

117TH CONGRESS
1ST SESSION

H. R. 3716

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

IN THE HOUSE OF REPRESENTATIVES

JUNE 4, 2021

Mrs. CAROLYN B. MALONEY of New York (for herself, Ms. PRESSLEY, Ms. NORTON, Mr. RASKIN, Mr. COOPER, and Mr. KHANNA) 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 2021”.

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 who
16 may be directly or indirectly negatively affected by
17 the proposed rule.

18 (2) An analysis of how children may be directly
19 or indirectly negatively affected by the proposed ap-
20 plicable rule, including with respect to the following:

21 (A) Physical safety.

1 (B) Mental, emotional, and physical health,
2 including the unique vulnerabilities of children's
3 specific stages of development.

4 (C) Relationship with and attachment to a
5 parent, legal guardian, sibling, or other ex-
6 tended family, Tribe, or community member.

7 (D) Well-being and security, including eco-
8 nomic security, education, and healthy develop-
9 ment.

10 (E) Identity, including race, ethnicity, reli-
11 gion, gender, gender identity, sexual orienta-
12 tion, and immigration status.

13 (3) Data sources and a description of any un-
14 certainties.

15 (4) A description of the demographic groups of
16 children negatively affected.

17 (5) Any reasonably foreseeable projected in-
18 crease in negative health or educational outcomes for
19 children, including reduced access to health insur-
20 ance, health care, and behavioral health care serv-
21 ices.

22 (6) Any significant alternatives to the proposed
23 applicable rule that could accomplish the stated ob-
24 jectives of the proposed applicable rule and that

1 minimize any negative impacts to children or that
2 provide greater benefits to children.

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

6 (1) The head of the agency shall convene a re-
7 view panel for the proposed applicable rule con-
8 sisting of full-time Federal employees of the office
9 within the agency responsible for carrying out the
10 proposed applicable rule, 3 children’s representa-
11 tives, a board certified pediatrician, a member of the
12 National Academy of Sciences with expertise in chil-
13 dren’s health, a licensed early childhood educator,
14 and 1 career employee from the Office of Informa-
15 tion and Regulatory Affairs.

16 (2) The review panel convened pursuant to
17 paragraph (1) shall review any material related to
18 the applicable rule that the agency has prepared in
19 connection with the requirements of this Act, includ-
20 ing any draft proposed applicable rule, and collect
21 advice and recommendations of each individual rep-
22 resentative identified by the agency on issues de-
23 scribed in subsection (b).

24 (3) Not later than 60 days after the date on
25 which an agency convenes a review panel pursuant

1 to paragraph (1), the review panel shall submit to
2 the head of the agency a report on the comments of
3 the children's representatives and any findings on
4 issues described in subsection (b). Such report shall
5 be made public as part of the rulemaking record.

6 (4) Where appropriate, the agency shall publish
7 any modification of the proposed applicable rule, the
8 initial regulatory children's analysis, or the decision
9 on whether an initial regulatory children's analysis is
10 required.

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

20 (1) In developing a proposed applicable rule,
21 the extent to which the agency consulted with indi-
22 viduals representing and advocating for affected chil-
23 dren with respect to the potential impacts of the ap-
24 plicable rule and took such concerns into consider-
25 ation.

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

3 **SEC. 3. FINAL REGULATORY CHILDREN'S ANALYSIS.**

4 (a) PUBLICATION REQUIRED.—Except as provided
5 for in subsections (a) and (b) of section 4, simultaneously
6 with the promulgation of a final applicable rule under sec-
7 tion 553 of title 5, United States Code, or any other appli-
8 cable statute, the head of the agency shall publish a final
9 regulatory children's analysis, or a summary of the anal-
10 ysis, in the Federal Register. In a case in which only the
11 summary is published, the head of the agency shall make
12 the final regulatory children's analysis available on a pub-
13 lic website of the agency and include a link to that website
14 in the summary.

15 (b) CONTENTS OF FINAL ANALYSIS.—Each final reg-
16 ulatory children's analysis required under this section
17 shall contain the following:

18 (1) A statement of the significant issues raised
19 by the public comments in response to the initial
20 regulatory children's analysis including the impacts
21 on children and the regulatory analysis, a statement
22 of the assessment by the agency of such issues, and
23 a statement of any changes made to the proposed
24 applicable rule as a result of such comments.

1 (2) An estimate of the number of children who
2 may be directly or indirectly negatively impacted by
3 the final applicable rule and the basis of such esti-
4 mate or a substantiated explanation of why such es-
5 timate is unavailable.

