

Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")² and Rule 19b-4 thereunder,³ a proposed rule change to amend NASD Rule 7010, on system services. The proposed rule change establishes an annual, scaled administrative fee, payable by Nasdaq market data distributors or vendors, for data usage monitoring costs and other administrative expenses incurred by Nasdaq. A notice of the proposed rule change appeared in the **Federal Register** on June 3, 1998.⁴ The Commission received no comment letters concerning the proposed rule change. The Commission is approving the proposed rule change.

Nasdaq has established an annual, scaled fee for Nasdaq real-time market data distributors or vendors to cover the expenses Nasdaq incurs to administer and monitor market data usage.

Previous, Nasdaq real-time market data distributors or vendors were required to submit annually a list, certified by a public accountant and paid for by the distributor or vendor, of all subscribers receiving real-time Nasdaq data.⁵ Alternatively, a Nasdaq real-time market data distributor or vendor could elect to pay a lower fee and have its service usage verified by an on-site review ("OSR") conducted by Nasdaq staff. The purpose of both the accountant certification and the OSR was to provide Nasdaq with independent confirmation of Nasdaq data usage. Nasdaq has eliminated the certified-list requirement and OSR alternative, and thus their attendant costs, and replaced them with the annual scaled administrative fees proposed in this filing.⁶ Nasdaq will

filed another substantive amendment modifying the proposed rule language. See letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc., to Katherine A. England, Division of Market Regulation, SEC, dated May 14, 1998 ("Amendment No. 2").

² 15 U.S.C. 78s(b)(1).

³ 17 CFR 240.19b-4.

⁴ Securities Exchange Act Release No. 40035 (May 27, 1998), 63 FR 30276.

⁵ Once this administrative fee becomes effective, Nasdaq will suspend indefinitely its current contractual requirement that Nasdaq real-time data distributors or vendors provide an annual accountant-certified list of their subscribers who receive Nasdaq data.

⁶ Distributors using per-quote and usage based reporting will have their monitoring fees determined by having their monthly payment totals divided by the professional subscriber fee rate, resulting in a terminal equivalent. For example, a distributor or vendor that is being charged \$1,000 month for its per-quote usage of Nasdaq Level 1 Service will have that \$1,000 fee divided by the existing \$20 monthly Level 1 per-terminal fee which results in a terminal equivalent of 50 with an annual monitoring fee of \$500.

retain the right, however, to demand a certified usage report, paid for by the distributors or vendor, in cases involving discrepancies in distributor or vendor reporting.⁷

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations thereunder.⁸ Specifically, the Commission believes that the approval of the proposed rule change is consistent with section 15A(b)(5)⁹ of the Act. Instead of requiring a public accountant's certification from its members verifying usage of Nasdaq market data, the Nasdaq will assess them an annual administrative fee which will be used to conduct Nasdaq-initiated OSRs, manage distributor applications, monitor vendor services, and perform other compliance activities. The revenue generated from this fee will benefit all Nasdaq members as it will allow Nasdaq staff to equitably and uniformly apply its expertise when conducting an OSR of any member. This fee structure should also reduce members' expenses as it is priced at levels similar to current OSR fees which, being consistently less expensive than the cost of obtaining an independent verification of data usage from a certified public accountant, are used by the majority of Nasdaq real-time market data distributors or vendors. As such, the Commission believes this administrative fee will not result in a material increase in overall monitoring fees paid by most Nasdaq data distributors or vendors.¹⁰

For 1998 billing purposes only, Nasdaq will not impose those administrative fees on any firm that incurs costs and submits a certified usage report in 1998 prior to the effective date of Nasdaq's new fee schedule. See Amendment No. 2, *supra* note 1.

⁷ Similarly, the submission of an unrequested, accountant-certified usage list will not preclude Nasdaq from conducting its own OSR nor will it exempt a distributor or vendor from payment of the administrative fee.

