair or deceptive acts or practices in connection with the collection, use, and/or disclosure of personal information from and about children on the Internet.**

General requirements. It shall be unlawful for any operator of a website or online service directed to children, or any operator that has actual knowledge that it is collecting or

maintaining personal information from a child, to collect personal information from a child in a manner that violates the regulations prescribed under this part. Generally, under this part, an operator must:

- (a) Provide notice on the website or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information (§ 312.4(b));
- (b) Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children (§ 312.5);
- (c) Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance (§ 312.6);
- (d) Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity (§ 312.7); and
- (e) Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children (§ 312.8).

#### § 312.4 Notice.

- (a) General principles of notice. ~~All notices under §§ 312.3(a) and 312.5~~ It shall be the obligation of the operator to provide notice and obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children. Such notice must be clearly and understandably written, ~~be~~ complete, and must contain no unrelated, confusing, or contradictory materials.
- (b) ~~Notice on the website or online service. Under § 312.3(a), an operator of a website or online service directed to children must post a link to a notice of its information practices with regard to children on the home page of its website or online service and at each area on the website or online service where personal information is collected from children. An operator of a general audience website or online service that has a separate children's area or site must post a link to a notice of its information practices with regard to children on the home page of the children's area.~~ Direct notice to the parent. An operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented.
- (c) Content of the direct notice to the parent.

(1) Content of the direct notice to the parent under § 312.5(c)(1) (Notice to Obtain Parent's Affirmative Consent to the Collection, Use, or Disclosure of a Child's Personal Information). This direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child, and, if such is the case, the name of the child or the parent, in order to obtain the parent's consent;

(ii) That the parent's consent is required for the collection, use, or disclosure of such information, and that the operator will not collect, use, or disclose any personal information from the child if the parent does not provide such consent;

(iii) The additional items of personal information the operator intends to collect from the child, or the potential opportunities for the disclosure of personal information, should the parent provide consent;

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(d);

(v) The means by which the parent can provide verifiable consent to the collection, use, and disclosure of the information; and

(vi) That if the parent does not provide consent within a reasonable time from the date the direct notice was sent, the operator will delete the parent's online contact information from its records.

(2) Content of the direct notice to the parent under § 312.5(c)(2) (Voluntary Notice to Parent of a Child's Online Activities Not Involving the Collection, Use or Disclosure of Personal Information). Where an operator chooses to notify a parent of a child's participation in a website or online service, and where such site or service does not collect any personal information other than the parent's online contact information, the direct notice shall set forth:

(i) That the operator has collected the parent's online contact information from the child in order to provide notice to, and subsequently update the parent about, a child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information;

(ii) That the parent's online contact information will not be used or disclosed for any other purpose;

(iii) That the parent may refuse to permit the child's participation in the website or online service and may require the deletion of the parent's online contact information, and how the parent can do so; and

(iv) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).

(3) Content of the direct notice to the parent under § 312.5(c)(4) (Notice to a Parent of Operator's Intent to Communicate with the Child Multiple Times). This direct notice shall set forth:

(i) That the operator has collected the child's online contact information from the child in order to provide multiple online communications to the child;

(ii) That the operator has collected the parent's online contact information from the child in order to notify the parent that the child has registered to receive multiple online communications from the operator;

(iii) That the online contact information collected from the child will not be used for any other purpose, disclosed, or combined with any other information collected from the child;

(iv) That the parent may refuse to permit further contact with the child and require the deletion of the parent's and child's online contact information, and how the parent can do so;

(v) That if the parent fails to respond to this direct notice, the operator may use the online contact information collected from the child for the purpose stated in the direct notice; and

(vi) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).

(4) Content of the direct notice to the parent required under § 312.5(c)(5) (Notice to a Parent In Order to Protect a Child's Safety). This direct notice shall set forth:

(i) That the operator has collected the name and the online contact information of the child and the parent in order to protect the safety of a child;



(ii) That the information will not be used or disclosed for any purpose unrelated to the child's safety;

(iii) That the parent may refuse to permit the use, and require the deletion, of the information collected, and how the parent can do so;

(iv) That if the parent fails to respond to this direct notice, the operator may use the information for the purpose stated in the direct notice; and

(v) A hyperlink to the operator's online notice of its information practices required under § 312.4(d).

