



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

AUG 13 2008

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIR

Mr. Gus Coldebella
Acting General Counsel and Regulatory Policy Officer
Department of Homeland Security
Washington, DC 20528

Dear Mr. Coldebella:

On July 14, 2008, the Department of Homeland Security submitted for Executive Order No. 12866 (EO 12866) review a draft proposed rule entitled, "*Coastwise Transportation of Passengers*." In this draft proposed rule, Customs and Border Protection (CBP) would reinterpret the current definition of a coastwise voyage under the Passenger Vessel Services Act (PVSA) of 1886. Foreign-flag vessels whose voyages begin and end at a U.S. port and stop at foreign port(s) where a large U.S.-flag passenger vessel engages in regular service, would be determined to be in violation of the PVSA unless: 1) the cumulative length of stay at foreign port(s) is more than 50 percent of the total amount of time spent at the intervening U.S. ports; and 2) passengers are permitted to go ashore at the foreign port(s). The current regulations implementing the PVSA do not include a minimum port stop requirement.

In the course of reviewing this draft proposed rule, the Office of Information and Regulatory Affairs has concluded that the draft does not meet several of the basic requirements of EO 12866 and Office of Management and Budget Circular A-4, which require "Federal agencies [to] promulgate only such regulations as are required by law, are necessary to interpret the law, or are made necessary by compelling public need, such as material failures of private markets to protect or improve the health and safety of the public, the environment, or the well-being of the American people." Specifically, this proposal presents no market failure or compelling public need, omits a statement of the costs and benefits of the rulemaking, and does not include a discussion and analysis of regulatory alternatives, significant distributive impacts, or uncertainties. For these reasons, we are returning the draft proposed rule for your reconsideration.

We appreciate your attention to these important issues. My staff is available to assist you should you decide to re-submit this rule.

Sincerely,

Susan E. Dudley
Administrator
Office of Information
and Regulatory Affairs