

104<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 917

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.

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## IN THE SENATE OF THE UNITED STATES

JUNE 13 (legislative day, JUNE 5), 1995

Mr. DOMENICI (for himself and Mr. BOND) introduced the following bill;  
which was read twice and referred to the Committee on Small Business

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## 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

18 (B) with respect to the Occupational Safe-  
19 ty and Health Small Business Advocacy Review

1 Panel, the Assistant Secretary for Occupational  
2 Safety and Health of the Department of Labor.

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

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

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

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

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

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

24 (7) REVIEW PANEL.—The term “review panel”  
25 means—

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

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

11 (8) RULE.—The term “rule”—

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

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

21 (9) SIGNIFICANT RULE.—The term “significant  
22 rule” means any rule proposed by an agency that  
23 the chairperson, in consultation with the Adminis-  
24 trator of the Office of Information and Regulatory

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

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

7 (B) an impact on small businesses.

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

## 12 **TITLE I—SMALL BUSINESS** 13 **ADVOCACY REVIEW**

### 14 **SEC. 101. SMALL BUSINESS ADVOCACY CHAIRPERSONS.**

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

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

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

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

11      (b) CHAIRPERSON OF OSHA REVIEW PANELS.—

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

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

9           (c) DUTIES OF THE CHAIRPERSON.—

10           (1) INITIAL DETERMINATION AND NOTIFICA-  
11 TION.—

12           (A) TIMING.—The chairperson shall take  
13 the actions described in subparagraph (B) not  
14 later than 45 days before the earlier of—

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

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

23           (B) ACTIONS.—With respect to a proposed  
24 rule that is the subject of a publication de-

1 scribed in clause (i) or (ii) of subparagraph (A),  
2 the chairperson shall—

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

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

13 (2) ESTABLISHMENT OF REVIEW PANELS.—

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

23 (B) EXCEPTIONS.—A review panel shall be  
24 established in accordance with subparagraph  
25 (A) unless the chairperson, in consultation with



1 the Chief Counsel for Advocacy, determines  
2 (and notifies the agency in writing of such de-  
3 termination) that—

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

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

13 (d) DUTIES REGARDING FINAL RULE.—

14 (1) IN GENERAL.—Not later than 45 days be-  
15 fore the issuance of a final rule, the chairperson  
16 shall—

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

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

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

24 (D) if the chairperson determines that  
25 such action is necessary, call one or more meet-

1           ings of the review panel and, if a quorum is  
2           present, direct the review panel to review, dis-  
3           cuss, or clarify any issue related to the subject  
4           final rule or the preparation of the report under  
5           paragraph (2).

6           (2) REPORT.—Except as provided in section  
7           105(b), not later than 5 days before the issuance of  
8           a final rule, the chairperson shall submit a report in  
9           accordance with section 105(a).

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

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

16           (1) provide technical guidance to the agency, in-  
17           cluding guidance relating to—

18           (A) the applicability of the proposed rule  
19           to small businesses;

20           (B) enforcement of and compliance with  
21           the rule by small businesses;

22           (C) the consistency or redundancy of the  
23           proposed rule with respect to other Federal,  
24           State, and local regulations and recordkeeping  
25           requirements imposed on small businesses; and

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

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

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

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

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

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

23 (b) MEMBERSHIP.—Each review panel shall be com-  
24 posed of—

25 (1) the chairperson;

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

5           (3) 1 member appointed by the Administrator  
6 of the Office of Information and Regulatory Affairs  
7 within the Office of Management and Budget from  
8 among the employees of that office who have specific  
9 knowledge of or responsibilities relating to the regu-  
10 latory responsibilities of the agency that would be  
11 responsible for carrying out the subject significant  
12 rule;

13           (4) 1 member appointed by the Chief Counsel  
14 for Advocacy from among the employees of the Of-  
15 fice; and

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

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

21                 (B) small business sectors or industries  
22 that would be especially impacted by the signifi-  
23 cant rule; or

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

1 (c) PERIOD OF APPOINTMENT; VACANCIES.—

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

8 (2) VACANCIES.—Any vacancy on a review  
9 panel shall not affect the powers of the review panel,  
10 but shall be filled in the same manner as the origi-  
11 nal appointment.