(d) Notice on the website or online service. In addition to the direct notice to the~~(1) Placement of the notice. (i) The link to the notice must be~~parent, an operator must post a prominent and clearly labeled as a link to an online notice of ~~the website or online service's~~s information practices with regard to children;~~(ii) The link to the notice must be placed in a clear and prominent place and manner~~ on the home or landing page or screen of the website or online service;~~and (iii) The link to the notice must be placed in a clear and prominent place and manner, and,~~ at each area ~~on~~of the website or online service where ~~children directly provide, or are asked to provide,~~ personal information,~~and is collected from children. The link must be~~ in close proximity to the requests for information in each such area. An operator of a general audience website or online service that has a separate children's area must post a link to a notice of its information practices with regard to children on the home or landing page or screen of the children's area. To be~~(2) Content of the notice. To be~~ complete, the online notice of the website or online service's information practices must state the following:

(i) The name, address, telephone number, and e-mail address of all operators collecting or maintaining personal information from children through the website or online service. Provided that: the operators of a website or online service may list the name, address, phone number, and e-mail address of one operator who will respond to all inquiries from parents concerning the operators' privacy policies and use of children's information, as long as the names of all the operators collecting or maintaining personal information from children through the website or online service are also listed in the notice;

(ii) The types~~2) A description~~ of personal~~what~~ information ~~collected~~the operator collects from children~~and whether the personal information is collected directly or passively;~~, including whether the website or online service enables a child to make personal information publicly

available; how the operator uses such information; and, the operator's disclosure practices for such information; and

~~(iii) How such personal information is or may be used by the operator(s), including but not limited to fulfillment of a requested transaction, recordkeeping, marketing back to the child, or making it publicly available through a chat room or by other means;~~

~~(iv) Whether personal information is disclosed to third parties, and if so, the types of business in which such third parties are engaged, and the general purposes for which such information is used; whether those third parties have agreed to maintain the confidentiality, security, and integrity of the personal information they obtain from the operator; and that the parent has the option to consent to the collection and use of their child's personal information without consenting to the disclosure of that information to third parties;~~

~~(v) That the operator is prohibited from conditioning a child's participation in an activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity; and~~

~~(vi)~~ <sup>3</sup> That the parent can review ~~and~~ or have deleted the child's personal information, and refuse to permit further collection or use of the child's information, and state the procedures for doing so.

~~(c) Notice to a parent. Under § 312.5, an operator must make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives notice of the operator's practices with regard to the collection, use, and/or disclosure of the child's personal information, including notice of any material change in the collection, use, and/or disclosure practices to which the parent has previously consented.~~

~~(1) Content of the notice to the parent. (i) All notices must state the following:~~

~~(A) That the operator wishes to collect personal information from the child;~~

~~(B) The information set forth in paragraph (b) of this section.~~

~~(ii) In the case of a notice to obtain verifiable parental consent under § 312.5(a), the notice must also state that the parent's consent is required for the collection, use, and/or disclosure of such information, and state the means by which the parent can provide verifiable consent to the collection of information.~~

~~(iii) In the case of a notice under the exception in § 312.5(e)(3), the notice must also state the following:~~

~~(A) That the operator has collected the child's e-mail address or other online contact information to respond to the child's request for information and that the requested information will require more than one contact with the child;~~

~~(B) That the parent may refuse to permit further contact with the child and require the deletion of the information, and how the parent can do so; and~~

~~(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose(s) stated in the notice.~~

~~(iv) In the case of a notice under the exception in § 312.5(e)(4), the notice must also state the following:~~

~~(A) That the operator has collected the child's name and e-mail address or other online contact information to protect the safety of the child participating on the website or online service;~~

~~(B) That the parent may refuse to permit the use of the information and require the deletion of the information, and how the parent can do so; and~~

~~(C) That if the parent fails to respond to the notice, the operator may use the information for the purpose stated in the notice.~~

### **§ 312.5 Parental consent.**

#### **(a) General requirements.**

(1) An operator is required to obtain verifiable parental consent before any collection, use, **and**/or disclosure of personal information from children, including consent to any material change in the collection, use, **and**/or disclosure practices to which the parent has previously consented.

