

SMALL BUSINESS REVIEW PANEL TECHNICAL
AMENDMENTS ACT OF 1999

—
MAY 25, 2000.—Ordered to be printed
—

Mr. TALENT, from the Committee on Small Business,
submitted the following

REPORT

[To accompany H.R. 1882]

[Including cost estimate of the Congressional Budget Office]

The Committee on Small Business, to whom was referred the bill (H.R. 1882) to amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 to ensure full analysis of potential impacts on small entities of rules proposed by certain agencies, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE

The purpose of H.R. 1882 is to amend provisions of law enacted by the Small Business Regulatory Enforcement Fairness Act of 1996 to ensure the full analysis of potential impacts on small entities of rules proposed by certain agencies. Specifically, it makes several technical amendments to the small business advocacy review panel process, which is codified in section 609 of the Regulatory Flexibility Act (Chapter 6 of Title 5, United States Code). It also adds the Internal Revenue Service as one of the covered agencies that must convene small business advocacy review panels.

NEED FOR LEGISLATION

The development of H.R. 1882 has been a two-year effort spearheaded by the work of the Subcommittee on Regulatory Reform and Paperwork Reduction and the Subcommittee on Government Programs and Oversight, which have held three joint hearings on the Small Business Advocacy Review Panel Process. The Subcommittees also commissioned a General Accounting Office (GAO) report that examined how the panel process was being imple-

mented. The oversight hearings by the Subcommittees, as well as the GAO report, revealed several areas in which the panel process could be clarified and strengthened. H.R. 1882 reflects these changes.

The General Accounting Office interviewed a number of small entity representatives who had participated in the panel process. Based on these interviews, as well as input from the participating agencies, the GAO report contained several suggestions about how the panel process could be strengthened. These suggestions primarily focused on the following four issues: (1) adjusting the time frames in which the panels are conducted, (2) ensuring that there is an adequate mix of representatives from the small entities that could be affected by the rule, (3) enhancing the methods that the panels used to gather comments, and (4) improving the background materials provided by the regulatory agencies.

Issues of panel process timing were one area that GAO highlighted. Several small entity representatives who had participated in the panel process said that they would have liked to have had more advance notice of panel meetings and telephone conference calls with the panels. Some of these representatives said that short advance notice had prevented them from participating in certain efforts. One individual, who had been identified as a possible small entity representative, said that short notice of these meetings prevented him from participating in the panel process at all. Most of those who voiced this concern said that they would have liked additional notice for panel meetings and telephone conference calls to avoid conflicts with other scheduled commitments.

Other small entity representatives that were interviewed said that they felt that they were not given enough time to study the materials that were provided to them by the covered agency. Many of these small entity representatives also said that an additional one to two weeks would have allowed them to consult with others (e.g., members of their professional associations) before providing comments. One small entity representative said that requiring comments from the representatives shortly after they receive materials from the agencies prevents them from providing the panels with an in-depth perspective regarding the draft rule.

To address these concerns, H.R. 1882 requires the covered agency to wait at least 30 days after information is provided to the small entity representatives before convening a review panel in order to provide time to review the materials that are provided to them and to make any necessary scheduling adjustments.

Another issue raised by the GAO report was the composition of individuals who are chosen to be small entity representatives (SERs). A consensus emerged that the best mix of small entity representatives is one that includes both individual small business owners and representatives from associations and other regulatory consultants that represent the interests of small entities. The individual small business owners provide valuable "hands-on" insights, while association representatives and other regulatory consultants generally have more resources available to devote to examining the proposed rule and have, in many cases, more expertise to understand the often technical nature of proposed regulations.

H.R. 1882 addresses this by ensuring that the agency has the authority to identify both sets of individuals to participate as small

entity representatives. Additionally, requiring the Chief Counsel for Advocacy to concur with each small entity representative chosen by the agency, as the legislation does, provides an added check on the selection process to help ensure that a good mix of SERs is identified.

Another issue that was raised as a result of the GAO report was the method that the review panels use to collect advice and recommendations from the small entity representatives. For the most part, the review panels have relied on telephone conference calls with the SERs to gather input during the panel process. While most SERs said that they viewed telephone conference calls as an efficient way for the review panel to gather comments, others felt that telephone conference calls limited the amount of discussion that could take place between themselves and the panel.

