



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

ADMINISTRATOR
OFFICE OF
INFORMATION AND
REGULATORY AFFAIRS

FEB 11 2004

Ms. Rosalind A. Knapp
Deputy General Counsel
Department of Transportation
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Ms. Knapp:

On November 11, 2003, the Department of Transportation (DOT) submitted a Maritime Administration (MARAD) draft proposed rule titled "Regulations To Be Followed by All Departments, Agencies, and Shippers Having Responsibility to Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels" to the Office of Management and Budget (OMB) for review under Executive Order No. 12866. Currently, 75 percent of cargoes generated by the U.S. Government are statutorily required to be shipped on U.S.-flag vessels. This proposed rule would revise how U.S. shipper agencies comply with this requirement.

A similar draft proposed rule was submitted to OMB on March 18, 2003. At that time, the U.S. Agency for International Development (USAID) and the Department of Agriculture (USDA) raised concerns that MARAD's proposed rule and its numerous provisions would establish requirements inconsistent with Congressional intent and undermine foreign policy objectives by diverting millions of food dollars to transportation costs. We returned the proposal to DOT for reconsideration on June 13, 2003, concluding that "the quality of MARAD's supporting regulatory analysis for this rule does not permit adequate analysis of these issues."

In its most recently submitted rule, DOT has still not provided adequate analytic justification for many of the rule's provisions. In addition, there are fundamental policy differences that have not been resolved in the review period and require additional time and consideration. We recommend that MARAD should focus the proposed rule on the single issue of how to define the three categories of vessels specifically mentioned in statute (dry bulk carriers, dry cargo liners, and tankers).

To provide adequate time to address these unresolved concerns, I am returning the draft proposed rule on cargo preference to the Department for your reconsideration. Our staff is available for further discussion with you on the concerns that have been raised. We look forward to working with DOT, USDA, and USAID to improve this important rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "John D. Graham". The signature is fluid and cursive, with a large initial "J" and "G".

John D. Graham
Administrator

Office of Information and Regulatory Affairs