

EDO Principal Correspondence Control

FROM: DUE: 04/13/05 EDO CONTROL: G20050248
DOC DT: 04/05/05
FINAL REPLY:

Representative Joe Barton

TO:

Chairman Diaz

FOR SIGNATURE OF : ** GRN **

CRC NO: 05-0188

Chairman Diaz

DESC:

ROUTING:

Request Assistance in Providing the Committee
on Energy and Commerce with Documents and
Information Relating to Agency's Compliance with
Section 610 of the Regulatory Flexibility Act

Reyes
Virgilio
Kane
Merschhoff
Silber
Dean
Burns/Cyr
Hagan, ADM

DATE: 04/08/05

ASSIGNED TO: CONTACT:

SBCR Kelley

SPECIAL INSTRUCTIONS OR REMARKS:

Template: SECY-017

E.R.LDS: SECY-01

OFFICE OF THE SECRETARY
CORRESPONDENCE CONTROL TICKET

Date Printed: Apr 08, 2005 09:51

PAPER NUMBER: LTR-05-0188

LOGGING DATE: 04/07/2005

ACTION OFFICE: EDO

AUTHOR: REP Joe Barton

AFFILIATION: REP

ADDRESSEE: CHRM Nils Diaz

SUBJECT: Request assistance in providing the Committee on Energy and Commerce with documents and information relating to agency's compliance with Section 610 of the Regulatory Flexibility Act (RFA)

ACTION: Signature of Chairman

DISTRIBUTION: RF, OCA to Ack

LETTER DATE: 04/05/2005

ACKNOWLEDGED No

SPECIAL HANDLING:

NOTES: Commission Correspondence
Request due date of 04/26/2005

FILE LOCATION: ADAMS

DATE DUE: 04/18/2005

DATE SIGNED:

EDO --G20050248

RALPH M. HALL, TEXAS
 MICHAEL BLUMKIN, FLORIDA
 VICE CHAIRMAN
 FRED UPTON, MICHIGAN
 CLIFF STEARNS, FLORIDA
 PAUL E. GILLMORE, OHIO
 NATHAN DEAL, GEORGIA
 ED WHITFIELD, KENTUCKY
 CHARLIE NORWOOD, GEORGIA
 BARBARA CUBIN, WYOMING
 JOHN SHIMKUS, ILLINOIS
 HEATHER WILSON, NEW MEXICO
 JOHN B. SHADIGG, ARIZONA
 CHARLES W. "CHAP" PICKERING, MISSISSIPPI
 VICE CHAIRMAN
 VITO FOSSELLA, NEW YORK
 ROY BLUNT, MISSOURI
 STEVE BUYER, INDIANA
 GEORGE RADANOVICH, CALIFORNIA
 CHARLES F. BASS, NEW HAMPSHIRE
 JOSEPH R. PITTS, PENNSYLVANIA
 MARY BONO, CALIFORNIA
 OREG WALKER, OREGON
 LEE TERRY, NEBRASKA
 MIKE FERGUSON, NEW JERSEY
 MIKE ROGERS, MICHIGAN
 CL "BUTCH" OTTER, IDAHO
 SUE MYRICK, NORTH CAROLINA
 JOHN SULLIVAN, OKLAHOMA
 TIM MURPHY, PENNSYLVANIA
 MICHAEL C. BLUPGESS, TEXAS
 MARSHA BLACKBURN, TENNESSEE

DJ ALBRIGHT STAFF DIRECTOR

ONE HUNDRED NINTH CONGRESS

U.S. House of Representatives
Committee on Energy and Commerce
 Washington, DC 20515-6115

JOE BARTON, TEXAS
 CHAIRMAN

April 5, 2005

JOHN D. DINGELL, MICHIGAN
 RANKING MEMBER
 HENRY A. WAXMAN, CALIFORNIA
 EDWARD J. MARKEY, MASSACHUSETTS
 RICK BOUCHER, VIRGINIA
 EDOLPHUS TOWNS, NEW YORK
 FRANK PALLONE, JR., NEW JERSEY
 SHERROD BROWN, OHIO
 BART GORDON, TENNESSEE
 BOBBY L. RUSH, ILLINOIS
 ANNA G. ESHOO, CALIFORNIA
 BART STUPAK, MICHIGAN
 EIJOT L. ENGEL, NEW YORK
 ALBERT R. WYNN, MARYLAND
 GENE GREEN, TEXAS
 TED STRICKLAND, OHIO
 DIANA DEGETTE, COLORADO
 LOIS CAPPS, CALIFORNIA
 MIKE DOYLE, PENNSYLVANIA
 TOM ALLEN, MAINE
 JIM DAVIS, FLORIDA
 JAN SCHAKOWSKY, ILLINOIS
 MILDRED L. SOULS, CALIFORNIA
 CHARLES A. GONZALEZ, TEXAS
 JAY INSLEE, WASHINGTON
 TAMMY BALDWIN, WISCONSIN
 MIKE ROSS, ARKANSAS