Most of these small entity representatives also expressed a preference for face-to-face meetings instead of telephone conference calls because they believed the discussions would be fuller and would provide greater value to the panels. When telephone conference calls were used, some small entity representatives said they found it confusing when there were numerous participants on the phone at once. One of these representatives, for example, suggested setting an agenda to clarify participation in the telephone conference calls.

H.R. 1882 helps to address this issue by requiring the review panel to accommodate requests for face-to-face oral presentations. This will help to ensure that the small entity representatives who wish to devote the time and resources to making face-to-face presentations will have the ability to participate to the fullest extent. It also recognizes that conference calls are still probably the most efficient way to gather recommendations in a timely manner, and allows review panels the ability to continue using the current method of obtaining comments from the SERs.

One issue that was raised by the GAO report, but was not addressed in the legislation was the issue of what materials the agency should provide to the small entity representatives and the review panel. Many small entity representatives who have participated on panels said the materials that the agencies provided to them about the draft rules permitted an intelligent and informed discussion of the rules' potential effects on small entities. However, other representatives said they believed that the materials that the regulatory agencies provided could have been improved, indicating that they believed the materials were too vague or did not provide enough information regarding the potential economic impact on small entities.

The Committee considered specifying what material were expected to be given to the small entity representatives. However, because there was no consensus as to what exact materials would be appropriate, the Committee did not address this issue in the legislation, leaving the agencies to continue providing materials in the manner that they currently do. Nevertheless, the Committee does expect the agency to provide materials that will allow the SERs to be meaningful participants in the panel process. This includes, when the information is available, a description of the major components of the draft proposed rule; regulatory alternatives that the agency is considering; economic analyses, and other data on the

cost, cost effectiveness, and benefits of the proposed rule; and a description of the number and type of small entities affected.

The Committee also recognizes that this type of information is now always available for review, particularly given the time constraints that the panel must operate under and the time constraints that the rulemaking process often imposes. Therefore, it is the hope of the Committee that the agencies represented on the review panel will work collaboratively to determine what information is necessary and available for review both by the panel and the small entity representatives. It is also expected that the covered agency will provide additional material when requested to do so after the review panel has been convened, provided that the materials requested are reasonable and accessible.

The final major change that H.R. 1882 makes is that it requires the Internal Revenue Service (IRS) to meet the requirements of the panel process. The addition of the IRS to this process reflects the many complaints that this Committee has received from small businesses across the nation that the IRS, when developing regulations, repeatedly ignores small businesses' unique requirements. It is also done with the understanding that the IRS has historically been abysmal in meeting the requirements of the Regulatory Flexibility Act.

By extending the SBREFA panel process to the IRS, we are helping small businesses deal with one of the most troublesome agencies they face. The IRS places one of the largest burdens on small businesses. The goal of H.R. 1882 is to bring the IRS regulation-making process into the light of day, and open it up to discussion. Small businesses must be allowed to participate in the dialogue. They must be a part of the process. Anything less is unfair—especially when it involves an institution like the IRS, which has a major impact on small businesses.

It is the Committee's hope that adding the IRS as a covered agency under the panel process will reinforce to the agency the strong desire of the Congress to see that they fully consider the impact of their regulations on small businesses. This is something that the Committee will continue to monitor in the future.

COMMITTEE ACTION

The Committee on Small Business has held a series of hearings that examined the small business advocacy review panel process that was established by the Small Business Regulatory Enforcement Fairness Act (SBREFA). These hearings were held jointly by the Subcommittee on Regulatory Reform and Paperwork Reduction and the Subcommittee on Government Programs and Oversight. They span a time period of over two years.

The first of these hearings was held over two days, On April 15 and April 17, 1997. The hearing focused on the need for good science in rulemaking and the use of cost-benefit and risk analysis as essential management tools in the regulatory process. The hearing also focused on the implementation and performance of the Environmental Protection Agency (EPA), the Occupational Safety and Health Administration (OSH), and the Small Business Administration (SBA) Chief Counsel for Advocacy of the statutory requirements of the small business advocacy review panel process. The new provisions added by SBREFA to the Regulatory Flexibility Act

required EPA and OSHA to implement a panel process for considering and responding fairly to the advice and recommendations of small businesses concerning the impact and efficacy of proposed regulations.

