

104TH CONGRESS
1ST SESSION

H. R. 1937

To facilitate small business involvement in the regulatory development processes of the Environmental Protection Agency and the Occupational Safety and Health Administration, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 27, 1995

Mr. SCHIFF introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Small Business, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To facilitate small business involvement in the regulatory development processes of the Environmental Protection Agency and the Occupational Safety and Health Administration, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Small Business Advocacy Act of 1995”.

6 (b) TABLE OF CONTENTS.—The table of contents for
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
 Sec. 2. Definitions.

TITLE I—SMALL BUSINESS ADVOCACY REVIEW

- Sec. 101. Small business advocacy chairpersons.
 Sec. 102. Small business advocacy review panels.
 Sec. 103. Review panel personnel matters.
 Sec. 104. Consultation with other entities.
 Sec. 105. Report.
 Sec. 106. Applicability of other law; judicial review.
 Sec. 107. Moratorium on certain regulations.

TITLE II—PEER REVIEW SURVEY

- Sec. 201. Peer review survey.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the following definitions
 3 shall apply:

4 (1) AGENCY.—The term “agency” means—

5 (A) with respect to the Environmental
 6 Small Business Advocacy Review Panel, the
 7 Environmental Protection Agency; and

8 (B) with respect to the Occupational Safe-
 9 ty and Health Small Business Advocacy Review
 10 Panel, the Occupational Safety and Health Ad-
 11 ministration of the Department of Labor.

12 (2) AGENCY HEAD.—The term “agency head”
 13 means—

14 (A) with respect to the Environmental
 15 Small Business Advocacy Review Panel, the Ad-
 16 ministrator of the Environmental Protection
 17 Agency; and

1 (B) with respect to the Occupational Safe-
2 ty and Health Small Business Advocacy Review
3 Panel, the Assistant Secretary for Occupational
4 Safety and Health of the Department of Labor.

5 (3) CHAIRPERSON.—The term “chairperson”
6 means—

7 (A) with respect to the Environmental
8 Small Business Advocacy Review Panel, the
9 chairperson of such review panel designated
10 under section 101(a); and

11 (B) with respect to the Occupational Safe-
12 ty and Health Small Business Advocacy Review
13 Panel, the chairperson of such review panel des-
14 ignated under section 101(b).

15 (4) CHIEF COUNSEL FOR ADVOCACY.—The
16 term “Chief Counsel for Advocacy” means the Chief
17 Counsel for Advocacy of the Small Business Admin-
18 istration.

19 (5) FINAL RULE.—The term “final rule” means
20 any final rule or interim final rule issued by an
21 agency for which a review panel has been established
22 under section 101(c)(2)(A).

23 (6) OFFICE.—The term “Office” means the Of-
24 fice of Advocacy of the Small Business Administra-
25 tion.

1 (7) REVIEW PANEL.—The term “review panel”
2 means—

3 (A) with respect to a significant rule of the
4 Environmental Protection Agency, an Environ-
5 mental Small Business Advocacy Review Panel
6 established under section 101(c)(2)(A); and

7 (B) with respect to a significant rule of the
8 Occupational Safety and Health Administration
9 of the Department of Labor, an Occupational
10 Safety and Health Small Business Advocacy
11 Review Panel established under section
12 101(c)(2)(A).

13 (8) RULE.—The term “rule”—

14 (A) means an agency statement of general
15 applicability and future effect, which the agency
16 intends to have the force and effect of law, that
17 is designed to implement, interpret, or prescribe
18 law or policy or to describe the procedure or
19 practice requirements of the agency; and

20 (B) does not include any rule that is lim-
21 ited to agency organization, management, or
22 personnel matters.

23 (9) SIGNIFICANT RULE.—The term “significant
24 rule” means any rule proposed by an agency that
25 the chairperson, in consultation with the Adminis-

1 trator of the Office of Information and Regulatory
2 Affairs within the Office of Management and Budg-
3 et, reasonably estimates would have—

4 (A) an annual aggregate impact on State,
5 local, and tribal governments and the private
6 sector in an amount equal to not less than
7 \$50,000,000; and

8 (B) an impact on small businesses.

9 (10) SMALL BUSINESS.—The term “small busi-
10 ness” has the same meaning as the term “small
11 business concern” in section 3 of the Small Business
12 Act.

13 **TITLE I—SMALL BUSINESS** 14 **ADVOCACY REVIEW**

15 **SEC. 101. SMALL BUSINESS ADVOCACY CHAIRPERSONS.**

16 (a) CHAIRPERSON OF ENVIRONMENTAL REVIEW
17 PANELS.—

18 (1) IN GENERAL.—Not later than 30 days after
19 the date of enactment of this Act, the Administrator
20 of the Environmental Protection Agency shall des-
21 ignate an employee of the Environmental Protection
22 Agency, who is a member of the Senior Executive
23 Service (as such term is defined in section 2101a of
24 title 5, United States Code) and whose immediate
25 supervisor is appointed by the President, to serve as

1 the chairperson of each Environmental Small Busi-
2 ness Advocacy Review Panel and to carry out the
3 purposes of this Act with respect to the Environ-
4 mental Protection Agency.

