

Via electronic submission

New York State Office of the Attorney General
[REDACTED], Senior Counsel
Economic Justice Division
28 Liberty Street
New York, NY 10005

RE: Stop Addictive Feeds Exploitation for Kids Act – N.Y. St. Reg. LAW-39-25-00001-P

Dear [REDACTED]:

The New York City (NYC) Department of Health and Mental Hygiene (Health Department) appreciates the opportunity to provide comments in response to the Stop Addictive Feeds Exploitation (SAFE) for Kids Act Notice of Proposed Rulemaking.

The provisions in the SAFE for Kids Act that prohibit addictive feeds and overnight notifications to minors without parental consent can only effectively be implemented with a clear and feasible set of age assurance requirements. The proposed rule's age assurance requirements generally constitute a well-reasoned and promising regulatory design, but we have concerns about the potential for large differences in false positive rates (FPR) across sex, image quality, actual age, and ethnicity.

Age Assurance Requirements

The proposed rule's age assurance requirements include several promising design decisions. First, the tiered accuracy system, rather than a single accuracy minimum threshold, reflects the reality that it is technically easier to achieve extremely high accuracy rates when detecting younger minors rather than older minors. Second, the decision to prevent social media operators from relying entirely on user self-declaration or social vouching due to their well-documented susceptibility to falsification, as discussed in the rule notice, is necessary for the law to be implemented effectively. Third, allowing operators to innovate with the methods or combinations of methods that they deem most effective and lowest burden, as long as they meet the accuracy thresholds, is a more dynamic system than providing a defined set of approved methods.

However, the proposed rule's age assurance requirements will only work effectively if there are sufficient vendors that meet the standards, while keeping the certification process of the accuracy thresholds robust. The National Institute of Standards and Technology (NIST) is the U.S. government agency responsible for technological measurements and standards. We would suggest adding NIST IR 8525 to the named

benchmarks in the list of industry standards that age assurance methods may meet, in addition to ISO 27566 and IEEE 2089.1.

Additionally, the proposed rule's accuracy minimum thresholds do not require methods to meet those thresholds across different groups. Age assurance methods can have FPR that vary substantially across sex and ethnicity.¹ If a method meets the <15% FPR for 17-year-olds in the aggregate but in doing so has a FPR of significantly higher than 15% for a specific sex or ethnic group, the regulations should mitigate these flaws.

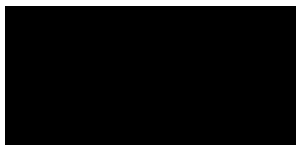
The NYC Health Department will be interested to see how the implementation of the framework for age assurance requirements in the proposed rule compares to other jurisdictions' adoption of age assurance requirements. For example, a potentially viable alternative path is found in California's recently signed Digital Age Assurance Act, which requires operating system providers to require account holders to indicate the birth date, age, or both, of the user at account setup, and software developers will need to recognize the age of the user and comply with laws accordingly.

Data Transparency

The proposed rule already requires social media operators to collect certified data on the accuracy rates of the methods they are using. However, we recommend that the proposed rule be modified to require operators to make this data, or a topline subset of this data, publicly available. This would provide greater transparency and help inform other jurisdictions' approaches to developing age assurance methods. It would also allow a public understanding of whether New York's regulatory approach is resulting in lower-burden, higher-accuracy methods being used than would be the case if it had adopted a defined set of approved methods for age assurance.

The NYC Health Department appreciates the opportunity to submit these comments.

Sincerely,



Dr. H Jean Wright

Executive Deputy Commissioner

¹ Kayee Hanaoka, Mei Ngan, Joyce Yang, George W. Quinn, Austin Hom, Patrick Grother (2024) Face Analysis Technology Evaluation: Age Estimation and Verification. (National Institute of Standards and Technology, Gaithersburg, MD), NIST IR 8525. <https://doi.org/10.6028/NIST.IR.8525>