This first hearing was comprised of four panels. The first panel included distinguished scientists that emphasized the need for good science in rulemaking and the availability of scientific expertise in the United States. The second and third panels included a number of small business owners who underscored the adverse economic impacts that ill-conceived regulations can have on the small business community. The fourth panel was comprised by government witnesses, including: Jere W. Glover, Chief Counsel for Advocacy, Small Business Administration; Thomas E. Kelly, Chair, Small Business Advocacy, Environmental Protection Agency; Robert Burt, Office of Regulatory Analysis, U.S. Department of Labor, and Keith Cole of the law firm of Beveridge & Diamond.

The testimony of the fourth panel focused solely on how the advocacy review panel requirements were being implemented. Both the provisions of the panel process that were working well, as well as the ones where difficulties were being experienced were highlighted.

The second joint subcommittee hearing was held on March 18, 1998. This hearing focused generally on the need for good science and common sense rulemaking and the unfair financial burdens borne by small businesses all over the Nation as a result of unscientific, impractical, and unnecessary regulations. More specifically, it examined how the small business advocacy review panel process was working at the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Small Business Administration.

In addition to receiving testimony from a number of individuals who had participated in a small business advocacy review panel, the Subcommittees heard once again from the representatives of the agencies with responsibility for implementing the review panels. The witnesses included Jere W. Glover, Chief Counsel for Advocacy, Small Business Administration; Thomas E. Kelly, Chair, Small Business Advocacy, Environmental Protection Agency; and Greg Watchman, Deputy Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor. There was a consensus among the witnesses that the panel process was working fairly well, and should be continued. However, there were also a number of issues that were raised that demonstrated where changes to the panel process were worthy of consideration. Specifically, the Office of Advocacy of the Small Business Administration was of the view that the panel process provided new leverage in its efforts to ensure that the regulatory culture among the agencies fully understood the problems caused small businesses by arbitrary and ill-conceived regulations. Additionally, both EPA and OSHA indicated that they found merit in the panel process.

The final joint hearing on this issue was held on March 11, 1999. The hearing was comprised of one panel of witnesses that had direct experience with the small business advocacy review panel process. The hearing focused on past experiences with actual review panels that had been convened by EPA and OSHA. It also ex-

amined draft legislation that had been developed to amend the panel process requirements of the Regulatory Flexibility Act.

The one other resource that the Committee used in its development of H.R. 1882 was a report that was completed by the General Accounting Office (“Regulatory Reform: Implementation of the Small Business Advocacy Review Panel Requirements,” GAO–GGD–98–36, March 1998).

This report responded to requests that EPA’s and OSHA’s implementation of SBREFA’s advocacy review panel requirements be examined. GAO’s specific objectives were to (1) determine whether EPA and OSHA had applied the advocacy review panel requirements to all rules that they proposed between June 28, 1996 and June 28, 1997, that may have a significant economic impact on a substantial number of small entities; (2) determine whether the EPA and OSHA panels, the regulatory agencies themselves, and SBA’s Chief Counsel for Advocacy followed the statute’s procedural requirements for panels convened between June 28, 1996 and November 1, 1997, and whether there were differences among the panels in how the statute’s requirements were implemented; (3) identify the changes, if any, that EPA and OSHA made to notices of proposed rulemaking as a result of the panels’ recommendations; and (4) identify any suggestions that agency officials and small entity representatives may have regarding how the advocacy review panel process could be improved.

The Committee was pleased with the analysis and the recommendations that GAO developed as a result of its examination of agency practices. In particular, GAO offered suggestions that focused on four primary issue areas: (1) adjusting the time frames in which the panels are conducted, (2) ensuring that there is an adequate mix of representatives from the small entities that could be affected by the rule, (3) enhancing the methods that the panels used to gather comments, and (4) improving the background materials provided by the regulatory agencies. These comments were based on recommendations from both small entity representatives and agency officials, and were a primary source of information for the development of H.R. 1882.