5 (2) DISABILITY OR ABSENCE.—If the employee
6 designated to serve as chairperson under paragraph
7 (1) is unable to serve as chairperson because of dis-
8 ability or absence, the Administrator of the Environ-
9 mental Protection Agency shall designate another
10 employee who meets the qualifications of such para-
11 graph to serve as chairperson.

12 (b) CHAIRPERSON OF OSHA REVIEW PANELS.—

13 (1) IN GENERAL.—Not later than 30 days after
14 the date of enactment of this Act, the Assistant Sec-
15 retary for Occupational Safety and Health of the
16 Department of Labor shall designate an employee of
17 the Occupational Safety and Health Administration
18 of the Department of Labor, who is a member of the
19 Senior Executive Service (as such term is defined in
20 section 2101a of title 5, United States Code) and
21 whose immediate supervisor is appointed by the
22 President, to serve as the chairperson of each Occu-
23 pational Safety and Health Small Business Advocacy
24 Review Panel and to carry out the purposes of this

1 Act with respect to the Occupational Safety and
2 Health Administration.

3 (2) DISABILITY OR ABSENCE.—If the employee
4 designated to serve as chairperson under paragraph
5 (1) is unable to serve as chairperson because of dis-
6 ability or absence, the Assistant Secretary for Occu-
7 pational Safety and Health of the Department of
8 Labor shall designate another employee who meets
9 the qualifications of such paragraph to serve as
10 chairperson.

11 (c) DUTIES OF THE CHAIRPERSON.—

12 (1) INITIAL DETERMINATION AND NOTIFICA-
13 TION.—

14 (A) TIMING.—The chairperson shall take
15 the actions described in subparagraph (B) at
16 least 45 days before the earlier of—

17 (i) the date of publication by an agen-
18 cy of a general notice of proposed rule-
19 making in the Federal Register under sec-
20 tion 553(b) of title 5, United States Code,
21 or any other provision of law; or

22 (ii) the date of publication by an
23 agency of a proposed rule in the Federal
24 Register.

1 (B) ACTIONS.—With respect to a proposed
2 rule that is the subject of a publication de-
3 scribed in clause (i) or (ii) of subparagraph (A),
4 the chairperson shall—

5 (i) determine (in accordance with sec-
6 tion 2(9)) whether the subject proposed
7 rule constitutes a significant rule; and

8 (ii) if so, notify the Administrator of
9 the Office of Information and Regulatory
10 Affairs within the Office of Management
11 and Budget and the Chief Counsel for Ad-
12 vocacy to appoint review panel members in
13 accordance with section 102(b) for evalua-
14 tion of the subject significant rule.

15 (2) ESTABLISHMENT OF REVIEW PANELS.—

16 (A) IN GENERAL.—Not later than 15 days
17 after receiving notice under paragraph
18 (1)(B)(ii), or such longer period as the chair-
19 person may allow, review panel members shall
20 be appointed by the Administrator of the Office
21 of Information and Regulatory Affairs within
22 the Office of Management and Budget, the
23 Chief Counsel for Advocacy, and the chair-
24 person in accordance with section 102(b).

1 (B) EXCEPTIONS.—A review panel shall be
2 established in accordance with subparagraph
3 (A) unless the chairperson, in consultation with
4 the Chief Counsel for Advocacy, determines
5 (and notifies the agency in writing of such de-
6 termination) that—

7 (i) a good faith effort to secure
8 enough non-Federal employee review panel
9 members necessary to constitute a quorum
10 with respect to the subject significant rule
11 was unsuccessful; and

12 (ii) compliance with this Act is not re-
13 quired with respect to the subject signifi-
14 cant rule due to a lack of availability of
15 private sector interests.

16 (d) DUTIES REGARDING FINAL RULE.—

17 (1) IN GENERAL.—At least 45 days before the
18 issuance of a final rule, the chairperson shall—

19 (A) notify panel members of the intent of
20 the agency to issue a final rule;

21 (B) provide panel members with a dated
22 draft of the final rule to be issued;

23 (C) solicit comments from panel members
24 in accordance with the duties of the review
25 panel described in section 102(a); and

1 (D) if the chairperson determines that
2 such action is necessary, call one or more meet-
3 ings of the review panel and, if a quorum is
4 present, direct the review panel to review, dis-
5 cuss, or clarify any issue related to the subject
6 final rule or the preparation of the report under
7 paragraph (2).

