

116TH CONGRESS
2D SESSION

H. R. 8565

To require agencies to analyze how certain rules impact children, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 9, 2020

Mrs. CAROLYN B. MALONEY of New York (for herself and Ms. PRESSLEY) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Oversight and Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To require agencies to analyze how certain rules impact children, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Children’s Protection Act of 2020”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Initial regulatory children’s analysis.
- Sec. 3. Final regulatory children’s analysis.

- Sec. 4. Exception, delay, and preparation of analyses.
- Sec. 5. Procedures for gathering comments.
- Sec. 6. Avoidance of duplicative or unnecessary analyses.
- Sec. 7. Reports.
- Sec. 8. Applicability.
- Sec. 9. Judicial review.
- Sec. 10. Definitions.

1 **SEC. 2. INITIAL REGULATORY CHILDREN'S ANALYSIS.**

2 (a) PUBLICATION AND PUBLIC COMMENT RE-
3 QUIRED.—Except as provided for in subsections (a) and
4 (b) of section 4, with respect to any proposed applicable
5 rule, the head of an agency shall include an initial regu-
6 latory children's analysis, or a summary of the analysis,
7 in the general notice of proposed rulemaking published in
8 the Federal Register under section 553 of title 5, United
9 States Code, or other applicable law, and make such anal-
10 ysis or summary available for public comment.

11 (b) CONTENTS OF INITIAL ANALYSIS.—Each initial
12 regulatory children's analysis required under this section
13 shall describe the impact of the proposed applicable rule
14 on children and contain the following:

15 (1) An estimate of the number of children
16 whose health outcomes may be directly or indirectly
17 negatively affected and how children's health may be
18 negatively affected by the proposed applicable rule,
19 including the following:

20 (A) The unique vulnerabilities of children
21 including unique behaviors, how children may

1 be exposed to chemicals, developing bodies, and
2 dependence on adults for their care.

3 (B) Data sources and a description of any
4 uncertainties.

5 (C) A description of the demographic
6 groups of children negatively affected.

7 (2) Any reasonably foreseeable projected in-
8 crease in negative health or educational outcomes for
9 children, including reduced access to health insur-
10 ance, health care, and behavioral health care serv-
11 ices.

12 (3) Any significant alternatives to the proposed
13 applicable rule that could accomplish the stated ob-
14 jectives of the proposed applicable rule and that
15 minimize any negative health impacts to children or
16 that provide greater benefits to children.

17 (c) REQUIREMENTS BEFORE PUBLICATION OF INI-
18 TIAL ANALYSIS.—Before the publication of an initial regu-
19 latory children’s analysis by an agency:

20 (1) The head of the agency shall convene a re-
21 view panel for the proposed applicable rule con-
22 sisting of full-time Federal employees of the office
23 within the agency responsible for carrying out the
24 proposed applicable rule, 3 children’s representa-
25 tives, a board certified pediatrician, a member of the

1 National Academy of Sciences with expertise in chil-
2 dren’s health, a licensed early childhood educator,
3 and 1 career employee from the Office of Informa-
4 tion and Regulatory Affairs.

5 (2) The review panel convened pursuant to
6 paragraph (1) shall review any material related to
7 the applicable rule that the agency has prepared in
8 connection with the requirements of this Act, includ-
9 ing any draft proposed applicable rule, and collect
10 advice and recommendations of each individual rep-
11 resentative identified by the agency on issues de-
12 scribed in subsection (b).

13 (3) Not later than 60 days after the date on
14 which an agency convenes a review panel pursuant
15 to paragraph (1), the review panel shall submit to
16 the head of the agency a report on the comments of
17 the children’s representatives and any findings on
18 issues described in subsection (b). Such report shall
19 be made public as part of the rulemaking record.

20 (4) Where appropriate, the agency shall publish
21 any modification of the proposed applicable rule, the
22 initial regulatory children’s analysis, or the decision
23 on whether an initial regulatory children’s analysis is
24 required.

