



## AIRCRAFT OWNERS AND PILOTS ASSOCIATION

421 Aviation Way • Frederick, MD 21701-4798  
Telephone (301) 695-2000 • Fax (301) 695-2375  
www.aopa.org

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January 11, 2006

Ms. Lisa Jones  
Office of Information and Regulatory Affairs  
Office of Management and Budget  
725 17th Street, NW.  
New Executive Office Building, Room 9013  
Washington, DC 20503

### **RE: Proposed Bulletin for Good Guidance Practices**

Dear Ms. Jones:

The Aircraft Owners and Pilots Association (AOPA) representing over 407,000 members supports the Office of Management and Budget's (OMB) proposed bulletin for Good Guidance Practices (GGP). AOPA recognizes the importance of public participation in the rulemaking process to avoid unnecessary limits on individual freedom and the disastrous financial consequences to the aviation community that may result from carelessly crafted rules or agency guidance documents.

Unfortunately, and all too often, federal agencies promulgate guidance documents in the form of orders and notices that carry the force of law but deny the public the opportunity to comment or to participate in their development. AOPA recommends that OMB amend its proposed GGP to clarify that a "significant guidance document" includes any document that is used by agency personnel in the interpretation and application of agency rules, such as agency orders and notices.

#### ***FAA Orders and Notices could become rulemaking without notice and comment***

The Federal Aviation Administration's (FAA) Orders and Notices are directives that the FAA uses to issue policy, instructions and work information to its own personnel and designees. FAA Orders and Notices spell out how the FAA expects to carry out its responsibilities on a full range of activities from pilot enforcement actions, developing airworthiness directives to performing aircraft field approvals. These FAA directives have a significant impact on the aviation community and unlike advisory circulars and policy statements; they are issued without the benefit of public comment. FAA Orders and Notices while intended to be workforce instructions on how to interpret regulatory requirements could inadvertently become rulemaking that bypasses regulatory development and review procedures.

#### ***Amend definition of "Significant Guidance Document" to include Orders and Notices***

AOPA asks that OMB include agency directives, orders, notices, and policy statements, in the definition of "significant guidance document" and also clarify that a guidance Ms.

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document need only meet one of the criteria described in (i) through (iv) to be considered a "significant guidance document." AOPA recommends that OMB amend the proposed definition of the term "Significant Guidance Document" to read as follows:

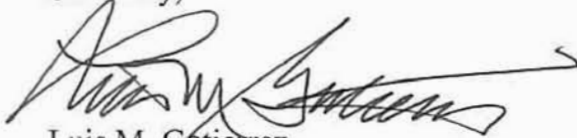
3. The term "significant guidance document" means a guidance document that may:
- (i) Reasonably be anticipated to lead to an annual effect of \$100 million or more or adversely affect in a material way the economy or a sector of the economy; **or**
  - (ii) Raise highly controversial issues related to interagency concerns or important Administration priorities; **or**
  - (iii) Set forth initial interpretations of statutory or regulatory requirements, or changes in interpretation or policy, **including but not limited to, agency directives, orders, notices, and policy statements; or**
  - (iv) Concern novel or complex scientific or technical issues.

Significant guidance documents do not include contractor instructions, legal advisory opinions for internal Executive Branch deliberations, briefs and other litigation positions, speeches, journal articles, editorials, media interviews, press materials, memoranda of understanding, or warning letters.

AOPA shares OMB's concern that agency guidance practices should be more transparent, consistent and accountable. We also agree with OMB that the absence of procedural review mechanisms undermines the lawfulness, quality, fairness and accountability of agency policymaking.

AOPA appreciates OMB's efforts and the opportunity to comment.

Sincerely,



Luis M. Gutierrez  
Director  
Regulatory and Certification Policy