

112th CONGRESS

1st Session

H. R. 3010

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents.

IN THE HOUSE OF REPRESENTATIVES

September 22, 2011

Mr. SMITH of Texas (for himself, Mr. COBLE, and Mr. PETERSON) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To reform the process by which Federal agencies analyze and formulate new regulations and guidance documents.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the 'Regulatory Accountability Act of 2011'.

SEC. 2. DEFINITIONS.

Section 551 of title 5, United States Code, is amended--

(1) in paragraph (13), by striking 'and' at the end;

(2) in paragraph (14), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

`(15) 'major rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose--

`(A) an annual cost on the economy of \$100,000,000 or more, adjusted annually for inflation;

`(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local, or tribal government agencies, or geographic regions;

`(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

`(D) significant costs on multiple sectors of the economy;

`(16) `high-impact rule' means any rule that the Administrator of the Office of Information and Regulatory Affairs determines is likely to impose an annual cost on the economy of \$1,000,000,000 or more, adjusted annually for inflation;

`(17) `guidance' means an agency statement of general applicability and future effect, other than a regulatory action, that sets forth a policy on a statutory, regulatory or technical issue or an interpretation of a statutory or regulatory issue;

`(18) `major guidance' means guidance that the Administrator of the Office of Information and Regulatory Affairs finds is likely to lead to--

`(A) an annual cost on the economy of \$100,000,000 or more, adjusted annually for inflation;

`(B) a major increase in costs or prices for consumers, individual industries, Federal, State, local or tribal government agencies, or geographic regions;

`(C) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets; or

`(D) significant costs for multiple sectors of the economy;

`(19) the `Information Quality Act' means section 515 of Public Law 106-554, the Treasury and General Government Appropriations Act for Fiscal Year 2001, and guidelines issued by the Administrator of the Office of Information and Regulatory Affairs or other agencies pursuant to the Act; and

`(20) the `Office of Information and Regulatory Affairs' means the office established under section 3503 of chapter 35 of title 44 and any successor to that office.'

SEC. 3. RULEMAKING.

(a) Section 553(a) of title 5, United States Code, is amended by striking `(a) This section applies' and inserting `(a) Applicability- This section applies'.

(b) Section 553 of title 5, United States Code, is amended by striking subsections (b) through (e) and inserting the following:

`(b) Rule Making Considerations- In a rule making, an agency shall make all preliminary and final determinations based on evidence and consider, in addition to other applicable considerations, the following:

`(1) The legal authority under which a rule may be proposed, including whether a rule making is

required by statute, and if so, whether by a specific date, or whether the agency has discretion to commence a rule making.

`(2) Other statutory considerations applicable to whether the agency can or should propose a rule or undertake other agency action.

`(3) The specific nature and significance of the problem the agency may address with a rule (including the degree and nature of risks the problem poses and the priority of addressing those risks compared to other matters or activities within the agency's jurisdiction), whether the problem warrants new agency action, and the countervailing risks that may be posed by alternatives for new agency action.

`(4) Whether existing rules have created or contributed to the problem the agency may address with a rule and whether those rules could be amended or rescinded to address the problem in whole or part.

`(5) Any reasonable alternatives for a new rule or other response identified by the agency or interested persons, including not only responses that mandate particular conduct or manners of compliance, but also--

`(A) the alternative of no Federal response;

`(B) amending or rescinding existing rules;

`(C) potential regional, State, local, or tribal regulatory action or other responses that could be taken in lieu of agency action; and

`(D) potential responses that--

`(i) specify performance objectives rather than conduct or manners of compliance;

`(ii) establish economic incentives to encourage desired behavior;

`(iii) provide information upon which choices can be made by the public; or

`(iv) incorporate other innovative alternatives rather than agency actions that specify conduct or manners of compliance.

`(6) Notwithstanding any other provision of law--

`(A) the potential costs and benefits associated with potential alternative rules and other responses considered under section 553(b)(5), including direct, indirect, and cumulative costs and benefits and estimated impacts on jobs, economic growth, innovation, and economic competitiveness;

`(B) means to increase the cost-effectiveness of any Federal response; and

`(C) incentives for innovation, consistency, predictability, lower costs of enforcement and compliance (to government entities, regulated entities, and the public), and flexibility.