(2) An operator must give the parent the option to consent to the collection and use of the child's personal information without consenting to disclosure of his or her personal information to third parties.

#### **(b) ~~Mechanisms~~Methods for verifiable parental consent.**

(1) An operator must make reasonable efforts to obtain verifiable parental consent, taking into consideration available technology. Any method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the

child's parent.

(2) ~~Methods~~Existing methods to obtain verifiable parental consent that satisfy the requirements of this paragraph include: ~~providing~~

(i) Providing a consent form to be signed by the parent and returned to the operator by postal mail ~~or~~, facsimile, or electronic scan; ~~requiring~~

(ii) Requiring a parent ~~to use a credit card~~, in connection with a monetary transaction, to use a credit card, debit card, or other online payment system that provides notification of each discrete transaction to the primary account holder; ~~having~~

(iii) Having a parent call a toll-free telephone number staffed by trained personnel; ~~using a digital certificate that uses public key technology; and using e-mail accompanied by a PIN or password obtained through one of the verification methods listed in this paragraph.~~

(iv) Having a parent connect to trained personnel via video-conference;

(v) Verifying a parent's identity by checking a form of government issued identification against databases of such information, where the parent's identification is deleted by the operator from its records promptly after such verification is complete; or

(vi) Provided that: ~~Until the Commission otherwise determines, methods to obtain verifiable parental consent for uses of information other than the "disclosures" defined by, an operator that does not "disclose" (as defined by § 312.2) children's personal information,~~ may ~~also include~~ use of ~~e-mail~~an email coupled with additional steps to provide assurances that the person providing the consent is the parent. Such additional steps include: sending a confirmatory ~~e-mail~~email to the parent following receipt of consent~~;~~, or obtaining a postal address or telephone number from the parent and confirming the parent~~'s~~ consent by letter or telephone call. ~~Operators who use such methods~~An operator that uses this method must provide notice that the parent can revoke any consent given in response to the earlier ~~e-mail~~email.

(3) Safe harbor approval of parental consent methods. A safe harbor

program approved by the Commission under § 312.11 may approve its member operators' use of a parental consent method not currently enumerated in paragraph (b)(2) where the safe harbor program determines that such parental consent method meets the requirements of paragraph (b)(1).

(c) Exceptions to prior parental consent. Verifiable parental consent is required prior to any collection, use, ~~and~~/or disclosure of personal information from a child except as set forth in this paragraph. ~~The exceptions to prior parental consent are as follows:~~

(1) Where the ~~operator collects~~sole purpose of collecting the name or online contact information of ~~a~~the parent or child ~~to be used for the sole purpose of obtaining~~is to provide notice and obtain parental consent ~~or providing notice~~ under § ~~312.4.312.4(c)(1)~~. If the operator has not obtained parental consent after a reasonable time from the date of the information collection, the operator must delete such information from its records;

(2) Where the ~~operator collects~~purpose of collecting a parent's online contact information ~~from a child for the sole purpose of responding~~is to provide voluntary notice to, and subsequently update the parent about, the child's participation in a website or online service that does not otherwise collect, use, or disclose children's personal information. In such cases, the parent's online contact information may not be used or disclosed for any other purpose. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(2);

(3) Where the sole purpose of collecting online contact information from a child is to respond directly on a one-time basis to a specific request from the child, and where such information is not used to ~~recontact~~re-contact the child or for any other purpose, is not disclosed, and is deleted by the operator from its records promptly after responding to the child's request;

(34) Where the ~~operator collects~~purpose of collecting a child's and a parent's online contact information ~~from a child to be used~~is to respond directly more than once to ~~a~~the child's specific request ~~from the child,~~ and where such information is not used for any other purpose, disclosed, or combined with any other information collected from the child. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to ensure that the parent receives notice as described in § 312.4(c)(3). An operator will not be deemed to

have made reasonable efforts to ensure that a parent receives notice where the notice to the parent was unable to be delivered;