1 (d) WAIVER OF REQUIREMENTS.—In consultation
2 with the individuals identified in subsection (c)(1), the Ad-
3 ministrator may waive the requirements of paragraph (2),
4 (3), or (4) of subsection (c) by including in the rulemaking
5 record a written finding with reasons therefor that those
6 requirements would not advance the effective participation
7 of children’s representatives in the rulemaking process.
8 For purposes of this subsection, the factors to be consid-
9 ered in making such a finding are as follows:

10 (1) In developing a proposed applicable rule,
11 the extent to which the agency consulted with indi-
12 viduals representing and advocating for affected chil-
13 dren with respect to the potential impacts of the ap-
14 plicable rule and took such concerns into consider-
15 ation.

16 (2) Special circumstances requiring prompt
17 issuance of the applicable rule.

18 **SEC. 3. FINAL REGULATORY CHILDREN’S ANALYSIS.**

19 (a) PUBLICATION REQUIRED.—Except as provided
20 for in subsections (a) and (b) of section 4, simultaneously
21 with the promulgation of a final applicable rule under sec-
22 tion 553 of title 5, United States Code, or any other appli-
23 cable statute, the head of the agency shall publish a final
24 regulatory children’s analysis, or a summary of the anal-
25 ysis, in the Federal Register. In a case in which only the

1 summary is published, the head of the agency shall make
2 the final regulatory children’s analysis available on a pub-
3 lic website of the agency and include a link to that website
4 in the summary.

5 (b) CONTENTS OF FINAL ANALYSIS.—Each final reg-
6 ulatory children’s analysis required under this section
7 shall contain the following:

8 (1) A statement of the significant issues raised
9 by the public comments in response to the initial
10 regulatory children’s analysis including the impacts
11 on children and the regulatory analysis, a statement
12 of the assessment by the agency of such issues, and
13 a statement of any changes made to the proposed
14 applicable rule as a result of such comments.

15 (2) An estimate of the number of children
16 whose health the final applicable rule may directly or
17 indirectly negatively impact and the basis of such es-
18 timate or a substantiated explanation of why such
19 estimate is unavailable.

20 (3) A description of the demographic groups of
21 children impacted by the final applicable rule.

22 (4) A description of the steps the agency has
23 taken to minimize the negative impact on children’s
24 health, and to maximize the benefits to children, in-
25 cluding a statement of the factual, policy, and legal

1 reasons for selecting any alternative adopted in the
2 final applicable rule and why any other alternative
3 that had less negative impact on children's health
4 was not adopted.

5 (5) An appendix containing the following:

6 (A) Any draft of the proposed applicable
7 rule submitted by the agency to the Office of
8 Management and Budget for any interagency
9 review process prior to proposal of any such
10 rule and each document accompanying any such
11 draft.

12 (B) Each written comment to any draft
13 described in subparagraph (A) by any other
14 agency and each written response to such writ-
15 ten comment by the Administrator.

16 (C) Each draft of the final applicable rule
17 submitted for such review process prior to pro-
18 mulgation and each written comment thereon
19 and any document accompanying each such
20 draft and any written response thereto.

21 **SEC. 4. EXCEPTION, DELAY, AND PREPARATION OF ANAL-**

22 **YSES.**

23 (a) EXCEPTION.—The requirements of sections 2 and
24 3 do not apply if the head of an agency—

1 (1) certifies that an applicable rule will not
2 have a negative impact on the health of a substantial
3 number of children; and

4 (2) publishes such certification in the Federal
5 Register at the time of publication of general notice
6 of proposed rulemaking for the applicable rule along
7 with a statement providing details for the factual
8 basis for such certification.

9 (b) DELAYS.—

10 (1) EMERGENCY.—The head of an agency may
11 delay the completion of the requirements of section
12 2 by publishing in the Federal Register, not later
13 than the date of publication of the final applicable
14 rule, a written finding that the final applicable rule
15 is being promulgated in response to an emergency
16 that makes timely compliance impracticable.

17 (2) IMPRACTICABILITY.—The head of an agen-
18 cy may delay the completion of the requirements of
19 section 3 for a period of not more than 180 days
20 after the date of publication in the Federal Register
21 of a final applicable rule by publishing in the Fed-
22 eral Register with the final applicable rule, a written
23 finding that the final applicable rule is being pro-
24 mulgated in response to an emergency that makes
25 timely compliance with the provisions of section 3

1 impracticable. If the agency has not prepared and
2 published the final regulatory analysis as described
3 in section 3 within 180 days after the date of publi-
4 cation of the final applicable rule, such applicable
5 rule shall lapse and have no effect.

