H. R. _____

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

IN THE HOUSE OF REPRESENTATIVES

M. __________ introduced the following bill; which was referred to the Committee on ________________

A BILL

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Children's Protection Act of 2020”.

(b) Table of Contents.—The table of contents for 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.

SEC. 2. INITIAL REGULATORY CHILDREN’S ANALYSIS.

(a) PUBLICATION AND PUBLIC COMMENT REQUIRED.—Except as provided for in subsections (a) and (b) of section 4, with respect to any proposed applicable rule, the head of an agency shall include an initial regulatory children’s analysis, or a summary of the analysis, in the general notice of proposed rulemaking published in the Federal Register under section 553 of title 5, United States Code, or other applicable law, and make such analysis or summary available for public comment.

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

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

(A) The unique vulnerabilities of children including unique behaviors, how children may
be exposed to chemicals, developing bodies, and
dependence on adults for their care.

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

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

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

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

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

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

(2) The review panel convened pursuant to paragraph (1) shall review any material related to the applicable rule that the agency has prepared in connection with the requirements of this Act, including any draft proposed applicable rule, and collect advice and recommendations of each individual representative identified by the agency on issues described in subsection (b).

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

(4) Where appropriate, the agency shall publish any modification of the proposed applicable rule, the initial regulatory children’s analysis, or the decision on whether an initial regulatory children’s analysis is required.
(d) WAIVER OF REQUIREMENTS.—In consultation with the individuals identified in subsection (c)(1), the Administrator may waive the requirements of paragraph (2), (3), or (4) of subsection (c) by including in the rulemaking record a written finding with reasons therefor that those requirements would not advance the effective participation of children’s representatives in the rulemaking process. For purposes of this subsection, the factors to be considered in making such a finding are as follows:

(1) In developing a proposed applicable rule, the extent to which the agency consulted with individuals representing and advocating for affected children with respect to the potential impacts of the applicable rule and took such concerns into consideration.

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

SEC. 3. FINAL REGULATORY CHILDREN’S ANALYSIS.

(a) PUBLICATION REQUIRED.—Except as provided for in subsections (a) and (b) of section 4, simultaneously with the promulgation of a final applicable rule under section 553 of title 5, United States Code, or any other applicable statue, the head of the agency shall publish a final regulatory children’s analysis, or a summary of the analysis, in the Federal Register. In a case in which only the
summary is published, the head of the agency shall make
the final regulatory children’s analysis available on a pub-
lic website of the agency and include a link to that website
in the summary.

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

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

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

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

(4) A description of the steps the agency has
taken to minimize the negative impact on children’s
health, and to maximize the benefits to children, in-
cluding a statement of the factual, policy, and legal
reasons for selecting any alternative adopted in the final applicable rule and why any other alternative that had less negative impact on children’s health was not adopted.

(5) An appendix containing the following:

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

(B) Each written comment to any draft described in subparagraph (A) by any other agency and each written response to such written comment by the Administrator.

(C) Each draft of the final applicable rule submitted for such review process prior to promulgation and each written comment thereon and any document accompanying each such draft and any written response thereto.

SEC. 4. EXCEPTION, DELAY, AND PREPARATION OF ANALYSES.

(a) Exception.—The requirements of sections 2 and 3 do not apply if the head of an agency—
(1) certifies that an applicable rule will not have a negative impact on the health of a substantial number of children; and

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

(b) DELAYS.—

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

(2) IMPrACTICABILITY.—The head of an agency may delay the completion of the requirements of section 3 for a period of not more than 180 days after the date of publication in the Federal Register of a final applicable rule by publishing in the Federal Register with the final applicable rule, a written finding that the final applicable rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 3
impracticable. If the agency has not prepared and published the final regulatory analysis as described in section 3 within 180 days after the date of publication of the final applicable rule, such applicable rule shall lapse and have no effect.

(c) PREPARATION.—

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

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

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

(2) SPECIAL ATTENTION TO UNIQUE VULNERABILITIES.—An agency shall consider the unique vulnerabilities of children, including the unique behaviors, exposure routes, developing bodies, and dependence on adults for their care, in preparing the analysis and description described in paragraph (1).
SEC. 5. PROCEDURES FOR GATHERING COMMENTS.

