

109<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 2840

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.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 9, 2005

Mr. CHABOT (for himself, Mr. NADLER, Mr. CANNON, and Mr. DELAHUNT) introduced the following bill; which was referred to the Committee on the Judiciary

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## 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 of 2005”.

1 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**  
2 **INTO CONSIDERATION IMPACTS ON INDI-**  
3 **VIDUAL PRIVACY.**

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

7 **“§ 553a. Privacy impact assessment in rulemaking**

8 “(a) INITIAL PRIVACY IMPACT ASSESSMENT.—

9 “(1) IN GENERAL.—Whenever an agency is re-  
10 quired by section 553 of this title, or any other law,  
11 to publish a general notice of proposed rulemaking  
12 for a proposed rule, or publishes a notice of pro-  
13 posed rulemaking for an interpretative rule involving  
14 the internal revenue laws of the United States, and  
15 such rule or proposed rulemaking pertains to the  
16 collection, maintenance, use, or disclosure of person-  
17 ally identifiable information from 10 or more indi-  
18 viduals, other than agencies, instrumentalities, or  
19 employees of the Federal Government, the agency  
20 shall prepare and make available for public comment  
21 an initial privacy impact assessment that describes  
22 the impact of the proposed rule on the privacy of in-  
23 dividuals. Such assessment or a summary thereof  
24 shall be signed by the senior agency official with pri-  
25 mary responsibility for privacy policy and be pub-  
26 lished in the Federal Register at the time of the

1 publication of a general notice of proposed rule-  
2 making for the rule.

3 “(2) CONTENTS.—Each initial privacy impact  
4 assessment required under this subsection shall con-  
5 tain the following:

6 “(A) A description and analysis of the ex-  
7 tent to which the proposed rule will impact the  
8 privacy interests of individuals, including the  
9 extent to which the proposed rule—

10 “(i) provides notice of the collection of  
11 personally identifiable information, and  
12 specifies what personally identifiable infor-  
13 mation is to be collected and how it is to  
14 be collected, maintained, used, and dis-  
15 closed;

16 “(ii) allows access to such information  
17 by the person to whom the personally iden-  
18 tifiable information pertains and provides  
19 an opportunity to correct inaccuracies;

20 “(iii) prevents such information,  
21 which is collected for one purpose, from  
22 being used for another purpose; and

23 “(iv) provides security for such infor-  
24 mation.

1           “(B) A description of any significant alter-  
2           natives to the proposed rule which accomplish  
3           the stated objectives of applicable statutes and  
4           which minimize any significant privacy impact  
5           of the proposed rule on individuals.

6           “(b) FINAL PRIVACY IMPACT ASSESSMENT.—

7           “(1) IN GENERAL.—Whenever an agency pro-  
8           mulgates a final rule under section 553 of this title,  
9           after being required by that section or any other law  
10          to publish a general notice of proposed rulemaking,  
11          or promulgates a final interpretative rule involving  
12          the internal revenue laws of the United States, and  
13          such rule or proposed rulemaking pertains to the  
14          collection, maintenance, use, or disclosure of person-  
15          ally identifiable information from 10 or more indi-  
16          viduals, other than agencies, instrumentalities, or  
17          employees of the Federal Government, the agency  
18          shall prepare a final privacy impact assessment,  
19          signed by the senior agency official with primary re-  
20          sponsibility for privacy policy.

21          “(2) CONTENTS.—Each final privacy impact as-  
22          sessment required under this subsection shall con-  
23          tain the following:

24                 “(A) A description and analysis of the ex-  
25                 tent to which the final rule will impact the pri-

1 vacy interests of individuals, including the ex-  
2 tent to which such 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 any significant issues  
19 raised by the public comments in response to  
20 the initial privacy impact assessment, a sum-  
21 mary of the analysis of the agency of such  
22 issues, and a statement of any changes made in  
23 such 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 assess-  
11 ment available to members of the public and shall  
12 publish in the Federal Register such assessment or  
13 a summary thereof.

