

Union Calendar No. 434

107TH CONGRESS
2^D SESSION

H. R. 4561

[Report No. 107-701]

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 24, 2002

Mr. BARR of Georgia (for himself, Mr. CHABOT, Mr. WATT of North Carolina, Mr. GEKAS, Mr. NADLER, Mr. GREEN of Wisconsin, and Mr. SHOWS) introduced the following bill; which was referred to the Committee on the Judiciary

SEPTEMBER 30, 2002

Additional sponsors: Mr. FLAKE, Mr. FRANK, Mr. PAUL, Mr. OTTER, Mr. SCHAFFER, Mr. TIAHRT, Mr. STUMP, Mr. FILNER, Mr. SENSENBRENNER, Mr. PETERSON of Minnesota, Mr. STENHOLM, Mr. MCGOVERN, Ms. RIVERS, Ms. SCHAKOWSKY, Mr. DAVIS of Illinois, Mr. HALL of Ohio, Mr. CALVERT, Mr. BOUCHER, Ms. WATSON, Mr. MOORE, Mr. HOSTETTLER, Mrs. JO ANN DAVIS of Virginia, Mr. CONYERS, Mr. NORWOOD, Ms. SLAUGHTER, Mr. FARR of California, Ms. MCKINNEY, Ms. JACKSON-LEE of Texas, Mr. PENCE, Mr. KENNEDY of Minnesota, Ms. BALDWIN, Mr. RANGEL, Mr. HEFLEY, Mr. BLUMENAUER, Mr. CANNON, Ms. BERKLEY, and Mr. HONDA

SEPTEMBER 30, 2002

Committed to the Committee of the Whole House on the State of the Union
and ordered to be printed

A BILL

To amend title 5, United States Code, to require that agencies, in promulgating rules, take into consideration the impact of such rules on the privacy of individuals, 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.**

4 This Act may be cited as the “Federal Agency Pro-
5 tection of Privacy Act”.

6 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**
7 **INTO CONSIDERATION IMPACTS ON INDI-**
8 **VIDUAL PRIVACY.**

9 (a) IN GENERAL.—Title 5, United States Code, is
10 amended by adding after section 553 the following new
11 section:

12 **“§ 553a. Privacy impact analysis in rulemaking**

13 “(a) INITIAL PRIVACY IMPACT ANALYSIS.—

14 “(1) IN GENERAL.—Whenever an agency is re-
15 quired by section 553 of this title, or any other law,
16 to publish a general notice of proposed rulemaking
17 for any proposed rule, or publishes a notice of pro-
18 posed rulemaking for an interpretative rule involving
19 the internal revenue laws of the United States, the
20 agency shall prepare and make available for public
21 comment an initial privacy impact analysis. Such

1 analysis shall describe the impact of the proposed
2 rule on the privacy of individuals. The initial privacy
3 impact analysis or a summary shall be signed by the
4 senior agency official with primary responsibility for
5 privacy policy and be published in the Federal Reg-
6 ister at the time of the publication of a general no-
7 tice of proposed rulemaking for the rule.

8 “(2) CONTENTS.—Each initial privacy impact
9 analysis required under this subsection shall contain
10 the following:

11 “(A) A description and assessment of the
12 extent to which the proposed rule will impact
13 the privacy interests of individuals, including
14 the extent to which the proposed rule—

15 “(i) provides notice of the collection of
16 personally identifiable information, and
17 specifies what personally identifiable infor-
18 mation is to be collected and how it is to
19 be collected, maintained, used, and dis-
20 closed;

21 “(ii) allows access to such information
22 by the person to whom the personally iden-
23 tifiable information pertains and provides
24 an opportunity to correct inaccuracies;

1 “(iii) prevents such information,
2 which is collected for one purpose, from
3 being used for another purpose; and

4 “(iv) provides security for such infor-
5 mation.

6 “(B) A description of any significant alter-
7 natives to the proposed rule which accomplish
8 the stated objectives of applicable statutes and
9 which minimize any significant privacy impact
10 of the proposed rule on individuals.

11 “(b) FINAL PRIVACY IMPACT ANALYSIS.—

12 “(1) IN GENERAL.—Whenever an agency pro-
13 mulgates a final rule under section 553 of this title,
14 after being required by that section or any other law
15 to publish a general notice of proposed rulemaking,
16 or promulgates a final interpretative rule involving
17 the internal revenue laws of the United States, the
18 agency shall prepare a final privacy impact analysis,
19 signed by the senior agency official with primary re-
20 sponsibility for privacy policy.