(5) Where the purpose of collecting a child's and a parent's name and online contact information, is to protect the safety of a child, and where such information is not used or disclosed for any purpose unrelated to the child's safety. In such cases, the operator must make reasonable efforts, taking into consideration available technology, to provide a parent with notice as described in § 312.4(c)(4); ~~ensure that a parent receives notice and has the opportunity to request that the operator make no further use of the information, as described in § 312.4(c), immediately after the initial response and before making any additional response to the child. Mechanisms to provide such notice include, but are not limited to, sending the notice by postal mail or sending the notice to the parent's e-mail address, but do not include asking a child to print a notice form or sending an e-mail to the child;~~

~~(4) Where the operator collects a child's name and online contact information to the extent reasonably necessary to protect the safety of a child participant on the website or online service, and the operator uses reasonable efforts to provide a parent, where such information is:~~

~~(i) Used for the sole purpose of protecting the child's safety;~~

~~(ii) Not used to recontact the child or for any other purpose;~~

~~(iii) Not disclosed on the website or online service; and~~

~~(5) Where the operator collects a child's name and online contact information and such~~

(6) Where the purpose of collecting a child's name and online contact information is not used for any other purpose, to the extent reasonably necessary to:

(i) ~~To~~ protect the security or integrity of its website or online service;

(ii) ~~To~~ take precautions against liability;

(iii) ~~To~~ respond to judicial process; or

(iv) ~~To~~ to the extent permitted under other provisions of law, to provide information to law enforcement agencies or for an investigation on a matter related to public safety; and where such information is not be used for any other purpose;

(7) Where an operator collects a persistent identifier and no other personal information and such identifier is used for the sole purpose of providing support for the internal operations of the website or online service. In such case, there also shall be no obligation to provide notice under § 312.4; or

(8) Where an operator covered under paragraph (b) of the definition of website or online service directed to children collects a persistent identifier and no other personal information from a user who affirmatively interacts with the operator and whose previous registration with that operator indicates that such user is not a child. In such case, there also shall be no obligation to provide notice under § 312.4.

**§ 312.6 Right of parent to review personal information provided by a child.**

(a) Upon request of a parent whose child has provided personal information to a website or online service, the operator of that website or online service is required to provide to that parent the following:

(1) A description of the specific types or categories of personal information collected from children by the operator, such as name, address, telephone number, e-mail address, hobbies, and extracurricular activities;

(2) The opportunity at any time to refuse to permit the operator's further use or future online collection of personal information from that child, and to direct the operator to delete the child's personal information; and

(3) Notwithstanding any other provision of law, a means of reviewing any personal information collected from the child. The means employed by the operator to carry out this provision must:

(i) Ensure that the requestor is a parent of that child, taking into account available technology; and

(ii) Not be unduly burdensome to the parent.

(b) Neither an operator nor the operator's agent shall be held liable under any Federal or State law for any disclosure made in good faith and following reasonable procedures in responding to a request for disclosure of personal information under this section.

(c) Subject to the limitations set forth in § 312.7, an operator may terminate

any service provided to a child whose parent has refused, under paragraph (a)(2) of this section, to permit the operator's further use or collection of personal information from his or her child or has directed the operator to delete the child's personal information.

**§ 312.7 Prohibition against conditioning a child's participation on collection of personal information.**

An operator is prohibited from conditioning a child's participation in a game, the offering of a prize, or another activity on the child's disclosing more personal information than is reasonably necessary to participate in such activity.

**§ 312.8 Confidentiality, security, and integrity of personal information collected from children.**

The operator must establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children. The operator must also take reasonable steps to release children's personal information only to service providers and third parties who are capable of maintaining the confidentiality, security and integrity of such information, and who provide assurances that they will maintain the information in such a manner.

**§ 312.9 Enforcement.**

Subject to ~~sections~~ §§ 6503 and 6505 of the Children's Online Privacy Protection Act of 1998, a violation of a regulation prescribed under section 6502 (a) of this Act shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under ~~section~~ Section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

**§ 312.10 ~~Safe harbors.~~ Data retention and deletion requirements.**

An operator of a website or online service shall retain personal information collected online from a child for only as long as is reasonably necessary to fulfill the purpose for which the information was collected. The operator must delete such information using reasonable measures to protect against unauthorized access to, or use of, the information in connection with its deletion.

