

# Union Calendar No. 408

109<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 2840

[Report No. 109–675]

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

SEPTEMBER 25, 2006

Additional sponsors: Mr. BOUCHER, Mr. McDERMOTT, Mr. KENNEDY of Minnesota, and Mr. PAUL

SEPTEMBER 25, 2006

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italic*]

[For text of introduced bill, see copy of bill as introduced on June 9, 2005]

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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 Protec-*  
 5 *tion of Privacy Act of 2005”.*

6 **SEC. 2. REQUIREMENT THAT AGENCY RULEMAKING TAKE**  
 7 **INTO CONSIDERATION IMPACTS ON INDIVIDUAL PRIVACY.**

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

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

13 **“(a) INITIAL PRIVACY IMPACT ASSESSMENT.—**

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 for*  
 17 *a proposed rule, or publishes a notice of proposed*  
 18 *rulemaking for an interpretative rule involving the*  
 19 *internal revenue laws of the United States, and such*  
 20 *rule or proposed rulemaking pertains to the collection,*  
 21 *maintenance, use, or disclosure of personally identifi-*  
 22 *able information from 10 or more individuals, other*  
 23 *than agencies, instrumentalities, or employees of the*  
 24 *Federal government, the agency shall prepare and*  
 25 *make available for public comment an initial privacy*

1 *impact assessment that describes the impact of the*  
2 *proposed rule on the privacy of individuals. Such as-*  
3 *essment or a summary thereof 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 notice*  
7 *of proposed rulemaking for the rule.*

8 “(2) CONTENTS.—*Each initial privacy impact*  
9 *assessment required under this subsection shall con-*  
10 *tain the following:*

11 “(A) *A description and analysis of the ex-*  
12 *tent to which the proposed rule will impact the*  
13 *privacy interests of individuals, including the*  
14 *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 be*  
19 *collected, maintained, used, and disclosed;*

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

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

4           “(iv) provides security for such infor-  
5           mation, including the provision of written  
6           notice to any individual, within 14 days of  
7           the date of compromise, whose privacy in-  
8           terests are compromised by the unauthorized  
9           release of personally identifiable informa-  
10          tion as a result of a breach of security at  
11          or by the agency.

12          “(B) A description of any significant alter-  
13          natives to the proposed rule which accomplish  
14          the stated objectives of applicable statutes and  
15          which minimize any significant privacy impact  
16          of the proposed rule on individuals.

17          “(b) *FINAL PRIVACY IMPACT ASSESSMENT.*—

18               “(1) *IN GENERAL.*—Whenever an agency promul-  
19          gates a final rule under section 553 of this title, after  
20          being required by that section or any other law to  
21          publish a general notice of proposed rulemaking, or  
22          promulgates a final interpretative rule involving the  
23          internal revenue laws of the United States, and such  
24          rule or proposed rulemaking pertains to the collection,  
25          maintenance, use, or disclosure of personally identifi-

1     *able information from 10 or more individuals, other*  
2     *than agencies, instrumentalities, or employees of the*  
3     *Federal government, the agency shall prepare a final*  
4     *privacy impact assessment, signed by the senior agen-*  
5     *cy official with primary responsibility for privacy*  
6     *policy.*

7             “(2) *CONTENTS.—Each final privacy impact as-*  
8     *essment required under this subsection shall contain*  
9     *the following:*

10             “(A) *A description and analysis of the ex-*  
11     *tent to which the final rule will impact the pri-*  
12     *vacuity interests of individuals, including the ex-*  
13     *tent to which such rule—*

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

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

23             “(iii) *prevents such information, which*  
24     *is collected for one purpose, from being used*  
25     *for another purpose; and*

1           “(iv) provides security for such infor-  
2           mation, including the provision of written  
3           notice to any individual, within 14 days of  
4           the date of compromise, whose privacy in-  
5           terests are compromised by the unauthorized  
6           release of personally identifiable informa-  
7           tion as a result of a breach of security at  
8           or by the agency.