`(c) Advance Notice of Proposed Rule Making for Major Rules and High-Impact Rules-

`(1) In the case of a rule making for a major rule or high-impact rule, not later than 90 days before a notice of proposed rule making is published in the Federal Register, an agency shall publish advance notice of proposed rule making in the Federal Register. In publishing such advance notice, the agency shall--

`(A) include a written statement identifying, at a minimum--

`(i) the nature and significance of the problem the agency may address with a rule, including data and other evidence and information on which the agency expects to rely for the proposed rule;

`(ii) the legal authority under which a rule may be proposed, including whether a rule making is required by statute, and if so, whether by a specific date, or whether the agency has discretion to commence a rule making; and

`(iii) preliminary information available to the agency concerning the other considerations specified in subsection (b);

`(B) solicit written data, views or argument from interested persons concerning the information and issues addressed in the advance notice; and

`(C) provide for a period of not fewer than 60 days for interested persons to submit such written data, views, or argument to the agency.

`(d) Notices of Proposed Rule Making; Determinations of Other Agency Course- Following completion of procedures under subsection (c), if applicable, and consultation with the Administrator of the Office of Information and Regulatory Affairs, the agency shall publish either a notice of proposed rule making or a determination of other agency course, in accordance with the following:

`(1) A notice of proposed rule making shall include--

`(A) a statement of the time, place, and nature of public rule making proceedings;

`(B) reference to the legal authority under which the rule is proposed;

`(C) the terms of the proposed rule;

`(D) a description of information known to the agency on the subject and issues of the proposed rule, including but not limited to--

`(i) a summary of information known to the agency concerning the considerations specified in subsection (b);

`(ii) a summary of additional information the agency provided to and obtained from interested persons under subsection (c); and

`(iii) information specifically identifying all data, studies, models, and other evidence or information considered or used by the agency in connection with its determination to propose the rule;

`(E)(i) a reasoned preliminary determination of need for the rule based on the information described under subparagraph (D); and

`(ii) an additional statement of whether a rule is required by statute;

`(F) a reasoned preliminary determination that the benefits of the proposed rule meet the relevant statutory objectives and justify the costs of the proposed rule (including all costs to be considered under subsection (b)(6)), based on the information described under subparagraph (D);

`(G) a discussion of--

`(i) the alternatives to the proposed rule, and other alternative responses, considered by the agency under subsection (b);

`(ii) the costs and benefits of those alternatives (including all costs to be considered under subsection (b)(6));

`(iii) whether those alternatives meet relevant statutory objectives; and

`(iv) why the agency did not propose any of those alternatives; and

`(H)(i) a statement of whether existing rules have created or contributed to the problem the agency seeks to address with the proposed rule; and

`(ii) if so, whether or not the agency proposes to amend or rescind any such rules, and why.

All information considered by the agency, and steps to obtain information by the agency, in connection with its determination to propose the rule, including all information described by the agency under subparagraph (D) and, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the proposed rule and made accessible to the public for the public's use when the notice of proposed rule making is published.

`(2)(A) A notice of determination of other agency course shall include a description of the alternative response the agency determined to adopt.

`(B) If in its determination of other agency course the agency makes a determination to amend or rescind an existing rule, the agency need not undertake additional proceedings under subsection (c) before it publishes a notice of proposed rule making to amend or rescind the existing rule.

All information considered by the agency, and steps to obtain information by the agency, in connection with its determination of other agency course, including but not limited to all information that would be required to be described by the agency under paragraph (1)(D) if the agency had determined to publish a notice of proposed rule making and, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the determination and made accessible to the public for the public's use when the notice of determination is published.

`(3) After notice of proposed rule making required by this section, the agency shall provide interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation, except that--

`(A) if a hearing is required under paragraph (4)(B) or subsection (e), opportunity for oral presentation shall be provided pursuant to that requirement; or

`(B) when other than under subsection (e) of this section rules are required by statute or at the discretion of the agency to be made on the record after opportunity for an agency hearing, sections 556 and 557 shall apply, and paragraph (4), requirements of subsection (e) to receive comment outside of the procedures of sections 556 and 557, and the petition procedures of subsection (e)(6) shall not apply.

The agency shall provide not fewer than 90 days for interested persons to submit written data, views, or argument (or 120 days in the case of a proposed major or high-impact rule).

