AMENDMENT TO H.R. 4768, AS REPORTED
OFFERED BY MR. RUSSELL OF OKLAHOMA

Add at the end of the bill the following:

SEC. 3. REQUIRING NOTICE AND COMMENT FOR CERTAIN
INTERPRETIVE RULES.

Subchapter II of chapter 5 of title 5, United States
Code, is amended—

(1) in section 551—

(A) in paragraph (13), by striking “and”
at the end;

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

(C) by adding at the end the following:

“(15) ‘longstanding interpretive rule’ means an
interpretive rule that has been in effect for not less
than 1 year;

“(16) ‘revise’ means, with respect to an inter-
pretive rule, to promulgate an interpretive rule, any
provision of which conflicts, or is in any way incon-
sistent with, any provision of a longstanding inter-
pretive rule; and

“(17) ‘interpretive rule’ means an agency’s in-
terpretation of a statute or regulation that is within
the authority or competence of the agency, provided that, the existence of an agency’s interpretation may be demonstrated by—

“(A) an interpretation of a statute or regulation published by the agency in the Federal Register, or in a private letter ruling, advisory opinion letter, or the equivalent, on agency letterhead signed by an agency official or employee having apparent authority to issue it;

“(B) a course of conduct by the agency over a period of time with regard to two or more regulated parties that are unrelated to one another; or

“(C) other evidence that the trier of fact may find material, probative and sufficiently reliable in the circumstance to prove existence of an interpretation.”; and

(2) in section 553—

(A) in subsection (b), following the flush text, in subparagraph (A), by striking “interpretative rules” and inserting “an interpretive rule of an agency, unless the interpretive rule revises a longstanding interpretive rule of the agency”; and
(B) in subsection (d)(2), by striking “interpretative rules” and inserting “an interpretive rule of an agency, unless the interpretive rule revises a longstanding interpretive rule of the agency, and”.

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