⁸ The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. This new fee structure should allow Nasdaq staff to directly and uniformly apply its expertise in monitoring data usage. The new fee structure also establishes a more efficient means of fee collection. Moreover, this terminal-based fee, compared to that of a CPA certification, should provide vendors and distributors with a reduction in expenses. 15 U.S.C. 78c(f).

⁹ Section 15A(b)(5) requires the Commission to determine that the Association's rules are designed to provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

¹⁰ According to Nasdaq, it does not currently require delayed data distributors to meet audit requirements or pay an OSR fee. Nasdaq believes that the imposition of new minimal charges on delayed distributors is justified to compensate

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with section 15A(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NASD-98-25) be, and hereby, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,

Secretary.

[FR Doc. 98-25919 Filed 9-28-98; 8:45 am]

BILLING CODE 8010-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Small Business Administration

Interim Policy Directive, Small Business Competitiveness Demonstration Program

AGENCY: Office of Federal Procurement Policy (OFPP); Small Business Administration (SBA).

ACTION: Interim policy directive with request for comments.

SUMMARY: The OFPP and SBA are revising the interim policy directive and test plan dated April 16, 1993, (which revised the final policy directive and test plan dated August 31, 1989) to implement amendments to the Small Business Competitiveness Demonstration Program made by the Small Business Reauthorization Act of 1997, Pub. L. 105-135. Section 401 of Pub. L. 105-135 extends the Program indefinitely; section 402 requires monitoring of goal attainment on an annual basis; and sections 403-405 contain other technical changes to the

Nasdaq for the resources expended in initiating, managing and monitoring vendors' accounts to ensure they are in compliance with Nasdaq requirements, particularly those designed to protect investors. See letter from Thomas P. Moran, Senior Attorney, Office of General Counsel, The Nasdaq Stock Market, Inc. to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, dated September 14, 1998 (detailing the allocation of Nasdaq resources used in monitoring delayed data usage).

Nasdaq also advises that those vendors who receive both delayed and real-time data, will not be billed separately for each type of data but will only pay for the highest level of service received. This practice will continue for Nasdaq's proposed administrative fees as well. See Amendment No. 1, *supra* note 1.

¹¹ 15 U.S.C. 78s(b)(2).

¹² 17 CFR 200.30-3(a)(12).

Program. This interim policy directive implements conforming revisions to reflect these amendments and also responds to comments that we received on the April 16, 1993, interim policy directive and test plan.

DATES: Effective: September 29, 1998.

Comment Date: Comments on the interim policy directive should be submitted to the addresses shown below on or before November 30, 1998.

ADDRESSES: Comments on the policy directive should be submitted to: Deidre A. Lee, Administrator, Office of Federal Procurement Policy, Room 352, Old Executive Office Building, Washington, DC 20503.

Comments on the information collection requirements contained in Sections III.D.4. and III.E.7. of the policy directive should be submitted both to the OFPP Administrator at the above address and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20503—Attention: Desk Officer for the Federal Acquisition Regulation.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator (202) 395-3302.

SUPPLEMENTARY INFORMATION:

A. Background

Congress established the Small Business Competitiveness Demonstration Program in 1988 to test the effectiveness of eliminating small business set-asides in certain industries. (See Pub. L. 100-656 the Small Business Competitiveness Demonstration Program Act of 1988 ("Act"), as amended, at 15 U.S.C. 644 note.) The program has two primary objectives: (1) To demonstrate whether or not small businesses in certain industry groups can compete successfully on an unrestricted basis for Federal contracts, and (2) to demonstrate whether or not targeted goaling and management techniques can expand Federal contract opportunities for small businesses in industry categories where such opportunities historically have been low despite adequate numbers of small business contractors in the economy. A separate program to expand small business participation in the dredging industry, to be overseen by the Department of the Army, was also included in the Act. As originally established, the Demonstration Program extended through December 31, 1992.