`(4)(A) Within 30 days of publication of notice of proposed rulemaking, a member of the public may petition for a hearing in accordance with section 556 to determine whether any evidence or other information upon which the agency bases the proposed rule fails to comply with of the Information Quality Act.

`(B)(i) The agency may, upon review of the petition, determine without further process to exclude from the rule making the evidence or other information that is the subject of the petition and, if appropriate, withdraw the proposed rule. The agency shall promptly publish any such determination.

`(ii) If the agency does not resolve the petition under the procedures of clause (i), it shall grant any such petition that presents a prima facie case that evidence or other information upon which the agency bases the proposed rule fails to comply with the Information Quality Act, hold the requested hearing not later than 30 days after receipt of the petition, provide a reasonable opportunity for cross-examination at the hearing, and decide the issues presented by the petition not later than 60 days after receipt of the petition. The agency may deny any petition that it determines does not present such a prima facie case.

`(C) There shall be no judicial review of the agency's disposition of issues considered and decided or determined under subparagraph (B)(ii) until judicial review of the agency's final action. There shall be no judicial review of an agency's determination to withdraw a proposed rule under subparagraph (B)(i).

`(D) Failure to petition for a hearing under this paragraph shall not preclude judicial review of any claim based on the Information Quality Act under chapter 7 of this title.

`(e) Hearings for High-Impact Rules- Following notice of a proposed rule making, receipt of comments on the proposed rule, and any hearing held under subsection (d)(4), and before adoption of any high-impact rule, the agency shall hold a hearing in accordance with sections 556 and 557, unless such hearing is waived by all participants in the rulemaking other than the agency. The agency shall provide a reasonable opportunity for cross-examination at such hearing. The hearing shall be limited to the following issues of fact, except that participants at the hearing other than the agency may waive determination of any such issue:

`(1) Whether the agency's asserted factual predicate for the rule is supported by the evidence.

`(2) Whether there is an alternative to the proposed rule that would achieve the relevant statutory objectives at a lower cost (including all costs to be considered under subsection (b)(6)) than the proposed rule.

`(3) If there is more than one alternative to the proposed rule that would achieve the relevant statutory objectives at a lower cost than the proposed rule, which alternative would achieve the relevant statutory objectives at the lowest cost.

`(4) Whether, if the agency proposes to adopt a rule that is more costly than the least costly alternative that would achieve the relevant statutory objectives (including all costs to be considered under subsection (b)(6)), the additional benefits of the more costly rule exceed the additional costs of the more costly rule.

`(5) Whether the evidence and other information upon which the agency bases the proposed rule meets the requirements of the Information Quality Act.

`(6) Upon petition by an interested person who has participated in the rulemaking, other issues relevant to the rule making, unless the agency determines that consideration of the issues at the hearing would not advance consideration of the rule or would, in light of the nature of the need for agency action, unreasonably delay completion of the rule making. An agency shall grant or deny a petition under this paragraph within 30 days of its receipt of the petition.

No later than 45 days before any hearing held under this subsection or sections 556 and 557, the agency shall publish in the Federal Register a notice specifying the proposed rule to be considered at such hearing, the issues to be considered at the hearing, and the time and place for such hearing, except that such notice may be issued not later than 15 days before a hearing held under subsection (d)(4)(B).

`(f) Final Rules- (1) The agency shall adopt a rule only following consultation with the Administrator of the Office of Information and Regulatory Affairs to facilitate compliance with applicable rule making requirements.

`(2) The agency shall adopt a rule only on the basis of the best reasonably obtainable scientific, technical, economic, and other evidence and information concerning the need for, consequences of, and alternatives to the rule.

`(3)(A) Except as provided in subparagraph (B), the agency shall adopt the least costly rule considered during the rule making (including all costs to be considered under subsection (b)(6)) that meets relevant statutory objectives.

`(B) The agency may adopt a rule that is more costly than the least costly alternative that would achieve the relevant statutory objectives only if the additional benefits of the more costly rule justify its additional costs and only if the agency explains its reason for doing so based on interests of public health, safety or welfare that are clearly within the scope of the statutory provision authorizing the rule.