§ 312.11 Safe harbor programs.

(a) In general. ~~An operator will be deemed to be in compliance with the requirements of this part if that operator complies with self-regulatory guidelines, issued by representatives of the marketing or online industries, or by Industry groups or~~ other persons, ~~that, after notice and comment, are approved by~~ may apply to the Commission. ~~for approval of self-regulatory program guidelines ("safe harbor programs").~~ The application shall be filed



with the Commission's Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the application. The Commission shall issue a written determination within 180 days of the filing of the application.

( b ) Criteria for approval of self-regulatory program guidelines. ~~To be approved by the Commission, guidelines must include~~ Proposed safe harbor programs must demonstrate that they meet the following performance standards:

(1) ~~A requirement~~ Program requirements that ensure operators subject to the self-regulatory program guidelines (“subject operators”) ~~implement~~ provide substantially ~~similar requirements that provide~~ the same or greater protections for children as those contained in §§ 312.2 through ~~312.9; 312.8, and 312.10.~~

(2) An effective, mandatory mechanism for the independent assessment of subject operators' compliance with the self-regulatory program guidelines. At a minimum, this mechanism must include a comprehensive review by the safe harbor program, to be conducted not less than annually, of each subject operator's information policies, practices, and representations. The assessment mechanism required under this paragraph can be provided by an independent enforcement program, such as a seal program. ~~This performance standard may be satisfied by:~~

~~(i) Periodic reviews of subject operators' information practices conducted on a random basis either by the industry group promulgating the guidelines or by an independent entity;~~

~~(ii) Periodic reviews of all subject operators' information practices, conducted either by the industry group promulgating the guidelines or by an independent entity;~~

~~(iii) Seeding of subject operators' databases, if accompanied by either paragraphs (b)(2)(i) or (b)(2)(ii) of this section; or~~

~~(iv) Any other equally effective independent assessment mechanism; and~~

(3) ~~Effective incentives~~ Disciplinary actions for subject operators' non-compliance with the self-regulatory program guidelines. This performance standard may be satisfied by:

(i) Mandatory, public reporting of ~~disciplinary~~ any action taken against subject operators by the industry group ~~promulgating~~ issuing the self-regulatory guidelines;

(ii) Consumer redress;

(iii) Voluntary payments to the United States Treasury in connection with an industry-directed program for violators of the self-regulatory guidelines;

(iv) Referral to the Commission of operators who engage in a pattern or practice of violating the self-regulatory guidelines; or

(v) Any other equally effective ~~incentive.~~**(4) The assessment mechanism required under paragraph (b)(2) of this section can be provided by an independent enforcement program, such as a seal program. In considering whether to initiate an investigation or to bring an enforcement action for violations of this part, and in considering appropriate remedies for such violations, the Commission will take into account whether an operator has been subject to self-regulatory guidelines approved under this section and whether the operator has taken remedial action pursuant to such guidelines, including but not limited to actions set forth in paragraphs (b)(3)(i) through (iii) of this section.**action.

(c) Request for Commission approval of self-regulatory program guidelines. ~~(1) To obtain Commission approval of self-regulatory guidelines, industry groups or other persons must file a request for such~~A proposed safe harbor program's request for approval. ~~A request~~ shall be accompanied by the following:

~~(i)~~(1) A detailed explanation of the applicant's business model, and the technological capabilities and mechanisms that will be used for initial and continuing assessment of subject operators' fitness for membership in the safe harbor program;

~~(2)~~(2) A copy of the full text of the guidelines for which approval is sought and any accompanying commentary;

~~(ii)~~(3) A comparison of each provision of §§ ~~312.3~~312.2 through ~~312.8~~312.8, and 312.10 with the corresponding provisions of the guidelines; and

~~(iii)~~(4) A statement explaining:

~~(A)~~(A) How the self-regulatory program guidelines, including the applicable assessment ~~mechanism~~mechanisms, meet the requirements of this part; and

(Bii) ~~How~~how the assessment ~~mechanism~~mechanisms and compliance ~~incentives~~consequences required under paragraphs (b)(2) and (b)(3) ~~of this section~~ provide effective enforcement of the requirements of this part.