To implement the Program, Congress in section 715(a) of the Act, authorized the OFPP Administrator to issue a test plan pursuant to section 15 of the Office of Federal Procurement Policy Act (41

U.S.C. 413). In addition, in section 715(b), Congress directed the OFPP Administrator, in cooperation with the SBA Administrator, to issue a policy directive (binding on all participating agencies) to ensure consistent government-wide implementation of the Act in the Federal Acquisition Regulation (FAR).

After requesting public comment on an interim policy directive and test plan 53 FR 52889 (December 29, 1988), OFPP implemented the Program by issuing a final policy directive and test plan dated August 31, 1989. 54 FR 37741 (September 12, 1989). In accordance with section 715(b) of the Act, the policy directive and test plan were implemented in the Federal Acquisition Regulation (48 CFR Subpart 19.10).

In 1992, Congress in Sections 201-203 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Pub. L. 102-366; "1992 Act"), extended the Demonstration Program through September 30, 1996, and made amendments to the Program. To carry out these amendments, Congress in Section 202(I) of the 1992 Act directed the OFPP Administrator to issue conforming modifications to the test plan and policy directive. The conforming modifications were issued in an interim policy directive with request for comments (58 FR 19849, April 16, 1993), and were incorporated into the Federal Acquisition Regulation (48 CFR Subpart 19.10). In 1996, Congress extended the Demonstration Program for one year, through September 30, 1997. Pub. L. 104-208, Div. D, Title I, Sec. 108. In 1997, Congress also extended the aspect of the Program covering expansion of small business participation in the dredging industry. Pub. L. 105-18, Title II, Sec. 2002.

In December 1997, the Small Business Reauthorization Act of 1997 (Pub. L. 105-135) was enacted into law ("1997 Act"). Sections 401-405 of the 1997 Act made the Demonstration Program permanent, and made further amendments to the Program.

In order to respond to the comments that we received on the April 1993 interim policy directive and test plan, and to make conforming changes to reflect the amendments made by the 1997 Act, we are now issuing a newly revised interim OFPP policy directive and implementation plan. In addition to making conforming revisions to reflect the amendments made by Congress in the 1997 Act, we also have made non-substantive revisions in various parts of the document, which are intended to improve its clarity. For ease of reading, we are re-issuing the interim policy

directive and implementation plan in its entirety for comment.

B. Comments on April 16, 1993, Policy Directive and Test Plan

OFPP received three comment letters in response to the request for comments on the April 16, 1993, interim policy directive and test plan. The main issues and concerns raised in the comments are summarized below:

1. **Comment:** The policy directive should establish goals for small and small disadvantaged business participation as a requirement of all solicitations with no restricted competition at all.

Response: This comment suggests that several economic and practical benefits would result from such an approach. However, elimination of all restricted competition is not within the scope of the Small Business Competitiveness Demonstration Program. The legislation that governs the Program requires that set-asides be reinstated if agencies do not meet established small business goals; consequently, it does not authorize the elimination of set-asides altogether. See section 713(b) of the Act, at 15 U.S.C. 644 note.

2. **Comment:** Awarding agencies, rather than the General Services Administration, should be given credit for awards under multiple award schedule contracts.

Response: This comment appears to be based on a misinterpretation of the Program. Contract awards made under multiple award schedule contracts are not covered by the Program. We did not include these contracts because SBA historically did not count such awards toward agencies' attainment of the government-wide small business goals.

3. **Comment:** The Defense Acquisition Regulation requirement that small disadvantaged business set-asides be utilized conflicts with the Program's requirements for the use of unrestricted competition.

Response: The requirement in question is based on 10 U.S.C. 2323 (formerly section 1207 of the Fiscal Year 1987 National Defense Authorization Act). Procurements under section 2323 are exempt from the Program's requirement for unrestricted competition. (See section 713(a) of the Act, at 15 U.S.C. 644 note.)

4. **Comment:** The \$25,000 reserve amount for emerging small businesses should be raised for the construction industry because a vast majority of construction projects are above that amount.