`(4) When it adopts a final rule, the agency shall publish a notice of final rule making. The notice shall include--

`(A) a concise, general statement of the rule's basis and purpose;

`(B) the agency's reasoned final determination of need for a rule to address the problem the agency seeks to address with the rule, including a statement of whether a rule is required by statute;

`(C) the agency's reasoned final determination that the benefits of the rule meet the relevant statutory objectives and justify the rule's costs (including all costs to be considered under subsection (b)(6));

`(D) the agency's reasoned final determination not to adopt any of the alternatives to the proposed rule considered by the agency during the rule making, including--

`(i) the agency's reasoned final determination that no alternative considered achieved the relevant statutory objectives with lower costs (including all costs to be considered under subsection (b)(6)) than the rule; or

`(ii) the agency's reasoned determination that its adoption of a more costly rule complies with subsection (f)(3)(B);

`(E) the agency's reasoned final determination--

`(i) that existing rules have not created or contributed to the problem the agency seeks to address with the rule; or

`(ii) that existing rules have created or contributed to the problem the agency seeks to address with the rule, and, if so--

`(I) why amendment or rescission of such existing rules is not alone sufficient to respond to the problem; and

`(II) whether and how the agency intends to amend or rescind the existing rule separate from adoption of the rule;

`(F) the agency's reasoned final determination that the evidence and other information upon which the agency bases the rule complies with the Information Quality Act; and

`(G)(i) for any major rule or high-impact rule, the agency's plan for review of the rule no less than every ten years to determine whether, based upon evidence, there remains a need for the rule, whether the rule is in fact achieving statutory objectives, whether the rule's benefits continue to justify its costs, and whether the rule can be modified or rescinded to reduce costs while continuing to achieve statutory objectives;

`(ii) review of a rule under a plan required by clause (i) of this subparagraph shall take into account the factors and criteria set forth in subsections (b) through (f) of section 553 of this title.

All information considered by the agency in connection with its adoption of the rule, and, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, information provided by that Office in consultations with the agency, shall be placed in the docket for the rule and made accessible to the public for the public's use no later than when the rule is adopted.

`(g) Exceptions From Notice and Hearing Requirements- (1) Except when notice or hearing is required by statute, subsections (c) through (e) of this section do not apply to interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice.

`(2)(A) When the agency for good cause, based upon evidence, finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that compliance with subsection (c), (d),

or (e) or requirements to render final determinations under subsection (f) of this section before the issuance of an interim rule is impracticable or contrary to the public interest, including interests of national security, such subsections or requirements to render final determinations shall not apply to the agency's adoption of an interim rule.

`(B) If, following compliance with subparagraph (A) of this paragraph, the agency adopts an interim rule, it shall commence proceedings that comply fully with subsections (c) through (f) of this section immediately upon publication of the interim rule. No less than 270 days from publication of the interim rule (or 18 months in the case of a major rule or high-impact rule), the agency shall complete rule making under subsections (c) through (f) of this subsection and take final action to adopt a final rule or rescind the interim rule. If the agency fails to take timely final action, the interim rule will cease to have the effect of law.

`(C) Other than in cases involving interests of national security, upon the agency's publication of an interim rule without compliance with subsections (c), (d), or (e) or requirements to render final determinations under subsection (f) of this section, an interested party may seek immediate judicial review under chapter 7 of this title of the agency's determination to adopt such interim rule. The record on such review shall include all documents and information considered by the agency and any additional information presented by a party that the court determines necessary to consider to assure justice.

`(h) Additional Requirements for Hearings- When a hearing is required under subsection (e) or is otherwise required by statute or at the agency's discretion before adoption of a rule, the agency shall comply with the requirements of sections 556 and 557 in addition to the requirements of subsection (f) in adopting the rule and in providing notice of the rule's adoption.

`(i) Date of Publication of Rule- The required publication or service of a substantive final or interim rule shall be made not less than 30 days before the effective date of the rule, except--

`(1) a substantive rule which grants or recognizes an exemption or relieves a restriction;

`(2) interpretive rules and statements of policy; or

`(3) as otherwise provided by the agency for good cause found and published with the rule.

`(j) Right To Petition- Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.

`(k) Rule Making Guidelines- (1)(A) The Administrator of the Office of Information and Regulatory Affairs shall have authority to establish guidelines for the assessment, including quantitative and qualitative assessment, of the costs and benefits of potential, proposed, and final rules and other economic issues or issues related to risk that are relevant to rule making under this section and other sections of this title. The rigor of cost-benefit analysis required by such guidelines shall be commensurate, in the Administrator's determination, with the economic impact of the rule.