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

8 (4) A description of the steps the agency has
9 taken to minimize the negative impact on children,
10 and to maximize the benefits to children, including
11 a statement of the factual, policy, and legal reasons
12 for selecting any alternative adopted in the final ap-
13 plicable rule and why any other alternative that had
14 less negative impact on children's health was not
15 adopted.

16 (5) An appendix containing the following:

17 (A) Any draft of the proposed applicable
18 rule submitted by the agency to the Office of
19 Management and Budget for any interagency
20 review process prior to proposal of any such
21 rule and each document accompanying any such
22 draft.

23 (B) Each written comment to any draft
24 described in subparagraph (A) by any other

1 agency and each written response to such writ-
2 ten comment by the Administrator.

3 (C) Each draft of the final applicable rule
4 submitted for such review process prior to pro-
5 mulgation and each written comment thereon
6 and any document accompanying each such
7 draft and any written response thereto.

8 **SEC. 4. EXCEPTION, DELAY, AND PREPARATION OF ANAL-**
9 **YSES.**

10 (a) EXCEPTION.—The requirements of sections 2 and
11 3 do not apply if the head of an agency—

12 (1) certifies that an applicable rule will not
13 have a negative impact on a substantial number of
14 children; and

15 (2) publishes such certification in the Federal
16 Register at the time of publication of general notice
17 of proposed rulemaking for the applicable rule along
18 with a statement providing details for the factual
19 basis for such certification.

20 (b) DELAYS.—

21 (1) EMERGENCY.—The head of an agency may
22 delay the completion of the requirements of section
23 2 by publishing in the Federal Register, not later
24 than the date of publication of the final applicable
25 rule, a written finding that the final applicable rule

1 is being promulgated in response to an emergency
2 that makes timely compliance impracticable.

3 (2) IMPRACTICABILITY.—The head of an agen-
4 cy may delay the completion of the requirements of
5 section 3 for a period of not more than 180 days
6 after the date of publication in the Federal Register
7 of a final applicable rule by publishing in the Fed-
8 eral Register with the final applicable rule, a written
9 finding that the final applicable rule is being pro-
10 mulgated in response to an emergency that makes
11 timely compliance with the provisions of section 3
12 impracticable. If the agency has not prepared and
13 published the final regulatory analysis as described
14 in section 3 within 180 days after the date of publi-
15 cation of the final applicable rule, such applicable
16 rule shall lapse and have no effect.

17 (c) PREPARATION.—

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

20 (A) a quantifiable or numerical description
21 of the effects of a proposed and final applicable
22 rule or alternatives to the proposed and final
23 applicable rule; and

24 (B) a qualitative analysis and description
25 of the effects of a proposed and final applicable

1 rule or alternatives to the proposed and final
2 applicable rule.

3 (2) SPECIAL ATTENTION TO UNIQUE
4 VULNERABILITIES.—An agency shall consider the
5 unique vulnerabilities of children, including the
6 unique behaviors, exposure routes, developing bodies,
7 and dependence on adults for their care, in pre-
8 paring the analysis and description described in
9 paragraph (1).

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

11 For any applicable rule, the head of the agency pro-
12 mulgating the applicable rule shall assure that children's
13 representatives have been given an opportunity to partici-
14 pate in the rulemaking for the applicable rule through rea-
15 sonable use of techniques, including the following:

16 (1) The inclusion in an advanced notice of pro-
17 posed rulemaking, if issued, of a statement that the
18 proposed applicable rule may have a negative effect
19 on a substantial number of children.

20 (2) The issuance of the notice through an easily
21 accessible publicly available press release or official
22 statement.

23 (3) The conduct of an open conference or a
24 public hearing concerning the applicable rule for

1 children's representatives, including soliciting and
2 receiving comments through the internet.

3 **SEC. 6. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY**
4 **ANALYSES.**

5 (a) IN GENERAL.—An agency may perform the anal-
6 yses required by sections 2 and 3 in conjunction with any
7 other required analysis, such as subchapter I of chapter
8 35 of title 44, United States Code (commonly referred to
9 as the Paperwork Reduction Act), or Executive Order
10 12866 (relating to regulatory planning and review).

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

15 **SEC. 7. REPORTS.**

16 (a) OIRA REPORT ON COMPLIANCE.—The Adminis-
17 trator shall monitor agency compliance with this Act and
18 not less frequently than annually submit to the President,
19 the Committee on Homeland Security and Governmental
20 Affairs of the Senate, and the Committee on Oversight
21 and Reform of the House of Representatives a report on
22 such compliance.