Response: The emerging small business reserve amount is set at \$25,000 by law (see section 712(b) of the

Act, at 15 U.S.C. 644 note). OFPP is authorized to adjust the reserve amount if agencies do not attain the statutory goal of awarding emerging small business concerns 15 percent of the total dollar value of contracts in a designated industry group. The 15 percent goal has consistently been exceeded for the construction industry. Accordingly, raising the reserve amount is not appropriate.

5. *Comment:* FAR architectural and engineering (A&E) service selection methods do not include small or small disadvantaged business preferences; as a result, there is still no protection for emerging small business A&E firms under the Program.

Response: The Program, which is implemented in the FAR at 48 CFR subpart 19.10, provides that all contracts under \$50,000 for A&E services shall be set-aside for emerging small businesses. Accordingly, we do not agree that there is no protection for emerging small business A&E firms under the Program.

6. *Comment:* The Defense Mapping Agency should be included under the Program.

Response: The test plan exempts the Defense Mapping Agency (now the National Imagery and Mapping Agency (NIMA)) from the Program. We received a comment suggesting that the rule be revised to require that all surveying and mapping activities of NIMA comply with the Program. The commenter relied on subsection 202(c) of Pub. L. 102-366 which requires that "solicitations for the award of contracts for architectural and engineering services (including surveying and mapping) issued by a Military Department or a Defense agency" comply with 10 U.S.C. sections 2855(a) and (b). Section 2855(a) requires that "contracts for architectural and engineering services and construction design in connection with a military family housing project" be awarded in accordance with 40 U.S.C. section 541 (the Brooks A-E Act). Section 2855(b) generally establishes thresholds for setting aside the contracts described in section 2855(a) for award to small business concerns. In our opinion, neither Pub. L. 102-366 nor 10 U.S.C. section 2855 support the commenter's position. We read these provisions to apply only to those contracts specifically described in 10 U.S.C. 2855(a), i.e., contracts for A&E services and construction design in connection with military construction or family housing projects. The NIMA does not conduct such procurements.

C. Revisions to the April 16, 1993 Interim Policy Directive and Test Plan

In the Small Business Reauthorization Act of 1997, Congress made several changes to the Act, which are summarized below and incorporated into the interim policy directive.

Section 401 of the 1997 Act amends section 711(c) of the Small Business Competitiveness Demonstration Program Act (the Act) to make the Program permanent. We have revised Section III.A.1 of the Implementation Plan (formerly the "Test Plan") to delete the Program's expiration date.

Section 402 of the 1997 Act amends section 712(d)(1) of the Act to require participating agencies to monitor the attainment of their small business participation goals on an annual basis. An annual review and reports to the Small Business Administration (SBA) must be completed by each participating agency not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. We have revised section IV.A.1. of the Implementation Plan to reflect annual monitoring of goal attainment.

Section 403 of the 1997 Act amends section 716(a) of the Act to transfer to the Small Business Administration the responsibility for reporting to Congress the results of the Program. Reports to Congress are due within 180 days after data for each of fiscal years 1991 through 2000 are available from the Federal Procurement Data Center. The section also updates the name of the Committee on Government Reform and Oversight of the House of Representatives.

Section 404 of the 1997 Act amends section 722(a) of the Act to make the dredging program permanent. As indicated above, under the Act, the Department of the Army (Corps of Engineers) is responsible for conducting the dredging program.

Section 405 of the 1997 Act amends section 717 of the Act to recognize that either the standard industrial classification (SIC) codes or the successor North American Industrial Classification System (NAICS) codes may be used to identify the designated industry groups covered by the Program. OMB issued the NAICS codes in 1997 (62 FR 17288 (April 9, 1997)). The Implementation Plan will continue to reference SIC codes until SBA and the FAR Council implement the NAICS codes.