8 (2) REPORT.—Except as provided in section
9 105(b), at least 5 days before the issuance of a final
10 rule, the chairperson shall submit a report in accord-
11 ance with section 105(a).

12 **SEC. 102. SMALL BUSINESS ADVOCACY REVIEW PANELS.**

13 (a) GENERAL DUTIES.—Before any publication de-
14 scribed in clause (i) or (ii) of section 101(c)(1)(A) of a
15 proposed significant rule, and again before the issuance
16 of such rule as a final rule, the review panel shall, in ac-
17 cordance with this Act—

18 (1) provide technical guidance to the agency, in-
19 cluding guidance relating to—

20 (A) the applicability of the proposed rule
21 to small businesses;

22 (B) enforcement of and compliance with
23 the rule by small businesses;

24 (C) the consistency or redundancy of the
25 proposed rule with respect to other Federal,

1 State, and local regulations and recordkeeping
2 requirements imposed on small businesses; and

3 (D) any other concerns posed by the pro-
4 posed rule that may impact significantly upon
5 small businesses; and

6 (2) evaluate each rule in the context of the re-
7 quirements imposed under—

8 (A) subsections (b) and (c) of section 603,
9 paragraphs (1) through (3) of section 604(a),
10 section 604(b), and paragraphs (1) through (5)
11 of section 609 of title 5, United States Code;

12 (B) sections 202 and 205 of the Unfunded
13 Mandates Act of 1995 (Public Law 104–4);

14 (C) subsection (a) and paragraphs (1)
15 through (12) of subsection (b) of section 1 of
16 Executive Order No. 12866, September 30,
17 1993; and

18 (D) any other requirement under any other
19 Act, including those relative to regulatory re-
20 form requirements that affect compliance, exist-
21 ing Federal or State regulations that may du-
22 plicate, overlap, or conflict with the significant
23 rule, and the readability and complexity of rules
24 and regulations.

1 (b) MEMBERSHIP.—Each review panel shall be com-
2 posed of—

3 (1) the chairperson;

4 (2) not less than 1 nor more than 3 members
5 appointed by the chairperson from among employees
6 of the agency who would be responsible for carrying
7 out the subject significant rule;

8 (3) 1 member appointed by the Administrator
9 of the Office of Information and Regulatory Affairs
10 within the Office of Management and Budget from
11 among the employees of that office who have specific
12 knowledge of or responsibilities relating to the regu-
13 latory responsibilities of the agency that would be
14 responsible for carrying out the subject significant
15 rule;

16 (4) 1 member appointed by the Chief Counsel
17 for Advocacy from among the employees of the Of-
18 fice; and

19 (5) not less than 1 nor more than 3 members
20 selected by the Chief Counsel for Advocacy from
21 among individuals who are representatives of—

22 (A) small businesses that would be im-
23 pacted by the significant rule;

1 (B) small business sectors or industries
2 that would be especially impacted by the signifi-
3 cant rule; or

4 (C) organizations whose memberships are
5 comprised of a cross-section of small businesses.

6 (c) PERIOD OF APPOINTMENT; VACANCIES.—

7 (1) PERIOD OF APPOINTMENT.—Each review
8 panel member, other than the chairperson, shall be
9 appointed for a term beginning on the date on which
10 the appointment is made and ending on the date on
11 which the report or written record is submitted
12 under section 105.

13 (2) VACANCIES.—Any vacancy on a review
14 panel shall not affect the powers of the review panel,
15 but shall be filled in the same manner as the origi-
16 nal appointment.

17 (d) QUORUM.—A quorum for the conduct of business
18 by a review panel shall consist of 1 member appointed
19 from each of paragraphs (2) through (5) of subsection (b).

20 (e) MEETINGS.—

21 (1) IN GENERAL.—Subject to paragraph (2),
22 the meetings of the review panel shall be at the call
23 of the chairperson.

24 (2) INITIAL MEETING.—Not later than 15 days
25 after all review panel members necessary to con-

1 stitute a quorum have been appointed under sub-
2 section (b), the chairperson shall conduct the initial
3 meeting of the review panel.

4 (f) POWERS OF REVIEW PANEL.—

5 (1) INFORMATION FROM FEDERAL AGENCIES.—

6 A review panel may secure, directly from any Fed-
7 eral department or agency, such information as the
8 review panel considers necessary to carry out this
9 title. Upon request of the chairperson, the head of
10 such department or agency shall furnish such infor-
11 mation to the review panel.

12 (2) POSTAL SERVICES.—A review panel may
13 use the United States mails in the same manner and
14 under the same conditions as other departments and
15 agencies of the Federal Government.