23 (b) AGENCY BIENNIAL SUBMISSION TO OFFICE OF
24 INFORMATION AND REGULATORY AFFAIRS.—

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

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

9 (i) A summary of the nature of the
10 rule and justification for whether or not
11 the rule will require an initial or final reg-
12 ulatory children’s analysis, including—

13 (I) the regulation identifier num-
14 ber and the docket number for the
15 rule; and

16 (II) the objectives of and legal
17 basis for the issuance of the rule, in-
18 cluding any statutory or judicial dead-
19 line and whether the agency plans to
20 conduct an initial regulatory chil-
21 dren’s analysis during the rulemaking.

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

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

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

5 (c) OFFICE OF INFORMATION AND REGULATORY AF-
6 FAIRS PUBLICATIONS.—

7 (1) CUMULATIVE ASSESSMENT OF AGENCY
8 RULEMAKING PUBLISHED ANNUALLY.—

9 (A) PUBLICATION IN THE FEDERAL REG-
10 ISTER.—Not later than October 1 of each year,
11 the Administrator shall publish in the Federal
12 Register, for the previous year a report on the
13 following:

14 (i) Each report the Administrator re-
15 ceived from the head of each agency under
16 subsection (b)(1).

17 (ii) The number of rules and a list of
18 each such rule—

19 (I) that was proposed by each
20 agency, including, for each such rule,
21 an indication of whether the issuing
22 agency conducted an initial regulatory
23 children’s analysis of the rule; and

1 (II) that was finalized by each
2 agency, including for each such rule
3 an indication of whether—

4 (aa) the issuing agency con-
5 ducted a final regulatory chil-
6 dren’s analysis of the rule;

7 (bb) the agency claimed an
8 exception from the procedures
9 under section 4(a); or

10 (cc) the rule was issued pur-
11 suant to a statutory mandate or
12 the rulemaking is committed to
13 agency discretion by law.

14 (B) PUBLICATION ON THE INTERNET.—

15 Not later than October 1 of each year, the Ad-
16 ministrator shall make publicly available on the
17 internet the following:

18 (i) The initial and final regulatory
19 children’s analysis, if conducted, for each
20 proposed rule or final rule issued by an
21 agency for the previous year.

22 (ii) The docket number and regulation
23 identifier number for each proposed or
24 final rule issued by an agency for the pre-
25 vious year.

1 (iii) The number of rules and a list of
2 each rule reviewed by the Director of the
3 Office of Management and Budget for the
4 previous year, and the authority under
5 which each such review was conducted.

6 **SEC. 8. APPLICABILITY.**

7 This Act shall apply with respect to any proposed ap-
8 plicable rule within the year before the date of enactment
9 of this Act that has not been finalized as of the date of
10 the enactment of this Act and any proposed applicable rule
11 on or after the date of the enactment of this Act.

12 **SEC. 9. JUDICIAL REVIEW.**

13 In the case of an action brought under chapter 7 of
14 title 5, United States Code, alleging that the head of an
15 agency did not comply with the requirement under section
16 2(a) or that the head of an agency's determination that
17 a rule was not an applicable rule was arbitrary, capricious,
18 an abuse of discretion, or otherwise not in accordance with
19 law, the reviewing court may not vacate a rule but may
20 only remand the rule to the agency to comply with such
21 section or review the determination, as applicable.

22 **SEC. 10. DEFINITIONS.**

23 In this Act:

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

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

7 (3) APPLICABLE RULE.—The term “applicable
8 rule” means a rule that may negatively affect, di-
9 rectly or indirectly, a substantial number of children.

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

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

15 (A) means a nonprofit organization or a
16 municipal, State, or Federal agency, or Federal
17 advisory committee that has the mission of pro-
18 tecting all children’s health and welfare or pro-
19 viding healthcare services to all children despite
20 race, ethnicity, socioeconomic class, sexual ori-
21 entation, or other identification markers; and

22 (B) does not include any trade association
23 or for-profit entities.

24 (6) NONPROFIT ORGANIZATION.—The term
25 “nonprofit organization” means an organization that

1 is described in section 501(c)(3) of the Internal Rev-
2 enue Code of 1986 and is exempt from taxation
3 under section 501(a) of such Code.

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

8 (8) STATE.—The term “State” means each
9 State of the United States, the District of Columbia,
10 each commonwealth, territory, or possession of the
11 United States, and each federally recognized Indian
12 Tribe.

13 (9) SUBSTANTIAL NUMBER OF CHILDREN.—
14 The term “substantial number of children” means at
15 least 500 children.

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