H.R. 1882 was introduced on May 20, 1999. On May 25, 1999, the Committee on Small Business met for the purpose of considering and reporting H.R. 1882. H.R. 1882 was introduced, considered as read, and opened for amendment. No amendments were offered. Chairman Talent moved to pass H.R. 1882 and report it to the House. At 2:15 p.m., by voice vote, a quorum being present, the Committee passed the bill, H.R. 1882, and ordered it reported.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Designates the bill as the “Small Business Review Panel Technical Amendments Act of 1999.”

Section 2. Findings and purposes

(a) The Congress finds the following:

(1) A vibrant and growing small business sector is critical to creating jobs in a dynamic economy.

(2) Small businesses bear a disproportionate share of regulatory costs and burdens.

(3) Federal agencies must consider the impact of their regulations on small businesses early in the rulemaking process.

(4) The Small Business Advocacy Review Panel process that was established by the Small Business Regulatory Enforcement Fairness Act of 1996 has been effective in allowing small businesses to participate in rules that are being developed by the Environmental Protection Agency and the Occupational Safety and Health Administration.

(b) The purposes of this Act are the following:

(1) To provide a forum for the effective participation of small businesses in the Federal regulatory process.

(2) To clarify and strengthen the Small Business Advocacy Review Panel process.

(3) To expand the number of Federal agencies that are required to convene Small Business Advocacy Review Panels.

Section 3. Ensuring full analysis of potential impacts on small entities of rules proposed by certain agencies

Section 3 rewrites section 609(b) of the Regulatory Flexibility Act (Chapter 6 of Title 5, United States Code), making several technical amendments to small business advocacy review panel process.

First, it clarifies who has responsibility for choosing the small entity representatives (SERs). The current statute allows both the Chief Counsel for Advocacy and the agency to identify small entity representatives. This dual appointment method causes confusion and weakens accountability over the small entity representative appointment procedure. The legislation corrects this by specifying that it is the agency's responsibility to choose the small entity representatives, but requires the Chief Counsel to concur with each SER identified by the agency.

Second, it clarifies that the covered agency cannot convene the review panel until at least 30 days after the covered agency transmits information about the draft proposed rule to the small entity representatives. This is designed to address the problem that small entity representatives identified of not having enough time to review the information that was provided to them. Under this change, the small entity representatives would have at least 30 days to review the information provided to them. This change would also give the agency promulgating the rule some flexibility in deciding when to convene its review panel, while at the same time not unnecessarily delaying the process.

Third, it clarifies that a small entity representative shall have the opportunity to give an oral presentation to the review panel if the small entity representative so desires.

Fourth, it changes the way in which the final report of the review panel is handled. Currently, there is no requirement that the report of the review panel be printed in the *Federal Register*. Nor is there any requirements as to when the report of the review panel should be made public as part of the rulemaking record. As a practical matter, not everyone can come to Washington, DC, to inspect a covered agency's rulemaking record. The legislation merely requires that the report of the review panel be printed in the *Federal Register* within 120 days. A number of those who have par-

ticipated in the panel process have complained that they did not know whether their advice and recommendations were addressed by the covered agency because the panel report was not made public in a timely manner. The legislation corrects this situation by requiring a covered agency to print the report of the review panel in the Federal Register together with the notice of proposed rule-making, or as a separate item if the notice of proposed rulemaking occurs more than 120 days after the report is completed.

Section 4. Definitions

Section 4 amends section 609(d) of the Regulatory Flexibility Act (Chapter 6 of Title 5, United States Code) to include the Internal Revenue Service of the Department of the Treasury as one of the covered agencies that must convene small business advocacy review panels. Currently, the advocacy review panel requirements only apply to the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.

Section 4 also defines the term "small entity representative" to mean a small entity, which is already defined in the Regulatory Flexibility Act, or an individual or organization that represents a small entity. This clarification was made in the legislation to underscore the fact that representatives from small business associations and other trade groups, as well as regulatory consultants, often have more resources and expertise available to participate in the panel process than do individual and small entities. There is no disagreement that actual small business owners bring experience and insights that are vital to a successful review panel. However, representatives of trade associations and other regulatory consultants who represent the interests of small entities can also be valuable participants that should not be excluded from the panel process.