`(B) To ensure that agencies use the best available techniques to quantify and evaluate anticipated present and future benefits, costs, other economic issues, and risks as accurately as possible, the Administrator of the Office of Information and Regulatory Affairs shall regularly update guidelines established under paragraph (1)(A) of this subsection.

`(2) The Administrator of the Office of Information and Regulatory Affairs shall also have authority to issue guidelines to promote coordination, simplification and harmonization of agency rules during the rule making process and otherwise. Such guidelines shall assure that each agency avoids regulations that are inconsistent or incompatible with, or duplicative of, its other regulations and those of other Federal agencies and drafts its regulations to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.

`(3) To ensure consistency in Federal rule making, the Administrator of the Office of Information and Regulatory Affairs shall--

`(A) issue guidelines and otherwise take action to ensure that rule makings conducted in whole or in part under procedures specified in provisions of law other than those of subchapter II of this title conform to the fullest extent allowed by law with the procedures set forth in section 553 of this title; and

`(B) issue guidelines for the conduct of hearings under subsections 553(d)(4) and 553(e) of this section, including to assure a reasonable opportunity for cross-examination. Each agency shall adopt regulations for the conduct of hearings consistent with the guidelines issued under this subparagraph.

`(4) The Administrator of the Office of Information and Regulatory Affairs shall issue guidelines pursuant to the Information Quality Act to apply in rule making proceedings under sections 553, 556 and 557 of this title. In all cases, such guidelines, and the Administrator's specific determinations regarding agency compliance with such guidelines, shall be entitled to judicial deference.

`(l) Inclusion in the Record of Certain Documents and Information- The agency shall include in the record for a rule making all documents and information considered by the agency during the proceeding, including, at the discretion of the President or the Administrator of the Office of Information and Regulatory Affairs, documents and information communicated by that Office during consultation with the Agency.

`(m) Monetary Policy Exemption- Nothing in subsection (b)(6), subparagraphs (F) and (G) of subsection (d)(1), subsection (e), subsection (f)(3), and subparagraphs (C) and (D) of subsection (f)(5) shall apply to rule makings that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.'

SEC. 4. AGENCY GUIDANCE; PROCEDURES TO ISSUE MAJOR GUIDANCE; PRESIDENTIAL AUTHORITY TO ISSUE GUIDELINES FOR ISSUANCE OF GUIDANCE.

(a) In General- Chapter 5 of title 5, United States Code, is amended by inserting after section 553 the following new section:

`Sec. 553a. Agency guidance; procedures to issue major guidance; authority to issue guidelines for issuance of guidance

`(a) Before issuing any major guidance, an agency shall--

`(1) make and document a reasoned determination that--

`(A) assures that such guidance is understandable and complies with relevant statutory objectives and regulatory provisions;

`(B) identifies the costs and benefits (including all costs to be considered during the rule making under section 553(b) of this title) of conduct conforming to such guidance and assures that such benefits justify such costs; and

`(C) describes alternatives to such guidance and their costs and benefits (including all costs to be considered during rule making under section 553(b) of this title) and explains why the agency rejected those alternatives; and

`(2) confer with the Administrator of the Office of Information and Regulatory Affairs on the issuance of such guidance to assure that the guidance is reasonable, understandable, consistent with relevant statutory and regulatory provisions and requirements or practices of other agencies, does not produce costs that are unjustified by the guidance's benefits, and is otherwise appropriate.

`(b) Agency guidance--

`(1) is not legally binding and may not be relied upon by an agency as legal grounds for agency action;

`(2) shall state in a plain, prominent and permanent manner that it is not legally binding; and

`(3) shall, at the time it is issued or upon request, be made available by the issuing agency to interested persons and the public.

`(c) The Administrator of the Office of Information and Regulatory Affairs shall have authority to issue guidelines for use by the agencies in the issuance of major guidance and other guidance. Such guidelines shall assure that each agency avoids issuing guidance documents that are inconsistent or incompatible with, or duplicative of, with its other regulations and those of other Federal agencies and drafts its guidance documents to be simple and easy to understand, with the goal of minimizing the potential for uncertainty and litigation arising from such uncertainty.'.

(b) Clerical Amendment- The table of sections for chapter 5 of title 5, United States Code, is amended by inserting after the item relating to section 553 the following new item:

`553a. Agency guidance; procedures to issue major guidance; presidential authority to issue guidelines for issuance of guidance.'.