~~(2) The Commission shall act upon a request under this section within 180 days of the filing of such request and shall set forth its conclusions in writing.~~

~~(3) Industry groups or other persons whose guidelines have been approved by the Commission must submit proposed changes in those guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(1). The statement required under paragraph (c)(1)(iii) must describe how the proposed changes affect existing provisions of the guidelines.~~

(d) ~~Records. Industry groups or other persons who seek safe harbor treatment by compliance with guidelines that have been approved under this part shall maintain~~Reporting and recordkeeping requirements. Approved safe harbor programs shall:

(1) By July 1, 2014, and annually thereafter, submit a report to the Commission containing, at a minimum, an aggregated summary of the results of the independent assessments conducted under paragraph (b)(2), a description of any disciplinary action taken against any subject operator under paragraph (b)(3), and a description of any approvals of member operators' use of a parental consent mechanism, pursuant to § 312.5(b)(4);

(2) Promptly respond to Commission requests for additional information; and

(3) Maintain for a period not less than three years, and upon request make available to the Commission for inspection and copying:

~~(1)~~ Consumer complaints alleging violations of the guidelines by subject operators;

~~(2)~~ Records of disciplinary actions taken against subject operators; and

~~(3)~~ Results of the independent assessments of subject operators' compliance required under paragraph (b)(2) ~~of this section~~.

(e) Post-approval modifications to self-regulatory program guidelines. Approved safe harbor programs must submit proposed changes to their

guidelines for review and approval by the Commission in the manner required for initial approval of guidelines under paragraph (c)(2). The statement required under paragraph (c)(4) must describe how the proposed changes affect existing provisions of the guidelines.

(f) Revocation of approval of self-regulatory program guidelines. The Commission reserves the right to revoke any approval granted under this section if at any time it determines that the approved self-regulatory program guidelines and/or their implementation do not, in fact, meet the requirements of this part. meet the requirements of this part. Safe harbor programs that were approved prior to the publication of the Final Rule amendments must, by March 1, 2013, submit proposed modifications to their guidelines that would bring them into compliance with such amendments, or their approval shall be revoked.

(g) Operators' participation in a safe harbor program. An operator will be deemed to be in compliance with the requirements of §§ 312.2 through 312.8, and 312.10 if that operator complies with Commission-approved safe harbor program guidelines. In considering whether to initiate an investigation or bring an enforcement action against a subject operator for violations of this part, the Commission will take into account the history of the subject operator's participation in the safe harbor program, whether the subject operator has taken action to remedy such non-compliance, and whether the operator's noncompliance resulted in any one of the disciplinary actions set forth in paragraph (b)(3).

~~§ 312.11 Rulemaking review.~~

~~No later than April 21, 2005, the Commission shall initiate a rulemaking review proceeding to evaluate the implementation of this part, including the effect of the implementation of this part on practices relating to the collection and disclosure of information relating to children, children's ability to obtain access to information of their choice online, and on the availability of websites directed to children; and report to Congress on the results of this review.~~

§ 312.12 Voluntary Commission Approval Processes.

(a) Parental consent methods. An interested party may file a written request for Commission approval of parental consent methods not currently enumerated in § 312.5(b). To be considered for approval, a party must provide a detailed description of the proposed parental consent methods, together with an analysis of how the methods meet § 312.5(b)(1). The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request; and

(b) Support for internal operations of the website or online service. An interested party may file a written request for Commission approval of additional activities to be included within the definition of support for internal operations. To be considered for approval, a party must provide a detailed justification why such activities should be deemed support for internal operations, and an analysis of their potential effects on children's online privacy. The request shall be filed with the Commission's Office of the Secretary. The Commission will publish in the FEDERAL REGISTER a document seeking public comment on the request. The Commission shall issue a written determination within 120 days of the filing of the request.

§ 312.13 Severability.

The provisions of this part are separate and severable from one another. If any provision is stayed or determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.