

107TH CONGRESS
2D SESSION

H. R. 4561

AN ACT

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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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,*

1 **SECTION 1. SHORT TITLE.**

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

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

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

10 **“§ 553a. Privacy impact analysis in rulemaking**

11 “(a) INITIAL PRIVACY IMPACT ANALYSIS.—

12 “(1) IN GENERAL.—Whenever an agency is re-
13 quired by section 553 of this title, or any other law,
14 to publish a general notice of proposed rulemaking
15 for any proposed rule, or publishes a notice of pro-
16 posed rulemaking for an interpretative rule involving
17 the internal revenue laws of the United States, the
18 agency shall prepare and make available for public
19 comment an initial privacy impact analysis. Such
20 analysis shall describe the impact of the proposed
21 rule on the privacy of individuals. The initial privacy
22 impact analysis or a summary shall be signed by the
23 senior agency official with primary responsibility for
24 privacy policy and be published in the Federal Reg-
25 ister at the time of the publication of a general no-
26 tice of proposed rulemaking for the rule.

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

4 “(A) A description and assessment of the
5 extent to which the proposed rule will impact
6 the privacy interests of individuals, including
7 the extent to which the proposed rule—

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

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

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

21 “(iv) provides security for such infor-
22 mation.

23 “(B) A description of any significant alter-
24 natives to the proposed rule which accomplish
25 the stated objectives of applicable statutes and

1 which minimize any significant privacy impact
2 of the proposed rule on individuals.

3 “(b) FINAL PRIVACY IMPACT ANALYSIS.—

4 “(1) IN GENERAL.—Whenever an agency pro-
5 mulgates a final rule under section 553 of this title,
6 after being required by that section or any other law
7 to publish a general notice of proposed rulemaking,
8 or promulgates a final interpretative rule involving
9 the internal revenue laws of the United States, the
10 agency shall prepare a final privacy impact analysis,
11 signed by the senior agency official with primary re-
12 sponsibility for privacy policy.

13 “(2) CONTENTS.—Each final privacy impact
14 analysis required under this subsection shall contain
15 the following:

16 “(A) A description and assessment of the
17 extent to which the final rule will impact the
18 privacy interests of individuals, including the
19 extent to which the proposed rule—

20 “(i) provides notice of the collection of
21 personally identifiable information, and
22 specifies what personally identifiable infor-
23 mation is to be collected and how it is to
24 be collected, maintained, used, and dis-
25 closed;

1 “(ii) allows access to such information
2 by the person to whom the personally iden-
3 tifiable information pertains and provides
4 an opportunity to correct inaccuracies;

5 “(iii) prevents such information,
6 which is collected for one purpose, from
7 being used for another purpose; and

8 “(iv) provides security for such infor-
9 mation.

10 “(B) A summary of the significant issues
11 raised by the public comments in response to
12 the initial privacy impact analysis, a summary
13 of the assessment of the agency of such issues,
14 and a statement of any changes made in the
15 proposed rule as a result of such issues.

16 “(C) A description of the steps the agency
17 has taken to minimize the significant privacy
18 impact on individuals consistent with the stated
19 objectives of applicable statutes, including a
20 statement of the factual, policy, and legal rea-
21 sons for selecting the alternative adopted in the
22 final rule and why each one of the other signifi-
23 cant alternatives to the rule considered by the
24 agency which affect the privacy interests of in-
25 dividuals was rejected.

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

6 “(c) PROCEDURE FOR WAIVER OR DELAY OF COM-
7 PLETION.—An agency head may waive or delay the com-
8 pletion of some or all of the requirements of subsections
9 (a) and (b) to the same extent as the agency head may,
10 under section 608, waive or delay the completion of some
11 or all of the requirements of sections 603 and 604, respec-
12 tively.

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

22 “(1) the inclusion in an advance notice of pro-
23 posed rulemaking, if issued, of a statement that the
24 proposed rule may have a significant privacy impact

1 on individuals, or a privacy impact on a substantial
2 number of individuals;

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

6 “(3) the direct notification of interested individ-
7 uals;

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

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

15 “(e) PERIODIC REVIEW OF RULES.—

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

1 determination, the agency shall consider the fol-
2 lowing factors:

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

4 “(B) The nature of complaints or com-
5 ments received from the public concerning the
6 rule.

7 “(C) The complexity of the rule.

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

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

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

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

1 than 10 years after the date on which such rule was
2 last reviewed under this subsection. The agency may
3 amend such plan at any time by publishing the revi-
4 sion in the Federal Register.

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

13 “(f) JUDICIAL REVIEW.—

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

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

1 ance with subsections (b) and (c) in accordance with
2 chapter 7. Agency compliance with subsection (d)
3 shall be judicially reviewable in connection with judi-
4 cial review of subsection (b).

5 “(3) LIMITATIONS.—

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

14 “(B) In the case where an agency delays
15 the issuance of a final privacy impact analysis
16 pursuant to subsection (c), an action for judi-
17 cial review under this section shall be filed not
18 later than—

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

21 “(ii) where a provision of law requires
22 that an action challenging a final agency
23 regulation be commenced before the expi-
24 ration of the 1-year period, the number of
25 days specified in such provision of law that

1 is after the date the analysis is made avail-
2 able to the public.

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

8 “(A) remanding the rule to the agency;
9 and

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

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

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

1 “(7) EXCLUSIVITY.—Compliance or noncompli-
2 ance by an agency with the provisions of this section
3 shall be subject to judicial review only in accordance
4 with this subsection.

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

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

17 (b) PERIODIC REVIEW TRANSITION PROVISIONS.—

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

23 (2) In the case of a rule promulgated by an
24 agency before the date of the enactment of this Act,
25 such plan shall provide for the periodic review of

1 such rule before the expiration of the 10-year period
2 beginning on the date of the enactment of this Act.
3 For any such rule, the head of the agency may pro-
4 vide for a 1-year extension of such period if the head
5 of the agency, before the expiration of the period,
6 certifies in a statement published in the Federal
7 Register that reviewing such rule before the expira-
8 tion of the period is not feasible. The head of the
9 agency may provide for additional 1-year extensions
10 of the period pursuant to the preceding sentence,
11 but in no event may the period exceed 15 years.

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

14 (1) by redesignating clauses (iii) and (iv) as
15 clauses (iv) and (v), respectively; and

16 (2) by inserting after clause (ii) the following
17 new clause:

18 “(iii) the agency’s actions relevant to section
19 553a;”.

20 (d) CLERICAL AMENDMENT.—The table of sections
21 at the beginning of chapter 5 of title 5, United States

- 1 Code, is amended by adding after the item relating to sec-
- 2 tion 553 the following new item:

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

Passed the House of Representatives October 7,
2002.

Attest:

Clerk.