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

15 (e) MEETINGS.—

16 (1) IN GENERAL.—Subject to paragraph (2),  
17 the meetings of the review panel shall be at the call  
18 of the chairperson.

19 (2) INITIAL MEETING.—Not later than 15 days  
20 after all review panel members necessary to con-  
21 stitute a quorum have been appointed under sub-  
22 section (b), the chairperson shall conduct the initial  
23 meeting of the review panel.

24 (f) POWERS OF REVIEW PANEL.—

1 (1) INFORMATION FROM FEDERAL AGENCIES.—

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

8 (2) POSTAL SERVICES.—A review panel may  
9 use the United States mails in the same manner and  
10 under the same conditions as other departments and  
11 agencies of the Federal Government.

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

13 (a) NONCOMPENSATION OF MEMBERS.—

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

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

22 (b) DETAIL OF GOVERNMENT EMPLOYEES.—Any  
23 Federal Government employee may be detailed to a review  
24 panel without reimbursement, and such detail shall be

1 without interruption or loss of civil service status or privi-  
2 lege.

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

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

9 **SEC. 105. REPORT.**

10 (a) IN GENERAL.—Except as provided in subsection  
11 (b), the chairperson shall, in accordance with section  
12 101(d)(2), submit to the appropriate employees of the  
13 agency who would be responsible for carrying out the sub-  
14 ject significant rule and to the appropriate committees of  
15 the Senate and the House of Representatives a report,  
16 which shall include—

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

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

1 (A) if so—

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

6 (ii) any recommendations of the re-  
7 view panel regarding the contents of the  
8 survey; and

9 (B) if not, the reasons why such a survey  
10 is not recommended.

11 (b) FAILURE TO SUBMIT REPORT.—If the chair-  
12 person fails to submit a report under subsection (a), not  
13 later than the date on which the final rule is issued, the  
14 chairperson shall—

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

17 (2) submit a copy of such written record to the  
18 head of the agency and to the appropriate commit-  
19 tees of the Senate and the House of Representatives.

20 **SEC. 106. APPLICABILITY OF OTHER LAW; JUDICIAL RE-**  
21 **VIEW.**

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



1 (b) PROHIBITION ON JUDICIAL REVIEW.—No action  
2 or inaction of a review panel, including any recommenda-  
3 tions or advice of a review panel or any procedure or proc-  
4 ess of a review panel, may be subject to judicial review  
5 by a court of the United States under chapter 7 of title  
6 5, United States Code, or any other provision of law.

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

8 Notwithstanding any other provision of this Act, no  
9 agency shall make any publication described in clause (i)  
10 or (ii) of section 101(c)(1)(A) until the initial chairperson  
11 appointed under section 101 has had an adequate oppor-  
12 tunity to review the subject proposed rule in accordance  
13 with section 101(c)(1)(A).

14 **TITLE II—PEER REVIEW SURVEY**

15 **SEC. 201. PEER REVIEW SURVEY.**

16 (a) IN GENERAL.—If a review panel makes a rec-  
17 ommendation in any report submitted under section  
18 105(a) that a survey should be conducted with respect to  
19 a significant rule, the agency shall contract with a private  
20 sector auditing firm or other survey-related organization  
21 to conduct a survey of a cross-section of the small busi-  
22 nesses impacted by the rule.

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

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

3           (2) the degree to which the rule is easy to read  
4 and comprehend;

5           (3) the costs to implement the rule;

6           (4) any recordkeeping requirements imposed by  
7 the rule; and

8           (5) any other technical or general issues related  
9 to the rule.

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

13           (1) to each interested Federal agency; and

14           (2) upon request, to any other interested party,  
15 including organizations, individuals, State and local  
16 governments, and the Congress.

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