16 **SEC. 103. REVIEW PANEL PERSONNEL MATTERS.**

17 (a) NONCOMPENSATION OF MEMBERS.—

18 (1) IN GENERAL.—Members of the review panel
19 who are not officers or employees of the Federal
20 Government shall serve without compensation.

21 (2) FEDERAL EMPLOYEES.—Members of the re-
22 view panel who are officers or employees of the Fed-
23 eral Government shall serve without compensation in
24 addition to that received for their services as officers
25 or employees of the Federal Government.

1 (b) DETAIL OF GOVERNMENT EMPLOYEES.—Any
2 Federal Government employee may be detailed to a review
3 panel without reimbursement, and such detail shall be
4 without interruption or loss of civil service status or privi-
5 lege.

6 **SEC. 104. CONSULTATION WITH OTHER ENTITIES.**

7 In carrying out this title, the chairperson shall con-
8 sult and coordinate, to the maximum extent practicable,
9 the activities of the review panel with each office of the
10 agency that is responsible for the provision of data or tech-
11 nical advice concerning a significant rule.

12 **SEC. 105. REPORT.**

13 (a) IN GENERAL.—Except as provided in subsection
14 (b), the chairperson shall, in accordance with section
15 101(d)(2), submit to the appropriate employees of the
16 agency who would be responsible for carrying out the sub-
17 ject significant rule and to the appropriate committees of
18 the Senate and the House of Representatives a report,
19 which shall include—

20 (1) the findings and recommendations of the re-
21 view panel with respect to the significant rule, in-
22 cluding both the majority and minority views of the
23 review panel members, regardless of the consensus
24 of opinions that may derive from the meetings of the
25 review panel; and

1 (2) recommendations regarding whether a sur-
2 vey with respect to the subject significant rule
3 should be conducted under title II and—

4 (A) if so—

5 (i) a timeframe during which the sur-
6 vey should be conducted, taking into ac-
7 count the time required to implement the
8 rule and to gather appropriate data; and

9 (ii) any recommendations of the re-
10 view panel regarding the contents of the
11 survey; and

12 (B) if not, the reasons why such a survey
13 is not recommended.

14 (b) FAILURE TO SUBMIT REPORT.—If the chair-
15 person fails to submit a report under subsection (a), on
16 or before the date on which the final rule is issued, the
17 chairperson shall—

18 (1) prepare a written record of such failure de-
19 tailing the reasons therefor; and

20 (2) submit a copy of such written record to the
21 head of the agency and to the appropriate commit-
22 tees of the Senate and the House of Representatives.

1 **SEC. 106. APPLICABILITY OF OTHER LAW; JUDICIAL RE-**
2 **VIEW.**

3 (a) INAPPLICABILITY OF FEDERAL ADVISORY COM-
4 MITTEE ACT.—The provisions of the Federal Advisory
5 Committee Act do not apply to any review panel estab-
6 lished in accordance with this title.

7 (b) PROHIBITION ON JUDICIAL REVIEW.—No action
8 or inaction of a review panel, including any recommenda-
9 tions or advice of a review panel or any procedure or proc-
10 ess of a review panel, may be subject to judicial review
11 by a court of the United States under chapter 7 of title
12 5, United States Code, or any other provision of law.

13 **SEC. 107. MORATORIUM ON CERTAIN PUBLICATIONS.**

14 Notwithstanding any other provision of this Act, no
15 agency shall make any publication described in clause (i)
16 or (ii) of section 101(c)(1)(A) until the initial chairperson
17 appointed under section 101 has had an adequate oppor-
18 tunity to review the subject proposed rule in accordance
19 with section 101(c)(1)(A).

20 **TITLE II—PEER REVIEW SURVEY**

21 **SEC. 201. PEER REVIEW SURVEY.**

22 (a) IN GENERAL.—If a review panel makes a rec-
23 ommendation in any report submitted under section
24 105(a) that a survey should be conducted with respect to
25 a significant rule, the agency shall contract with a private
26 sector auditing firm or other survey-related organization

1 to conduct a survey of a cross-section of the small busi-
2 nesses impacted by the rule.

3 (b) CONTENTS OF SURVEY.—Each survey conducted
4 under this section shall address the impact of the signifi-
5 cant rule on small businesses, including—

6 (1) the applicability of the rule to various small
7 businesses;

8 (2) the degree to which the rule is easy to read
9 and comprehend;

10 (3) the costs to implement the rule;

11 (4) any recordkeeping requirements imposed by
12 the rule; and

13 (5) any other technical or general issues related
14 to the rule.

15 (c) AVAILABILITY OF SURVEY RESULTS.—The re-
16 sults of each survey conducted under this section shall be
17 made available—

18 (1) to each interested Federal agency; and

19 (2) upon request, to any other interested party,
20 including organizations, individuals, State and local
21 governments, and the Congress.

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HR 1937 IH—2