21 “(2) CONTENTS.—Each final privacy impact
22 analysis required under this subsection shall contain
23 the following:

24 “(A) A description and assessment of the
25 extent to which the final rule will impact the

1 privacy interests of individuals, including the
2 extent to which the proposed rule—

3 “(i) provides notice of the collection of
4 personally identifiable information, and
5 specifies what personally identifiable infor-
6 mation is to be collected and how it is to
7 be collected, maintained, used, and dis-
8 closed;

9 “(ii) allows access to such information
10 by the person to whom the personally iden-
11 tifiable information pertains and provides
12 an opportunity to correct inaccuracies;

13 “(iii) prevents such information,
14 which is collected for one purpose, from
15 being used for another purpose; and

16 “(iv) provides security for such infor-
17 mation.

18 “(B) A summary of the significant issues
19 raised by the public comments in response to
20 the initial privacy impact analysis, a summary
21 of the assessment of the agency of such issues,
22 and a statement of any changes made in the
23 proposed rule as a result of such issues.

24 “(C) A description of the steps the agency
25 has taken to minimize the significant privacy

1 impact on individuals consistent with the stated
2 objectives of applicable statutes, including a
3 statement of the factual, policy, and legal rea-
4 sons for selecting the alternative adopted in the
5 final rule and why each one of the other signifi-
6 cant alternatives to the rule considered by the
7 agency which affect the privacy interests of in-
8 dividuals was rejected.

9 “(3) AVAILABILITY TO PUBLIC.—The agency
10 shall make copies of the final privacy impact anal-
11 ysis available to members of the public and shall
12 publish in the Federal Register such analysis or a
13 summary thereof.

14 “(c) PROCEDURE FOR WAIVER OR DELAY OF COM-
15 PLETION.—An agency head may waive or delay the com-
16 pletion of some or all of the requirements of subsections
17 (a) and (b) to the same extent as the agency head may,
18 under section 608, waive or delay the completion of some
19 or all of the requirements of sections 603 and 604, respec-
20 tively.

21 “(d) PROCEDURES FOR GATHERING COMMENTS.—
22 When any rule is promulgated which may have a signifi-
23 cant privacy impact on individuals, or a privacy impact
24 on a substantial number of individuals, the head of the
25 agency promulgating the rule or the official of the agency

1 with statutory responsibility for the promulgation of the
2 rule shall assure that individuals have been given an op-
3 portunity to participate in the rulemaking for the rule
4 through techniques such as—

5 “(1) the inclusion in an advance notice of pro-
6 posed rulemaking, if issued, of a statement that the
7 proposed rule may have a significant privacy impact
8 on individuals, or a privacy impact on a substantial
9 number of individuals;

10 “(2) the publication of a general notice of pro-
11 posed rulemaking in publications of national circula-
12 tion likely to be obtained by individuals;

13 “(3) the direct notification of interested individ-
14 uals;

15 “(4) the conduct of open conferences or public
16 hearings concerning the rule for individuals, includ-
17 ing soliciting and receiving comments over computer
18 networks; and

19 “(5) the adoption or modification of agency
20 procedural rules to reduce the cost or complexity of
21 participation in the rulemaking by individuals.

22 “(e) PERIODIC REVIEW OF RULES.—

23 “(1) IN GENERAL.—Each agency shall carry
24 out a periodic review of the rules promulgated by the
25 agency that have a significant privacy impact on in-

1 individuals, or a privacy impact on a substantial num-
2 ber of individuals. Under such periodic review, the
3 agency shall determine, for each such rule, whether
4 the rule can be amended or rescinded in a manner
5 that minimizes any such impact while remaining in
6 accordance with applicable statutes. For each such
7 determination, the agency shall consider the fol-
8 lowing factors:

9 “(A) The continued need for the rule.

10 “(B) The nature of complaints or com-
11 ments received from the public concerning the
12 rule.

13 “(C) The complexity of the rule.

14 “(D) The extent to which the rule over-
15 laps, duplicates, or conflicts with other Federal
16 rules, and, to the extent feasible, with State and
17 local governmental rules.

18 “(E) The length of time since the rule was
19 last reviewed under this subsection.

20 “(F) The degree to which technology, eco-
21 nomic conditions, or other factors have changed
22 in the area affected by the rule since the rule
23 was last reviewed under this subsection.

24 “(2) PLAN REQUIRED.—Each agency shall
25 carry out the periodic review required by paragraph

1 (1) in accordance with a plan published by such
2 agency in the Federal Register. Each such plan shall
3 provide for the review under this subsection of each
4 rule promulgated by the agency not later than 10
5 years after the date on which such rule was pub-
6 lished as the final rule and, thereafter, not later
7 than 10 years after the date on which such rule was
8 last reviewed under this subsection. The agency may
9 amend such plan at any time by publishing the revi-
10 sion in the Federal Register.

11 “(3) ANNUAL PUBLICATION.—Each year, each
12 agency shall publish in the Federal Register a list of
13 the rules to be reviewed by such agency under this
14 subsection during the following year. The list shall
15 include a brief description of each such rule and the
16 need for and legal basis of such rule and shall invite
17 public comment upon the determination to be made
18 under this subsection with respect to such rule.