Section 5. Effective date

This section states that the changes made by H.R. 1882 shall take effect ninety days after the legislation is enacted.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 28, 1999.

Hon. JAMES M. TALENT,
Chairman, Committee on Small Business,
U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1882, the Small Business Review Panel Technical Amendments Act of 1999.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley and Cynthia Dudzinski.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, *Director*).

Enclosure.

H.R. 1882—Small Business Review Panel Technical Amendments Act of 1999

CBO estimates that implementing H.R. 1882 would cost about \$2 million each year over the 2000–2004 period, assuming appropriation of the necessary amounts. H.R. 1882 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

Under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), the Environmental Protection Agency (EPA) and the Occupational Safety and Health Administration (OSHA) must convene panels, prior to publishing regulations, to analyze the potential impact of those regulations on small businesses. Panels consist of employees of the agency proposing the regulation, the Small Business Administration (SBA), and the Office of Management and Budget (OMB). Panels collect advice from representatives of the small business that would be affected and submit a report to the agency proposing the regulation.

H.R. 1882 would amend SBREFA to include the Internal Revenue Service (IRS), thus requiring that agency to convene panels to analyze some of the regulations it intends to issue. The bill also would change the panel process by allowing small business representatives to make oral presentations to panels, extending the period of review, requiring agencies to print reports by panels in the Federal Register, and making agencies provide more information.

Based on the number of regulations the IRS expects to issue each year and the experiences of EPA and OSHA, CBO estimates that implementing H.R. 1882 would cost the IRS less than \$2 million a year. (We expect that the bill would apply to fewer than 10 IRS regulations each year.) In addition, CBO estimates that implementing the changes to the panel review process would cost EPA, OSHA, OMB, and SBA less than \$500,000 a year.

The CBO staff contacts are Mark Hadley and Cynthia Dudzinski. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Pursuant to the Congressional Budget Act of 1974, the Committee estimates that the amendments to the Regulatory Flexibility Act contained in H.R. 1882 will not increase appropriations over the next five fiscal years. Furthermore, pursuant to clause 3(d)(2)(A) of rule XIII of the Rules of the House of Representatives, the Committee estimates that implementation of H.R. 1882 will not significantly increase administrative costs. This is consistent with the estimate of the Congressional Budget Office.

DISCHARGE BY COMMITTEE ON THE JUDICIARY

U.S. HOUSE OF REPRESENTATIVES,
 COMMITTEE ON THE JUDICIARY,
Washington, DC, May 26, 1999.

Hon. JAMES TALENT,
*Chairman, Committee on Small Business,
 U.S. House of Representatives, Washington, DC.*

DEAR CHAIRMAN TALENT: I am writing to you regarding H.R. 1882, legislation that was ordered reported by your Committee on May 25, 1999. As you know, H.R. 1882 was referred to both the Committee on the Judiciary and your Committee because its provisions fall within the Rule X jurisdiction of each of our committees.

The Judiciary Committee does not object to the substance of H.R. 1882 as ordered reported by your committee. In fact, the language of the bill was developed through consultation between our respective staffs, and reflects the judgment of this committee. For this reason, and in order to expedite scheduling of this legislation on the House floor, the Committee is willing to be discharged from further consideration of the bill. However, this does not in any way waive this Committee's jurisdiction over the bill or related legislation, or over the general subject matters contained in the bill which fall within this Committee's jurisdiction. I also reserve the right to request that Members of the Judiciary Committee be appointed to serve on any conference committee appointed with respect to this legislation.

Thank you for your continued cooperation in this and other matters falling within our joint jurisdiction.

Sincerely,

HENRY J. HYDE,
Chairman.

OVERSIGHT FINDINGS

In accordance with clause 4(c)(2) of rule X of the Rules of the House of Representatives, the Committee states that no oversight findings or recommendations have been made by the Committee on Government Reform with respect to the subject matter contained in H.R. 1882.

In accordance with clause (2)(b)(1) of the rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee on Small Business with respect to the subject matter contained in H.R. 1882 are incorporated into the descriptive portions of this report.

