

Children's Protection Act of 2021

SECTION-BY-SECTION

Section 1: Short Title

Identifies the bill as the "Children's Protection Act of 2021."

Section 2: Initial Regulatory Children's Analysis

(a) PUBLICATION AND PUBLIC COMMENT REQUIRED: An agency would be required to publish an initial regulatory children's analysis or a summary in the general notice of proposed rulemaking published in the Federal Register of any rule it proposes that may negatively affect, directly or indirectly, at least 500 children. The agency also would make the analysis or summary available for public comment.

(b) CONTENTS OF INITIAL ANALYSIS: Each analysis would describe the proposed rule's impact on children, specifically stating an estimate of the number of children that may be directly or indirectly harmed by an agency's rule and how they may be harmed. The analysis would include demographic information of children impacted, reasonably foreseeable projected increases in negative health or educational outcomes due to rule implementation, and environmental exposures detrimental to children's health due to the rule, as well as data sources, descriptions of uncertainties, and alternatives to the proposed rule that could accomplish the same objectives while minimizing negative impacts or providing greater benefits to children.

(c) REQUIREMENTS BEFORE PUBLICATION OF INITIAL ANALYSIS: Each agency would be required to convene a review panel to conduct the analysis of the agency's rule. The review panel would be comprised of the agency's full-time Federal employee(s), three children's representatives, a board certified pediatrician, a member of the National Academy of Sciences with childhood health expertise, a licensed early childhood educator, and one career employee from the Office of Information and Regulatory Affairs.

The review panel would review material and recommendations related to the rule, including drafts, and present advice and recommendations within 60 days in the form of a report to the agency that would be made public as part of the rulemaking record. The agency would publish any changes to the proposed rule and the initial regulatory children's analysis or the decision that an analysis is not required.

(d) WAIVER OF REQUIREMENTS: The agency may waive the review, reporting, and publication requirements described in the previous paragraphs if the review panel agrees that special circumstances require prompt issuance of the rule, or if sufficient consultation with individuals representing and advocating for affected children has already been considered.

Section 3: Final Regulatory Children's Analysis

(a) PUBLICATION REQUIRED: The agency proposing the rule would be required to publish a final regulatory children's analysis, or summary of the analysis, in the Federal Register. If the

agency opts to only publish a summary, it would include a link to the final and complete regulatory children's analysis made available on the agency's website.

(b) CONTENTS OF FINAL ANALYSIS: Each final regulatory children's analysis would include the significant issues raised in public comments, including an agency assessment of those comments and any changes made to the rule as a result; an estimate of the number of children whose health may be directly or indirectly harmed by the rule and the basis of such estimate or why such an estimate is unavailable; demographic information of children impacted; steps the agency took to minimize negative impacts on children and maximize benefits to children; and an appendix containing all drafts of the proposed and final rule submitted to the Office of Management and Budget (OMB) and the Office of Information and Regulatory Affairs (OIRA) for interagency review, including all associated written comments and responses.

Section 4: Exception, Delay, and Preparation of Analyses

(a) EXCEPTION: An initial and final regulatory children's analysis would not be required if the agency certifies its rule would not have a negative impact on at least 500 children, and publishes the certification and its factual basis in the Federal Register with the general notice of proposed rulemaking.

(b) DELAYS: Completion of the initial regulatory children's analysis could be delayed if the rule is being promulgated in response to an emergency that makes timely compliance impracticable. The agency could delay completion of the final regulatory children's analysis for up to 180 days after a rule's publication in the Federal Register if the published rule includes a written finding that its promulgation is in response to an emergency that makes timely compliance impracticable. Failure to publish the final regulatory children's analysis within 180 days would cause the rule to lapse.

(c) PREPARATION: The initial and final regulatory children's analyses must include both quantifiable and qualitative analyses and descriptions of the proposed rule's effects or alternatives to the rule. The agency also would be required to consider the unique vulnerabilities of children including behaviors, exposure routes, developing bodies, and dependence on adults for care, in preparing these analyses and descriptions.

Section 5: Procedures for Gathering Comments

Agencies would ensure children's representatives have been given an opportunity to participate in all applicable rulemakings through reasonable methods such as mention of possible harmful effects on children in the advanced notice of proposed rulemaking, a publicly accessible press release or official statement on the proposed rulemaking, or an open conference or public hearing on the rule for children's representatives, including soliciting and receiving comments via the internet.

Section 6: Avoidance of Duplicative or Unnecessary Analyses

(a) IN GENERAL: An agency may perform the analyses required by Section 2 and 3 in conjunction with any other required analysis.

(b) CONSOLIDATION OF RULES: To avoid duplicative action, an agency may consider a series of closely related applicable rules as one rule for the purposes of this legislation.

Section 7: Reports

(a) OIRA REPORT ON COMPLIANCE: OIRA would monitor agency compliance and annually submit a compliance report to the President, the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Oversight and Reform.

(b) AGENCY BIENNIAL SUBMISSION TO OFFICE OF INFORMATION AND REGULATORY AFFAIRS: Biennially, each agency would submit a report to OIRA summarizing each rule it expects to propose or finalize in the following six months; a justification for whether or not the rule would require an initial or final regulatory children's analysis; the regulation identifier and rule docket number; the objectives and legal basis for the rule including any statutory or judicial deadline; and the stage of rulemaking the rule has progressed to at the time of the report. OIRA would make each report publicly available online within 30 days.

(C) OFFICE OF INFORMATION AND REGULATORY AFFAIRS PUBLICATIONS: By October 1 of each year, OIRA would publish in the Federal Register a report documenting each biennial agency report received in the past year, including the number of rules proposed and finalized and a list of each rule denoting whether or not the agency conducted an initial and final regulatory children's analysis, any exceptions claimed, and whether the rule was issued pursuant to statutory mandate or by agency discretion.

OIRA also would make publicly available on the internet the initial and final regulatory children's analysis, docket number, and regulation identifier number for each proposed or final rule from the previous year, as well as the number of rules and a list of each rule reviewed by OMB for the previous year and the authority under which each review was conducted.

Section 8: Applicability

The Children's Protection Act would apply to any proposed applicable rule that has been issued but not yet finalized within the year before the date of enactment, and any proposed rule issued on or after the date of enactment.

Section 9: Judicial Review

If a judicial action alleges that an agency did not comply with the initial regulatory children's analysis required by Section 2(a) or wrongly determined that a rule would not harm a substantial number of children, the reviewing court could remand the rule to the agency for purposes of compliance or review.

Section 10: Definitions

- (1) “Administrator” means the Administrator of OIRA.
- (2) “Agency” has the meaning given that term in section 551 of title 5, United States Code.
- (3) “Applicable Rule” means a rule that may negatively affect, directly or indirectly, a substantial number of children.
- (4) “Child” means a human from the moment immediately after birth up to 18 years old.
- (5) “Children’s Representative” means a nonprofit organization or 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 regardless of race, ethnicity, socioeconomic class, sexual orientation, or other identification markers, and does not include any trade association or for-profit entities.
- (6) “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).
- (7) “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” means each State in 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” means at least 500 children.