6 (c) PREPARATION.—

7 (1) IN GENERAL.—In complying with sections 2
8 and 3, an agency shall include in any analysis—

9 (A) a quantifiable or numerical description
10 of the effects of a proposed and final applicable
11 rule or alternatives to the proposed and final
12 applicable rule; and

13 (B) a qualitative analysis and description
14 of the effects of a proposed and final applicable
15 rule or alternatives to the proposed and final
16 applicable rule.

17 (2) SPECIAL ATTENTION TO UNIQUE
18 VULNERABILITIES.—An agency shall consider the
19 unique vulnerabilities of children, including the
20 unique behaviors, exposure routes, developing bodies,
21 and dependence on adults for their care, in pre-
22 paring the analysis and description described in
23 paragraph (1).

1 **SEC. 5. PROCEDURES FOR GATHERING COMMENTS.**

2 For any applicable rule, the head of the agency pro-
3 mulgating the applicable rule shall assure that children's
4 representatives have been given an opportunity to partici-
5 pate in the rulemaking for the applicable rule through rea-
6 sonable use of techniques, including the following:

7 (1) The inclusion in an advanced notice of pro-
8 posed rulemaking, if issued, of a statement that the
9 proposed applicable rule may have a negative effect
10 on the health of a substantial number of children.

11 (2) The issuance of the notice through an easily
12 accessible publicly available press release or official
13 statement.

14 (3) The conduct of an open conference or a
15 public hearing concerning the applicable rule for
16 children's representatives, including soliciting and
17 receiving comments through the internet.

18 **SEC. 6. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY**
19 **ANALYSES.**

20 (a) IN GENERAL.—An agency may perform the anal-
21 yses required by sections 2 and 3 in conjunction with any
22 other required analysis, such as subchapter I of chapter
23 35 of title 44, United States Code (commonly referred to
24 as the Paperwork Reduction Act), or Executive Order
25 12866 (relating to regulatory planning and review).

1 (b) CONSOLIDATION OF RULES.—In order to avoid
2 duplicative action, an agency may consider a series of
3 closely related applicable rules as one rule for the purposes
4 of sections 2, 3, 4, and 5.

5 **SEC. 7. REPORTS.**

6 (a) OIRA REPORT ON COMPLIANCE.—The Adminis-
7 trator shall monitor agency compliance with this Act and
8 not less frequently than annually submit to the President,
9 the Committee on Homeland Security and Governmental
10 Affairs of the Senate, and the Committee on Oversight
11 and Reform of the House of Representatives a report on
12 such compliance.

13 (b) AGENCY BIENNIAL SUBMISSION TO OFFICE OF
14 INFORMATION AND REGULATORY AFFAIRS.—

15 (1) IN GENERAL.—On a biannual basis, the
16 head of each agency shall submit to the Adminis-
17 trator, in such a manner as the Administrator may
18 reasonably require, a report on the following infor-
19 mation:

20 (A) For each rule that the agency expects
21 to propose or finalize during the following 6-
22 month period:

23 (i) A summary of the nature of the
24 rule and justification for whether or not

1 the rule will require an initial or final reg-
2 ulatory children’s analysis, including—

3 (I) the regulation identifier num-
4 ber and the docket number for the
5 rule; and

6 (II) the objectives of and legal
7 basis for the issuance of the rule, in-
8 cluding any statutory or judicial dead-
9 line and whether the agency plans to
10 conduct an initial regulatory chil-
11 dren’s analysis during the rulemaking.

12 (ii) The stage of the rulemaking as of
13 the date on which the report is submitted.

14 (iii) Whether the rule is subject to re-
15 view under section 3.

16 (2) PUBLIC AVAILABILITY.—Not later than 30
17 days after the date on which the report is submitted
18 pursuant to paragraph (1), the Administrator shall
19 make such report publicly available on the internet.

20 (c) OFFICE OF INFORMATION AND REGULATORY AF-
21 FAIRS PUBLICATIONS.—

22 (1) CUMULATIVE ASSESSMENT OF AGENCY
23 RULEMAKING PUBLISHED ANNUALLY.—

24 (A) PUBLICATION IN THE FEDERAL REG-
25 ISTER.—Not later than October 1 of each year,

1 the Administrator shall publish in the Federal
2 Register, for the previous year a report on the
3 following:

4 (i) Each report the Administrator re-
5 ceived from the head of each agency under
6 subsection (b)(1).