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

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

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

6           “(c) *WAIVERS.*—

7           “(1) *EMERGENCIES.*—*An agency head may*  
8           *waive or delay the completion of some or all of the*  
9           *requirements of subsections (a) and (b) to the same*  
10          *extent as the agency head may, under section 608,*  
11          *waive or delay the completion of some or all of the*  
12          *requirements of sections 603 and 604, respectively.*

13          “(2) *NATIONAL SECURITY.*—*An agency head*  
14          *may, for national security reasons, or to protect from*  
15          *disclosure classified information, confidential com-*  
16          *mercial information, or information the disclosure of*  
17          *which may adversely affect a law enforcement effort,*  
18          *waive or delay the completion of some or all of the*  
19          *following requirements:*

20                 “(A) *The requirement of subsection (a)(1) to*  
21                 *make an assessment available for public com-*  
22                 *ment, provided that such assessment is made*  
23                 *available, in classified form, to the Committees*  
24                 *on the Judiciary of the House of Representatives*

1           *and the Senate, in lieu of making such assess-*  
2           *ment available to the public.*

3           “(B) *The requirement of subsection (a)(1) to*  
4           *have an assessment or summary thereof pub-*  
5           *lished in the Federal Register, provided that such*  
6           *assessment or summary is made available, in*  
7           *classified form, to the Committees on the Judici-*  
8           *ary of the House of Representatives and the Sen-*  
9           *ate, in lieu of publishing such assessment or*  
10          *summary in the Federal Register.*

11          “(C) *The requirements of subsection (b)(3),*  
12          *provided that the final privacy impact assess-*  
13          *ment is made available, in classified form, to the*  
14          *Committees on the Judiciary of the House of*  
15          *Representatives and the Senate, in lieu of mak-*  
16          *ing such assessment available to the public and*  
17          *publishing such assessment in the Federal Reg-*  
18          *ister.*

19          “(d) *PROCEDURES FOR GATHERING COMMENTS.—*  
20          *When any rule is promulgated which may have a signifi-*  
21          *cant privacy impact on individuals, or a privacy impact*  
22          *on a substantial number of individuals, the head of the*  
23          *agency promulgating the rule or the official of the agency*  
24          *with statutory responsibility for the promulgation of the*  
25          *rule shall assure that individuals have been given an oppor-*



1 tunity to participate in the rulemaking for the rule through  
 2 techniques such as—

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

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

11 “(3) the direct notification of interested individ-  
 12 uals;

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

17 “(5) the adoption or modification of agency pro-  
 18 cedural rules to reduce the cost or complexity of par-  
 19 ticipation in the rulemaking by individuals.

20 “(e) *PERIODIC REVIEW OF RULES.*—

21 “(1) *IN GENERAL.*—Each agency shall carry out  
 22 a periodic review of the rules promulgated by the  
 23 agency that have a significant privacy impact on in-  
 24 dividuals, or a privacy impact on a substantial num-  
 25 ber of individuals. Under such periodic review, the

1       agency shall determine, for each such rule, whether  
2       the rule can be amended or rescinded in a manner  
3       that minimizes any such impact while remaining in  
4       accordance with applicable statutes. For each such de-  
5       termination, the agency shall consider the following  
6       factors:

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

8               “(B) The nature of complaints or comments  
9       received from the public concerning the rule.

10              “(C) The complexity of the rule.

11              “(D) The extent to which the rule overlaps,  
12       duplicates, or conflicts with other Federal rules,  
13       and, to the extent feasible, with State and local  
14       governmental rules.