19 “(f) JUDICIAL REVIEW.—

20 “(1) IN GENERAL.—For any rule subject to this
21 section, an individual who is adversely affected or
22 aggrieved by final agency action is entitled to judi-
23 cial review of agency compliance with the require-
24 ments of subsections (b) and (c) in accordance with
25 chapter 7. Agency compliance with subsection (d)

1 shall be judicially reviewable in connection with judi-
2 cial review of subsection (b).

3 “(2) JURISDICTION.—Each court having juris-
4 diction to review such rule for compliance with sec-
5 tion 553, or under any other provision of law, shall
6 have jurisdiction to review any claims of noncompli-
7 ance with subsections (b) and (c) in accordance with
8 chapter 7. Agency compliance with subsection (d)
9 shall be judicially reviewable in connection with judi-
10 cial review of subsection (b).

11 “(3) LIMITATIONS.—

12 “(A) An individual may seek such review
13 during the period beginning on the date of final
14 agency action and ending 1 year later, except
15 that where a provision of law requires that an
16 action challenging a final agency action be com-
17 menced before the expiration of 1 year, such
18 lesser period shall apply to an action for judicial
19 review under this subsection.

20 “(B) In the case where an agency delays
21 the issuance of a final privacy impact analysis
22 pursuant to subsection (c), an action for judi-
23 cial review under this section shall be filed not
24 later than—

1 “(i) 1 year after the date the analysis
2 is made available to the public; or

3 “(ii) where a provision of law requires
4 that an action challenging a final agency
5 regulation be commenced before the expi-
6 ration of the 1-year period, the number of
7 days specified in such provision of law that
8 is after the date the analysis is made avail-
9 able to the public.

10 “(4) RELIEF.—In granting any relief in an ac-
11 tion under this subsection, the court shall order the
12 agency to take corrective action consistent with this
13 section and chapter 7, including, but not limited
14 to—

15 “(A) remanding the rule to the agency;
16 and

17 “(B) deferring the enforcement of the rule
18 against individuals, unless the court finds that
19 continued enforcement of the rule is in the pub-
20 lic interest.

21 “(5) RULE OF CONSTRUCTION.—Nothing in
22 this subsection shall be construed to limit the au-
23 thority of any court to stay the effective date of any
24 rule or provision thereof under any other provision

1 of law or to grant any other relief in addition to the
2 requirements of this subsection.

3 “(6) RECORD OF AGENCY ACTION.—In an ac-
4 tion for the judicial review of a rule, the privacy im-
5 pact analysis for such rule, including an analysis
6 prepared or corrected pursuant to paragraph (4),
7 shall constitute part of the entire record of agency
8 action in connection with such review.

9 “(7) EXCLUSIVITY.—Compliance or noncompli-
10 ance by an agency with the provisions of this section
11 shall be subject to judicial review only in accordance
12 with this subsection.

13 “(8) SAVINGS CLAUSE.—Nothing in this sub-
14 section bars judicial review of any other impact
15 statement or similar analysis required by any other
16 law if judicial review of such statement or analysis
17 is otherwise permitted by law.

18 “(g) DEFINITION.—For purposes of this section, the
19 term ‘personally identifiable information’ means informa-
20 tion that can be used to identify an individual, including
21 such individual’s name, address, telephone number, photo-
22 graph, social security number or other identifying infor-
23 mation. It includes information about such individual’s
24 medical or financial condition.”.

25 (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

1 (1) INITIAL PLAN.—For each agency, the plan
2 required by subsection (e) of section 553a of title 5,
3 United States Code (as added by subsection (a)),
4 shall be published not later than 180 days after the
5 date of the enactment of this Act.

6 (2) In the case of a rule promulgated by an
7 agency before the date of the enactment of this Act,
8 such plan shall provide for the periodic review of
9 such rule before the expiration of the 10-year period
10 beginning on the date of the enactment of this Act.
11 For any such rule, the head of the agency may pro-
12 vide for a 1-year extension of such period if the head
13 of the agency, before the expiration of the period,
14 certifies in a statement published in the Federal
15 Register that reviewing such rule before the expira-
16 tion of the period is not feasible. The head of the
17 agency may provide for additional 1-year extensions
18 of the period pursuant to the preceding sentence,
19 but in no event may the period exceed 15 years.

20 (c) CONGRESSIONAL REVIEW.—Section 801(a)(1)(B)
21 of title 5, United States Code, is amended—

22 (1) by redesignating clauses (iii) and (iv) as
23 clauses (iv) and (v), respectively; and

24 (2) by inserting after clause (ii) the following
25 new clause:

1 “(iii) the agency’s actions relevant to section
2 553a;”.

3 (d) CLERICAL AMENDMENT.—The table of sections
4 at the beginning of chapter 5 of title 5, United States
5 Code, is amended by adding after the item relating to sec-
6 tion 553 the following new item:

“553a. Privacy impact analysis in rulemaking.”.

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