7 (ii) The number of rules and a list of
8 each such rule—

9 (I) that was proposed by each
10 agency, including, for each such rule,
11 an indication of whether the issuing
12 agency conducted an initial regulatory
13 children’s analysis of the rule; and

14 (II) that was finalized by each
15 agency, including for each such rule
16 an indication of whether—

17 (aa) the issuing agency con-
18 ducted a final regulatory chil-
19 dren’s analysis of the rule;

20 (bb) the agency claimed an
21 exception from the procedures
22 under section 4(a); or

23 (cc) the rule was issued pur-
24 suant to a statutory mandate or

1 the rulemaking is committed to
2 agency discretion by law.

3 (B) PUBLICATION ON THE INTERNET.—

4 Not later than October 1 of each year, the Ad-
5 ministrator shall make publicly available on the
6 internet the following:

7 (i) The initial and final regulatory
8 children’s analysis, if conducted, for each
9 proposed rule or final rule issued by an
10 agency for the previous year.

11 (ii) The docket number and regulation
12 identifier number for each proposed or
13 final rule issued by an agency for the pre-
14 vious year.

15 (iii) The number of rules and a list of
16 each rule reviewed by the Director of the
17 Office of Management and Budget for the
18 previous year, and the authority under
19 which each such review was conducted.

20 **SEC. 8. APPLICABILITY.**

21 This Act shall apply with respect to any proposed ap-
22 plicable rule within the year before the date of enactment
23 of this Act that has not been finalized as of the date of
24 the enactment of this Act and any proposed applicable rule
25 on or after the date of the enactment of this Act.

1 **SEC. 9. JUDICIAL REVIEW.**

2 In the case of an action brought under chapter 7 of
3 title 5, United States Code, alleging that the head of an
4 agency did not comply with the requirement under section
5 2(a) or that the head of an agency's determination that
6 a rule was not an applicable rule was arbitrary, capricious,
7 an abuse of discretion, or otherwise not in accordance with
8 law, the reviewing court may not vacate a rule but may
9 only remand the rule to the agency to comply with such
10 section or review the determination, as applicable.

11 **SEC. 10. DEFINITIONS.**

12 In this Act:

13 (1) ADMINISTRATOR.—The term “Adminis-
14 trator” means the Administrator of the Office of In-
15 formation and Regulatory Affairs.

16 (2) AGENCY.—The term “agency” has the
17 meaning given that term in section 551 of title 5,
18 United States Code.

19 (3) APPLICABLE RULE.—The term “applicable
20 rule” means a rule that may negatively affect, di-
21 rectly or indirectly, the health of a substantial num-
22 ber of children.

23 (4) CHILD.—The term “child” means a human
24 from the moment immediately after birth up to an
25 age of 18 years.

1 (5) CHILDREN’S REPRESENTATIVE.—The term
2 “children’s representative”—

3 (A) means a nonprofit organization or a
4 municipal, State, or Federal agency, or Federal
5 advisory committee that has the mission of pro-
6 tecting all children’s health and welfare or pro-
7 viding healthcare services to all children despite
8 race, ethnicity, socioeconomic class, sexual ori-
9 entation, or other identification markers; and

10 (B) does not include any trade association
11 or for-profit entities.

12 (6) NONPROFIT ORGANIZATION.—The term
13 “nonprofit organization” means an organization that
14 is described in section 501(c)(3) of the Internal Rev-
15 enue Code of 1986 and is exempt from taxation
16 under section 501(a) of such Code.

17 (7) RULE.—The term “rule” has the meaning
18 given that term in section 551 of title 5, United
19 States Code, to which section 553 of title 5, United
20 States Code, applies.

21 (8) STATE.—The term “State” means each
22 State of the United States, the District of Columbia,
23 each commonwealth, territory, or possession of the
24 United States, and each federally recognized Indian
25 Tribe.

- 1 (9) SUBSTANTIAL NUMBER OF CHILDREN.—
2 The term “substantial number of children” means at
3 least 500 children.

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