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

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

21              “(2) *PLAN REQUIRED*.—Each agency shall carry  
22       out the periodic review required by paragraph (1) in  
23       accordance with a plan published by such agency in  
24       the Federal Register. Each such plan shall provide for  
25       the review under this subsection of each rule promul-

1 *gated by the agency not later than 10 years after the*  
2 *date on which such rule was published as the final*  
3 *rule and, thereafter, not later than 10 years after the*  
4 *date on which such rule was last reviewed under this*  
5 *subsection. The agency may amend such plan at any*  
6 *time by publishing the revision in the Federal Reg-*  
7 *ister.*

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

16 “(f) *JUDICIAL REVIEW.*—

17 “(1) *IN GENERAL.*—*For any rule subject to this*  
18 *section, an individual who is adversely affected or ag-*  
19 *grieved by final agency action is entitled to judicial*  
20 *review of agency compliance with the requirements of*  
21 *subsections (b) and (c) in accordance with chapter 7.*  
22 *Agency compliance with subsection (d) shall be judi-*  
23 *cially reviewable in connection with judicial review of*  
24 *subsection (b).*

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

9           “(3) *LIMITATIONS.*—

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

18           “(B) In the case where an agency delays the  
19           issuance of a final privacy impact assessment  
20           pursuant to subsection (c), an action for judicial  
21           review under this section shall be filed not later  
22           than—

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

1                   “(ii) where a provision of law requires  
2                   that an action challenging a final agency  
3                   regulation be commenced before the expira-  
4                   tion of the 1-year period, the number of  
5                   days specified in such provision of law that  
6                   is after the date the assessment is made  
7                   available to the public.

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

12                  “(A) remanding the rule to the agency; and

13                  “(B) deferring the enforcement of the rule  
14                  against individuals, unless the court finds that  
15                  continued enforcement of the rule is in the public  
16                  interest.

17                  “(5) *RULE OF CONSTRUCTION*.—Nothing in this  
18                  subsection shall be construed to limit the authority of  
19                  any court to stay the effective date of any rule or pro-  
20                  vision thereof under any other provision of law or to  
21                  grant any other relief in addition to the requirements  
22                  of this subsection.

23                  “(6) *RECORD OF AGENCY ACTION*.—In an action  
24                  for the judicial review of a rule, the privacy impact  
25                  assessment for such rule, including an assessment pre-

pared or corrected pursuant to paragraph (4), shall constitute part of the entire record of agency action in connection with such review.

“(7) *EXCLUSIVITY.*—Compliance or noncompliance by an agency with the provisions of this section shall be subject to judicial review only in accordance with this subsection.

“(8) *SAVINGS CLAUSE.*—Nothing in this subsection bars judicial review of any other impact statement or similar assessment required by any other law if judicial review of such statement or assessment is otherwise permitted by law.

“(g) *DEFINITION.*—For purposes of this section, the term ‘personally identifiable information’ means information that can be used to identify an individual, including such individual’s name, address, telephone number, photograph, social security number or other identifying information. It includes information about such individual’s medical or financial condition.”.

(b) *PERIODIC REVIEW TRANSITION PROVISIONS.*—

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

1           (2) *REVIEW PERIOD.*—*In the case of a rule pro-*  
2           *mulgated by an agency before the date of the enact-*  
3           *ment of this Act, such plan shall provide for the peri-*  
4           *odic review of such rule before the expiration of the*  
5           *10-year period beginning on the date of the enactment*  
6           *of this Act. For any such rule, the head of the agency*  
7           *may provide for a 1-year extension of such period if*  
8           *the head of the agency, before the expiration of the pe-*  
9           *riod, certifies in a statement published in the Federal*  
10          *Register that reviewing such rule before the expiration*  
11          *of the period is not feasible. The head of the agency*  
12          *may provide for additional 1-year extensions of the*  
13          *period pursuant to the preceding sentence, but in no*  
14          *event may the period exceed 15 years.*

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

17                 (1) *by redesignating clauses (iii) and (iv) as*  
18                 *clauses (iv) and (v), respectively; and*

19                 (2) *by inserting after clause (ii) the following*  
20                 *new clause:*

21                         “(iii) *the agency’s actions relevant to section*  
22                         *553a;*”.

23          (d) *CLERICAL AMENDMENT.*—*The table of sections at*  
24          *the beginning of chapter 5 of title 5, United States Code,*

- 1 *is amended by adding after the item relating to section 553*
- 2 *the following new item:*

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





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