STATEMENT OF CONSTITUTIONAL AUTHORITY

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds the authority for this legislation in Article I, Section 8, clause 18, of the Constitution of the United States.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 609 OF TITLE 5, UNITED STATES CODE

§ 609. Procedures for gathering comments

(a) * * *

[(b) Prior to publication of an initial regulatory flexibility analysis which a covered agency is required to conduct by this chapter—

[(1) a covered agency shall notify the Chief Counsel for Advocacy of the Small Business Administration and provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected;

[(2) not later than 15 days after the date of receipt of the materials described in paragraph (1), the Chief Counsel shall identify individuals representative of affected small entities for the purpose of obtaining advice and recommendations from those individuals about the potential impacts of the proposed rule;

[(3) the agency shall convene a review panel for such rule consisting wholly of full time Federal employees of the office within the agency responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs within the Office of Management and Budget, and the Chief Counsel;

[(4) the panel shall review any material the agency has prepared in connection with this chapter, including any draft proposed rule, collect advice and recommendations of each individual small entity representative identified by the agency after consultation with the Chief Counsel, on issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c);

[(5) not later than 60 days after the date a covered agency convenes a review panel pursuant to paragraph (3), the review panel shall report on the comments of the small entity representatives and its findings as to issues related to subsections 603(b), paragraphs (3), (4) and (5) and 603(c), provided that such report shall be made public as part of the rulemaking record; and

[(6) where appropriate, the agency shall modify the proposed rule, the initial regulatory flexibility analysis or the decision on whether an initial regulatory flexibility analysis is required.]

(b)(1) Before the publication of an initial regulatory flexibility analysis that a covered agency is required to conduct under this chapter, the head of the covered agency shall—

(A) notify the Chief Counsel for Advocacy of the Small Business Administration (in this subsection referred to as the “Chief Counsel”) in writing;

(B) provide the Chief Counsel with information on the potential impacts of the proposed rule on small entities and the type of small entities that might be affected; and

(C) not later than 30 days after complying with subparagraphs (A) and (B)—

(i) with the concurrence of the Chief Counsel, identify affected small entity representatives; and

(ii) transmit the information referred to in subparagraph (B) to the identified small entity representatives for the purposes of obtaining advice and recommendations about the potential impacts of the draft proposed rule.

(2)(A) Not earlier than 30 days after the covered agency transmits information pursuant to paragraph (1)(C)(ii), the head of the covered agency shall convene a review panel for the draft proposed rule. The panel shall consist solely of full-time Federal employees of the office within the covered agency that will be responsible for carrying out the proposed rule, the Office of Information and Regulatory Affairs of the Office of Management and Budget, and the Chief Counsel.

(B) The review panel shall—

(i) review any material the covered agency has prepared in connection with this chapter, including any draft proposed rule;

(ii) collect advice and recommendations from the small entity representatives identified under paragraph (1)(C)(i) on issues related to paragraphs (3), (4), and (5) of section 603(b) and section 603(c); and

(iii) allow any small entity representative identified under paragraph (1)(C)(i) to make an oral presentation to the panel, if requested.

(C) Not later than 60 days after the date a covered agency convenes a review panel pursuant to this paragraph, the review panel shall report to the head of the covered agency on—

(i) the comments received from the small entity representatives identified under paragraph (1)(C)(i); and

(ii) its findings regarding issues related to paragraphs (3), (4), and (5) of section 603(b) and section 603(c).

(3) The head of the covered agency shall print in the Federal Register the report of the review panel under paragraph (2)(C), by the earlier of—

(A) 120 days after the date the head of the covered agency receives the report; or

(B) as part of the publication of the notice of proposed rule-making for the proposed rule.

(4) Where appropriate, the covered agency shall modify the draft proposed rule, the initial regulatory flexibility analysis for the draft proposed rule, or the decision on whether an initial regulatory flexibility analysis is required for the draft proposed rule.

* * * * *

[(d) For purposes of this section, the term “covered agency” means the Environmental Protection Agency and the Occupational Safety and Health Administration of the Department of Labor.]

(d) For the purposes of this section—

(1) the term “covered agency” means the Environmental Protection Agency, the Occupational Safety and Health Administration of the Department of Labor, and the Internal Revenue Service of the Department of the Treasury; and

(2) *the term “small entity representative” means a small entity, or an individual or organization that represents a small entity.*

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