For any applicable rule, the head of the agency promulgating the applicable rule shall assure that children’s representatives have been given an opportunity to participate in the rulemaking for the applicable rule through reasonable use of techniques, including the following:

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

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

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

SEC. 6. AVOIDANCE OF DUPLICATIVE OR UNNECESSARY ANALYSES.

(a) IN GENERAL.—An agency may perform the analyses required by sections 2 and 3 in conjunction with any other required analysis, such as subchapter I of chapter 35 of title 44, United States Code (commonly referred to as the Paperwork Reduction Act) or Executive Order 12866 (relating to regulatory planning and review).
(b) CONSOLIDATION OF RULES.—In order to avoid duplicative action, an agency may consider a series of closely related applicable rules as one rule for the purposes of sections 2, 3, 4, and 5.

SEC. 7. REPORTS.

(a) OIRA REPORT ON COMPLIANCE.—The Administrator shall monitor agency compliance with this Act and not less frequently than annually submit to the President, the Committee on Homeland Security and Governmental Affairs of the Senate, and the Committee on Oversight and Reform of the House of Representatives a report on such compliance.

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

(1) IN GENERAL.—On a biennial basis, the head of each agency shall submit to the Administrator, in such a manner as the Administrator may reasonably require, a report on the following information:

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

(i) A summary of the nature of the rule and justification for whether or not
the rule will require an initial or final regulatory children’s analysis, including—

(I) the regulation identifier number and the docket number for the rule; and

(II) the objectives of and legal basis for the issuance of the rule, including any statutory or judicial deadline and whether the agency plans to conduct an initial regulatory children’s analysis during the rule making.

(ii) The stage of the rule making as of the date on which the report is submitted.

(iii) Whether the rule is subject to review under section 3.

(2) Public Availability.—Not later than 30 days after the date on which the report is submitted pursuant to paragraph (1), the Administrator shall make such report publicly available on the Internet.

(c) Office of Information and Regulatory Affairs Publications.—

(1) Cumulative Assessment of Agency Rule Making Published Annually.—
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(A) Publication in the Federal Register.—Not later than October 1 of each year, the Administrator shall publish in the Federal Register, for the previous year a report on the following:

(i) Each report the Administrator received from the head of each agency under subsection (b)(1).

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

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

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

(aa) the issuing agency conducted a final regulatory children’s analysis of the rule;

(bb) the agency claimed an exception from the procedures under section 4(a); or
(cc) the rule was issued pursuant to a statutory mandate or the rule making is committed to agency discretion by law.

(B) PUBLICATION ON THE INTERNET.— Not later than October 1 of each year, the Administrator shall make publicly available on the Internet the following:

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

(ii) The docket number and regulation identifier number for each proposed or final rule issued by an agency for the previous year.

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

SEC. 8. APPLICABILITY.

This Act shall apply with respect to any proposed applicable rule within the year before the date of enactment of this Act that has not been finalized as of the date of
the enactment of this Act and any proposed applicable rule
on or after the date of the enactment of this Act.

SEC. 9. JUDICIAL REVIEW.

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

SEC. 10. DEFINITIONS.

In this Act:

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

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

(3) APPLICABLE RULE.—The term “applicable
rule” means a rule that may negatively affect, di-
rectly or indirectly, the health of a substantial num-
ber of children.
(4) **Child.**—The term “child” means a human from the moment immediately after birth up to an age of 18 years.

(5) **Children’s representative.**—The term “children’s representative”—

(A) means a nonprofit organization or a municipal, State, or Federal agency, or Federal advisory committee that has the mission of protecting all children’s health and welfare or providing healthcare services to all children despite race, ethnicity, socioeconomic class, sexual orientation, or other identification markers; and

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

(6) **Nonprofit organization.**—The term “nonprofit organization” means an organization that is described in section 501(c)(3) of the Internal Revenue Code of 1986 and is exempt from taxation under section 501(a) of such Code.

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

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

(9) **Substantial number of children.**—

The term “substantial number of children” means at least 500 children.