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United States Senate
COMMITTEE ON SMALL BUSINESS
WASHINGTON, DC 20510–6350

April 19, 1999

The Honorable William M. Daley
Secretary
Department of Commerce
Herbert C. Hoover Building
Fourteenth and Constitution Avenues, N.W.
Washington D.C. 20230

Dear Dear Mr. Secretary:

Today I released a report by the U.S. General Accounting Office (GAO) entitled, *Regulatory Flexibility Act: Agency Interpretations Vary* (Report). I asked GAO to prepare this Report to update its prior reports, which have regrettably documented a pattern and practice of agency noncompliance with the requirements of Section 610(c) of the Regulatory Flexibility Act of 1980 (Reg Flex Act). In addition, the Report expands the review to agency compliance with the periodic review of rules under Section 610 generally.

As you are aware, Section 610 requires each agency to publish in the *Federal Register* a plan for the periodic review of its rules with a significant economic impact on a substantial number of small entities. For rules existing on the effective date of the Reg Flex Act, the plan must provide for a review within 10 years. For rules issued after the law's effective date, the plan must provide for a review within 10 years of their publication as a final rule. Section 610(c) requires agencies to publish a notice that includes a list of the existing rules, which are to be reviewed during the next 12 months. The notice must include a brief description of each rule, the need for and legal basis of the rule, as well as invite the public to comment on the rule.

Based on GAO's Report, it appears that the Department of Commerce (Department) has consistently issued regulations with a significant economic impact on a substantial number of small entities. However, the Department did not have any Section 610 review entries in the editions of the Unified Agenda reviewed by GAO. This suggests that the Department is not complying with the requirements of Section 610.

As Chairman of the Senate Committee on Small Business, I am committed to ensuring that federal agencies comply with their statutory obligations under the Reg Flex Act and the Small Business Regulatory Enforcement Fairness Act, which amended Reg Flex in 1996. To assist this Committee in its oversight of the implementation of these important laws, I request a thorough and detailed response with the legal explanation for why the Department is not conducting the periodic reviews required in Section 610. In

addition, please provide a list of the final rules with a significant economic impact on a substantial number of small entities that were issued by the Department between 1988 and 1998. Second, please confirm whether or not these rules were reviewed by the Department in accordance with Section 610. Finally, please provide a copy of the *Federal Register* notice, or the citation for each notice, published by the Department in compliance with Section 610(c). I would appreciate receiving this information by May 6, 1999.

As one of the seven agencies recognized by GAO for failing to include any Section 610 review entries in the two most recent editions of the Unified Agenda, the Department is the recipient of the enclosed "Plumber's Best Friend Award." This plunger symbolizes the need to unclog the regulatory process and to provide small entities with the treatment intended by Congress when it passed the Reg Flex Act and my Small Business Regulatory Enforcement Fairness Act. With improved Congressional oversight and judicial review, I trust federal agencies will take their statutory obligations under these laws more seriously.

Thank you for your assistance in responding to this request. If you have any questions regarding this letter, please contact me or Suey Howe, the Committee's Regulatory Counsel, at (202) 224-5175.

Sincerely,

Christopher S. Bond
Chairman

Attachment