The Honorable Niles J. Diaz
 Chairman
 U.S. Nuclear Regulatory Commission
 One White Flint North
 11555 Rockville Pike
 Rockville, Maryland 20852

Dear Chairman Diaz:

We write to request your assistance in providing the Committee on Energy and Commerce with documents and information relating to your agency's compliance with Section 610 of the Regulatory Flexibility Act (RFA) of 1980, through which Congress sought to ensure that agencies remain constantly vigilant of opportunities to reduce unnecessarily burdensome rules and regulations on small businesses.

Under Section 610 each federal agency must plan for, and conduct, the periodic review of its rules that have or will have a significant economic impact on a substantial number of such small entities—that is, small businesses, small governmental jurisdictions, and other small organizations. The purpose of these reviews, which must be conducted within ten years of publication of the final rule, is to determine whether each such rule should be continued without change, amended, or rescinded to minimize the economic impact on these organizations.

After 25 years, Section 610 remains the only crosscutting statutory requirement through which federal agencies reexamine certain rules after they have been issued, as the Congressional Research Service (CRS) reports. However, assessments of agency implementation of this requirement by the Government Accountability Office reveal a troubling track record; some agencies have not performed required reviews, others have not implemented the requirements properly, or have defined review criteria so that rules that may significantly affect small entities are not subject to review.

In a March 2005 review, CRS reported that, according to submissions to the *Unified Agenda of Federal Regulatory and Deregulatory Action*, some agencies routinely identify hundreds of new regulatory actions that could have a significant economic impact on a substantial number of small entities (and thus subject to RFA). Yet these very same agencies list a relative handful of planned Section 610 reviews. As CRS notes, it would be reasonable to expect that, because agencies intend to issue a large number of rules each year with a significant effect on

The Honorable Niles J. Diaz

Page 2

small entities, those same agencies would need to reexamine a large number of rules each year under Section 610.

Given the potential for Section 610 review to reduce unnecessarily burdensome regulation, particularly on small businesses and other small organizations, we seek to assess directly how agencies within the Committee's jurisdiction have been implementing Section 610 reviews and to assess the general impact and effectiveness of this requirement for meeting the goals of Congress. To assist us as we begin this review, and pursuant to Rules X and XI of the U.S. House of Representatives, please provide for the time period starting on January 1, 1995 to the present the following documents and answers to questions detailed below on or before Tuesday, April 26, 2005:

1. Please provide a copy of your agency's plans, and related guidance documents, for the periodic review of rules, pursuant to Section 610 of the Regulatory Flexibility Act.
2. Provide a detailed narrative explanation of (a) the steps your agency takes to identify rules and regulations for review under Section 610, (b) how your agency tracks rules that may be subject to Section 610 review, and (c) the analytical process your agency follows to perform Section 610 reviews.
3. Provide a list of all rules that have been reviewed by your agency under Section 610, including the dates upon which notice was provided that the rules were subject to review, when the reviews were completed, the results of those reviews, the specific factors considered (pursuant to Section 610), and reasons for making review decisions.
4. What rules has your agency identified as having "a significant economic impact on a substantial number of small entities," and will those rules be subject to Section 610 review, and if not, why not?
5. What percentage of proposed rules and final rules has your agency certified as not having "a significant economic impact on a substantial number of small entities," pursuant to the Regulatory Flexibility Act?
6. Provide guidance documents used by your agency to assess whether proposed rules could be certified as not having a "significant economic impact on a substantial number of small entities."
7. Identify the offices, job titles, and names of individuals responsible for devising, implementing, and ensuring adherence to procedures for conducting periodic review of rules pursuant to Section 610.

The Honorable Niles J. Diaz


Page 3

Thank you for your assistance. If you have any questions, please contact Peter Spencer of the Majority Committee staff at (202) 226-2424.

Sincerely,



Joe Barton
Chairman



Ed Whitfield
Chairman
Subcommittee on Oversight
and Investigations

cc: The Honorable John Dingell, Ranking Member,
Committee on Energy and Commerce
The Honorable Bart Stupak, Ranking Member,
Subcommittee on Oversight and Investigations