SEC. 5. HEARINGS; PRESIDING EMPLOYEES; POWERS AND DUTIES; BURDEN OF PROOF; EVIDENCE; RECORD AS BASIS OF DECISION.

Section 556 of title 5, United States Code, is amended by striking subsection (e) and inserting the following:

`(e)(1) The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding, constitutes the exclusive record for decision in accordance with section 557 and, on payment of lawfully prescribed costs, shall be made available to the parties. When an agency decision

rests on official notice of a material fact not appearing in the evidence in the record, a party is entitled, on timely request, to an opportunity to show the contrary.

`(2) Notwithstanding paragraph (1) of this subsection, in a proceeding held under this section pursuant to section 553(d)(4) or 553(e), the record for decision shall include any information that is part of the record of proceedings under section 553.

`(f) When an agency conducts rule making under this section and section 557 directly after concluding proceedings upon an advance notice of proposed rulemaking under section 553(c), the matters to be considered and determinations to be made shall include, among other relevant matters and determinations, the matters and determinations described in subsections (b) and (f) of section 553.

`(g) Upon receipt of a petition for a hearing under this section, the agency shall grant the petition in the case of any major rule, unless the agency reasonably determines that a hearing would not advance consideration of the rule or would, in light of the need for agency action, unreasonably delay completion of the rule making. The agency shall publish its decision to grant or deny the petition when it renders the decision, including an explanation of the grounds for decision. The information contained in the petition shall in all cases be included in the administrative record. This subsection shall not apply to rule makings that concern monetary policy proposed or implemented by the Board of Governors of the Federal Reserve System or the Federal Open Market Committee.'

SEC. 6. ACTIONS REVIEWABLE.

Section 704 of title 5, United States Code, is amended--

(1) by striking 'Agency action made' and inserting '(a) Agency action made'; and

(2) by adding at the end the following:

`(b) Other than in cases involving interests of national security, notwithstanding subsection (a) of this section, upon the agency's publication of an interim rule without compliance with section 553 (c), (d), or (e) or requirements to render final determinations under subsection (f) of section 553, an interested party may seek immediate judicial review under this chapter of the agency's determination to adopt such rule on an interim basis. Review shall be limited to whether the agency abused its discretion to adopt the interim rule without compliance with section 553 (c), (d), or (e) or without rendering final determinations under subsection (f) of section 553.'

SEC. 7. SCOPE OF REVIEW.

Section 706 of title 5, United States Code is amended--

(1) by striking 'To the extent necessary' and inserting '(a) To the extent necessary';

(2) in paragraph (2)(A) of subsection (a) (as redesignated by paragraph (1) of this section), by inserting after 'in accordance with law' the following: '(including the Information Quality Act)'; and

(3) by adding at the end the following:

`(b) The court shall not defer to the agency's--

`(1) interpretation of an agency rule if the agency did not comply with the procedures of section 553 or sections 556-557 of chapter 5 of this title to issue the interpretation;

`(2) determination of the costs and benefits or other economic or risk assessment of the action, if the agency failed to conform to guidelines on such determinations and assessments established by the Administrator of the Office of Information and Regulatory Affairs under section 553(k); or

`(3) determinations under interlocutory review pursuant to sections 553(g)(2)(C) and 704(b).

`(c) The court shall review agency denials of petitions under section 553(e)(6) or any other petition for a hearing under sections 556 and 557 for abuse of agency discretion.'

SEC. 8. ADDED DEFINITION.

Section 701(b) of title 5, United States Code, is amended--

(1) in paragraph (1), by striking `and';

(2) in paragraph (2), by striking the period at the end, and inserting `; and'; and

(3) by adding at the end the following:

`(3) `substantial evidence' means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of the record considered as a whole, taking into account whatever in the record fairly detracts from the weight of the evidence relied upon by the agency to support its decision.'

SEC. 9. EFFECTIVE DATE.

The amendments made by this Act to--

(1) sections 553, 556, and 704 of title 5, United States Code;

(2) subsection (b) of section 701 of such title;

(3) paragraphs (2) and (3) of section 706(b) of such title; and

(4) subsection (c) of section 706 of such title;

shall not apply to any rule makings pending or completed on the date of enactment of this Act.

END