

Rule review would be appropriate.⁸ Therefore, in a separate document being published elsewhere in this issue of the **Federal Register**, the Commission is also issuing a final amendment to the Rule to extend the sliding scale mechanism pending further review.⁹

II. Rule Review

The Children's Online Privacy Protection Act and Section 312.11 of the Rule require that the Commission initiate a review no later than April 21, 2005, to evaluate the Rule's implementation. The Act and Section 312.11 of the Rule mandate that this review specifically consider the Rule's effect on: (1) Practices relating to the collection and disclosure of information relating to children; (2) children's ability to obtain access to information of their choice online; and (3) the availability of Web sites directed to children. The Act and Section 312.11 also require that the Commission report to Congress on the results of this review.

The Commission also reviews each of its rules at least once every ten years to determine whether they should be retained, eliminated, or modified in light of changes in the marketplace or technology. The FTC has not conducted a regulatory review of the Rule since it became effective in 2000. The Commission therefore has determined to pose its standard regulatory review questions at this time to determine whether the Rule should be retained, eliminated, or modified. The Commission also has determined that it would be beneficial to seek comments—in addition to those already received—on the effectiveness of and need for the sliding scale approach to obtaining verifiable parental consent.

The Commission's experience in administering the Rule has raised four additional issues on which public comment would be especially useful. First, the Commission has been made aware of concerns about the factors used to determine whether a Web site is directed at children. Currently, such factors include the subject matter of the site, visual or audio content, age of models, language used, target audience of advertising or promotional materials, and empirical evidence regarding audience composition or intended audience. The Commission therefore

seeks comment on whether the factors should be clarified or supplemented.

Second, the Commission requests comment on an issue that has arisen in the context of determining whether a general audience Web site operator has actual knowledge of a child's age. Some operators in the past have collected age information and refused to allow children to participate while informing them that they must be 13 or older to participate. The operators then have allowed children to "back-button," or return to the entry screen, and enter an older age. The Final Rule's Statement of Basis and Purpose discusses the meaning of "actual knowledge" and, since the inception of the Rule, the Commission has published additional business guidance on the term.¹⁰ The Commission seeks comment on whether the term "actual knowledge" is sufficiently clear and whether Web site operators are encouraging children to back-button and change their age.

Third, the Commission specifically invites comment on the use of credit cards as a means of obtaining verifiable parental consent. Currently the Rule allows operators to obtain verifiable parental consent through the use of a credit card in connection with a transaction. It appears that some companies are now marketing debit cards to children, who may be able to use these cards to circumvent the parental consent requirement. In addition, some operators may be failing to conduct an actual transaction with the credit card, which provides some extra assurance that the person providing consent is the parent. Instead, the operators may be using methods that merely verify that a given credit card number is valid.

Fourth, the Commission seeks comment on the COPPA safe harbor program. The Rule's safe harbor provision allows industry groups and other entities to seek Commission approval of self-regulatory guidelines that implement substantially similar requirements to the Rule that provide the same or greater protections for children. Operators are deemed to be in compliance with the Rule if they comply with a safe harbor program's guidelines. Four safe harbor programs have been approved by the Commission—CARU, TRUSTe, ESRB, and Privo—and the Commission is interested in feedback on the effectiveness of these types of programs.

The Commission therefore seeks public comments relating to the subjects specifically noted in the Act and Section 312.11 of the Rule. It also seeks public comments concerning the costs and benefits of the Rule, including whether any modifications to the Rule are needed in light of changes in technology or in the marketplace. Furthermore, it seeks public comment on four practical issues that have arisen in the course of Rule enforcement. Public comments will assist the Commission in determining whether the Rule needs to be changed and in preparing a report to Congress on the effect of the Rule's implementation.

III. Request for Comments

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the COPPA Rule, including written data, views, facts, and arguments addressing the Rule. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received by June 27, 2005. The Commission is particularly interested in comments addressing the following questions:

A. General Questions for Comment

(1) Are children's online privacy and safety at greater, lesser, or the same risk as existed before COPPA and the Rule? Please explain.

(2) Is there a continuing need for the Rule as currently promulgated? Why or why not?

(a) Since the Rule was issued, have changes in technology, industry, or economic conditions affected the need for or effectiveness of the Rule?

(b) Does the Rule include any provisions, not mandated by the Act, that are unnecessary and why?

(c) What are the aggregate costs and benefits of the Rule?

(d) Have the costs or benefits of the Rule dissipated over time?

(e) Does the Rule contain provisions, not mandated by the Act, whose costs outweigh their benefits?

(3) What effect, if any, has the Rule had on children, parents, or other consumers?

(a) Has the Rule benefitted children, parents, or other consumers? If so, how?

(b) Has the Rule imposed any costs on children, parents, or other consumers? If so, what are these costs?

(c) What changes, if any, should be made to the Rule to increase its benefits, consistent with the Act's requirements? What costs would these changes impose?

⁸ All comments received in response to the January 2005 Notice of Proposed Rulemaking and Request for Comment are located at <http://www.ftc.gov/os/publiccomments.htm>.

⁹ For purposes of this review, the Commission will continue to consider all comments submitted in response to its January 2005 Notice of Proposed Rulemaking and Request for Comment; accordingly, previous commenters need not resubmit their comments.

¹⁰ *The Children's Online Privacy Protection Rule: Not Just for Kids' Sites*, available online at <http://www.ftc.gov/bcp/online/pubs/alerts/coppabizalrt.htm>.

(ii) Digital certificate technology;
(iii) Other digital credentialing
technology;
(iv) P3P technology; and
(v) Other secure electronic
technologies.

¹² See 16 CFR 1.26(b)(5).