14 “(c) WAIVERS.—

15 “(1) EMERGENCIES.—An agency head may  
16 waive or delay the completion of some or all of the  
17 requirements of subsections (a) and (b) to the same  
18 extent as the agency head may, under section 608,  
19 waive or delay the completion of some or all of the  
20 requirements of sections 603 and 604, respectively.

21 “(2) NATIONAL SECURITY.—An agency head  
22 may, for national security reasons, or to protect  
23 from disclosure classified information, confidential  
24 commercial information, or information the dislo-  
25 sure of which may adversely affect a law enforce-

1       ment effort, waive or delay the completion of some  
2       or all of the following requirements:

3               “(A) The requirement of subsection (a)(1)  
4               to make an assessment available for public com-  
5               ment.

6               “(B) The requirement of subsection (a)(1)  
7               to have an assessment or summary thereof pub-  
8               lished in the Federal Register.

9               “(C) The requirements of subsection  
10              (b)(3).

11       “(d) PROCEDURES FOR GATHERING COMMENTS.—  
12       When any rule is promulgated which may have a signifi-  
13       cant privacy impact on individuals, or a privacy impact  
14       on a substantial number of individuals, the head of the  
15       agency promulgating the rule or the official of the agency  
16       with statutory responsibility for the promulgation of the  
17       rule shall assure that individuals have been given an op-  
18       portunity to participate in the rulemaking for the rule  
19       through techniques such as—

20              “(1) the inclusion in an advance notice of pro-  
21              posed rulemaking, if issued, of a statement that the  
22              proposed rule may have a significant privacy impact  
23              on individuals, or a privacy impact on a substantial  
24              number of individuals;

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

4           “(3) the direct notification of interested individ-  
5           uals;

6           “(4) the conduct of open conferences or public  
7           hearings concerning the rule for individuals, includ-  
8           ing soliciting and receiving comments over computer  
9           networks; and

10           “(5) the adoption or modification of agency  
11           procedural rules to reduce the cost or complexity of  
12           participation in the rulemaking by individuals.

13           “(e) PERIODIC REVIEW OF RULES.—

14           “(1) IN GENERAL.—Each agency shall carry  
15           out a periodic review of the rules promulgated by the  
16           agency that have a significant privacy impact on in-  
17           dividuals, or a privacy impact on a substantial num-  
18           ber of individuals. Under such periodic review, the  
19           agency shall determine, for each such rule, whether  
20           the rule can be amended or rescinded in a manner  
21           that minimizes any such impact while remaining in  
22           accordance with applicable statutes. For each such  
23           determination, the agency shall consider the fol-  
24           lowing factors:

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

1           “(B) The nature of complaints or com-  
2           ments received from the public concerning the  
3           rule.

4           “(C) The complexity of the rule.

5           “(D) The extent to which the rule over-  
6           laps, duplicates, or conflicts with other Federal  
7           rules, and, to the extent feasible, with State and  
8           local governmental rules.

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

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

15          “(2) PLAN REQUIRED.—Each agency shall  
16          carry out the periodic review required by paragraph  
17          (1) in accordance with a plan published by such  
18          agency in the Federal Register. Each such plan shall  
19          provide for the review under this subsection of each  
20          rule promulgated by the agency not later than 10  
21          years after the date on which such rule was pub-  
22          lished as the final rule and, thereafter, not later  
23          than 10 years after the date on which such rule was  
24          last reviewed under this subsection. The agency may

1 amend such plan at any time by publishing the revi-  
2 sion in the Federal Register.

3 “(3) ANNUAL PUBLICATION.—Each year, each  
4 agency shall publish in the Federal Register a list of  
5 the rules to be reviewed by such agency under this  
6 subsection during the following year. The list shall  
7 include a brief description of each such rule and the  
8 need for and legal basis of such rule and shall invite  
9 public comment upon the determination to be made  
10 under this subsection with respect to such rule.

