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Ms. Lisa Jones
Office of Information and Regulatory Affairs
Office of Management and Budget
725 17th Street, N.W.
New Executive Office Building, Room 9013
Washington, D.C. 20506-0001

BY E-MAIL (omb_ggp@omb.eop.gov and ljones@omb.eop.gov)

RE: OMB PROPOSED BULLETIN FOR GOOD GUIDANCE PRACTICES

Dear Ms. Jones:

These comments are submitted on behalf of the Associated Equipment Distributors (AED) in response to the proposed "Bulletin for Good Guidance Practices" published in the Federal Register on November 30, 2005. AED is an international trade association based in Oak Brook, Illinois, representing 1,200 construction equipment distributors, manufacturers and industry-service firms. AED members sell, service, and rent equipment and engines used in heavy and light construction, mining, agriculture, forestry, aggregates, and industrial applications.

Our association thanks the Office of Management and Budget (OMB) for recognizing the impact that guidance material issued by federal regulatory agencies has on the regulated community. We agree with the OMB that transparency in the guidance drafting process is critical, as guidance should not be used for rulemaking.

Suggested Changes to "Good Guidance Bulletin"

Many agency promulgated documents affect AED members in a peripheral way. As a result, agencies do not examine how proposed policy changes will impact the equipment industry in particular. In order to aid our members in their ability to receive notice of policies and documents affecting them, we respectfully request several changes to the language in the Good Guidance Bulletin.

First, we suggest that in addition to the other requirements indicated at Section II(2) of the proposed bulletin, when issuing guidance documents, agencies also be required to identify the persons affected by the document and that they be required to provide identified persons with reasonable time to comment on the proposed policy. This would encourage agencies to more fully consider what parties may be affected by the issuance of the documents.

Second, AED recommends including a series of questions for agencies to answer when issuing guidance documents. The answers to these questions would help identify cases where guidance is being used for rulemaking. In particular, agencies should be required to identify:

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- The underlying need for the document;
- Relevant regulatory basis for issuing the document;
- Relevant preceding guidance (i.e., Advisory Circulars, Orders, etc.);
- Applicable legal interpretations or decisions (precedents);
- Ambiguities or inconsistencies in regulations and guidance;
- Who will be administering or enforcing the guidance materials;
- Whom the guidance impacts; and
- Whether there will be an economic impact on the affected parties;

In reviewing the responses to these questions, the OMB can make a better determination whether an agency is attempting to use guidance material to change rules or implement new ones. Submitting these questions and answers for review will aid the OMB in its oversight capacity, providing an important check on agency activity.

Finally we ask that you change the definition of "significant guidance document" in section I(3)(i) of the Bulletin. The current requirement that a guidance document "reasonably be anticipated to lead to an annual effect of \$100 million or more" to be considered "significant" threatens to undermine many of the Bulletin's potential benefits. Agencies often believe, incorrectly, that guidance documents issued for internal use affect only government employees and therefore do not require an economic analysis. In reality, such documents can have significant "bottom line" impact on regulated parties. Removing the \$100 million economic impact limit will ensure that OMB and the regulated community are afforded an opportunity to review and comment on guidance documents they would not otherwise be permitted to due to a lack of understanding on the part of the issuing agency of the document's true consequences.

Conclusion

AED believes OMB's goal of effectively monitoring agency compliance with the Administrative Procedures Act (APA) is critical to ensuring fair and reasonable regulatory policy. AED's suggested changes to the Good Guidance Bulletin would help to further that goal by increasing the visibility of "internal" guidance documents and by allowing regulated parties to comment on documents that affect them. Providing transparency in agency guidance procedures fosters the type of "good government" that AED supports.

Thank you for considering our comments. Should you have any questions or desire additional information, please do not hesitate to contact me at 703-739-9513.

Sincerely,



Christian A. Klein
Washington Counsel