11 “(f) JUDICIAL REVIEW.—

12 “(1) IN GENERAL.—For any rule subject to this  
13 section, an individual who is adversely affected or  
14 aggrieved by final agency action is entitled to judi-  
15 cial review of agency compliance with the require-  
16 ments of subsections (b) and (c) in accordance with  
17 chapter 7. Agency compliance with subsection (d)  
18 shall be judicially reviewable in connection with judi-  
19 cial review of subsection (b).

20 “(2) JURISDICTION.—Each court having juris-  
21 diction to review such rule for compliance with sec-  
22 tion 553, or under any other provision of law, shall  
23 have jurisdiction to review any claims of noncompli-  
24 ance with 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 “(3) LIMITATIONS.—

4 “(A) An individual may seek such review  
5 during the period beginning on the date of final  
6 agency action and ending 1 year later, except  
7 that where a provision of law requires that an  
8 action challenging a final agency action be com-  
9 menced before the expiration of 1 year, such  
10 lesser period shall apply to an action for judicial  
11 review under this subsection.

12 “(B) In the case where an agency delays  
13 the issuance of a final privacy impact assess-  
14 ment pursuant to subsection (c), an action for  
15 judicial review under this section shall be filed  
16 not later than—

17 “(i) 1 year after the date the assess-  
18 ment is made available to the public; or

19 “(ii) where a provision of law requires  
20 that an action challenging a final agency  
21 regulation be commenced before the expi-  
22 ration of the 1-year period, the number of  
23 days specified in such provision of law that  
24 is after the date the assessment is made  
25 available to the public.

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

6                   “(A) remanding the rule to the agency;

7                   and

8                   “(B) deferring the enforcement of the rule  
9                   against individuals, unless the court finds that  
10                  continued enforcement of the rule is in the pub-  
11                  lic interest.

12           “(5) RULE OF CONSTRUCTION.—Nothing in  
13           this subsection shall be construed to limit the au-  
14           thority of any court to stay the effective date of any  
15           rule or provision thereof under any other provision  
16           of law or to grant any other relief in addition to the  
17           requirements of this subsection.

18           “(6) RECORD OF AGENCY ACTION.—In an ac-  
19           tion for the judicial review of a rule, the privacy im-  
20           pact assessment for such rule, including an assess-  
21           ment prepared or corrected pursuant to paragraph  
22           (4), shall constitute part of the entire record of  
23           agency action in connection with such review.

24           “(7) EXCLUSIVITY.—Compliance or noncompli-  
25           ance by an agency with the provisions of this section

1 shall be subject to judicial review only in accordance  
2 with this subsection.

3 “(8) SAVINGS CLAUSE.—Nothing in this sub-  
4 section bars judicial review of any other impact  
5 statement or similar assessment required by any  
6 other law if judicial review of such statement or as-  
7 sessment is otherwise permitted by law.

8 “(g) DEFINITION.—For purposes of this section, the  
9 term ‘personally identifiable information’ means informa-  
10 tion that can be used to identify an individual, including  
11 such individual’s name, address, telephone number, photo-  
12 graph, social security number or other identifying infor-  
13 mation. It includes information about such individual’s  
14 medical or financial condition.”.

15 (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

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

21 (2) In the case of a rule promulgated by an  
22 agency before the date of the enactment of this Act,  
23 such plan shall provide for the periodic review of  
24 such rule before the expiration of the 10-year period  
25 beginning on the date of the enactment of this Act.

1 For any such rule, the head of the agency may pro-  
2 vide for a 1-year extension of such period if the head  
3 of the agency, before the expiration of the period,  
4 certifies in a statement published in the Federal  
5 Register that reviewing such rule before the expira-  
6 tion of the period is not feasible. The head of the  
7 agency may provide for additional 1-year extensions  
8 of the period pursuant to the preceding sentence,  
9 but in no event may the period exceed 15 years.

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

12 (1) by redesignating clauses (iii) and (iv) as  
13 clauses (iv) and (v), respectively; and

14 (2) by inserting after clause (ii) the following  
15 new clause:

16 “(iii) the agency’s actions relevant to section  
17 553a;”.

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

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

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