One provision of the Act that has expired is section 714(b), which required the OFPP Administrator to develop a simplified data collection

system to collect data on the participation of small business concerns as subcontractors under prime contracts for A&E services. It also set a temporary 35 percent small business participation goal for A&E services until the simplified data collection system was implemented. The purpose of the system was to collect subcontracting data below the first tier of subcontracting to demonstrate if the actual rate of small business participation under A&E prime contracts was substantially higher than was reflected in the government's existing subcontracting data collection system. OFPP implemented the simplified data collection data on October 27, 1993 (58 FR 57869). The requirement for this system expired on September 30, 1997. Accordingly, the Implementation Plan excludes the subcontracting reporting system previously described in Section V.C.1. of the April 16, 1993, Interim Policy Directive. It also deletes the reference in section III.C.1. to the temporary 35 percent goal for A&E services.

This interim Policy Directive also recognizes that section 4201 of the Federal Acquisition Streamlining Act of 1994 authorizes agencies to use competition to "the maximum extent practicable" for procurements below the simplified acquisition threshold. Accordingly, we revised the implementation plan to substitute "unrestricted competition" for "full and open competition" throughout the document. This allows agencies to use the "maximum practicable competition" standard for procurements below the simplified acquisition threshold but above the emerging small business reserve. Agencies will continue to use full and open competition for unrestricted procurements above the simplified acquisition threshold.

This interim Policy Directive also authorizes prime contract awards to small businesses pursuant to the HUBZone Act of 1997, Title VI of the Small Business Reauthorization Act of 1997 (Pub. L. 105-135), to count toward goal attainment. In addition, the interim Policy Directive recognizes that participating agencies may set aside procurements in the DIGs, under the HUBZone Empowerment Contracting Program, that exceed the emerging small business reserve amount even though the agency's 40 percent small business goal is being attained. (This is consistent with the Small Business Regulations implementing the HUBZone Act, 63 FR 31896, 31902.) We revised Sections III.C.3., III.D.1, III.D.2, and IV.A.6 of the Implementation Plan to reflect these changes.

We also made two minor changes as follows: (1) Section III.D.3.a. was revised to reflect that the emerging small business reserve amount for A&E services has been raised to \$50,000, and (2) the citations to the Code of Federal Regulations (C.F.R.) at section III.E.4 have been updated.

Finally, to improve the clarity of the document, we have made non-substantive changes in various parts of the text.

We intend to issue a final policy directive by April 30, 1999.

D. Cumulative Report on the Demonstration Program for Fiscal Years 1991-1995

Section 716(a) of the Act, as amended by the Omnibus Consolidated Appropriations Act of 1997 (Pub. L. 104-208, Division D, Section 108), required a cumulative report of the results of the Demonstration Test Program for FYs 1991-1995. The report indicated that, at the macro level, small and emerging small businesses could maintain a significant market share without the benefits of preferences. In three of the four industries, awards to small and emerging small businesses exceeded the 40 and 15 percent goals set by the Program, respectively. Upon examination at the micro level, however, it appeared that the market share of these firms declined to some extent without preferences, compared to their share prior to the commencement of the Program. Therefore, although the Test Program demonstrated that small and emerging small businesses could maintain a significant market share without preferences, the Program also appeared to have reduced total small business awards in the construction, refuse, A&E services and non-nuclear ship repair industries. When viewed collectively, both the small business and emerging small business shares declined for every DIG from FYs 1991-1995.

SBA will continue to evaluate the economic impact of the Program in its subsequent reports to Congress.

E. Regulatory Flexibility Act and E.O. 12866

This interim policy directive incorporates changes to the Small Business Reauthorization Act of 1997 (Sections 401-405 of Pub. L. 105-135). This Act merely extended the Program indefinitely and modified the reporting procedures of the participating Federal agencies. The Act made no substantive changes to the Program as originally designed.

The changes required by the Act do not impose any new requirements or additional burdens on small businesses

and are unlikely to have an annual economic effect of \$100 million or more, result in a major increase in cost or prices, or have a significant effect on competition in the U.S. economy. Accordingly, this directive is not considered a significant rule within the meaning of Executive Order 12866 and will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* In addition, because this interim policy directive makes ministerial changes to conform the directive to amendments mandated by the 1997 Act (which amendments were effective upon the date of enactment), we have determined that advance comment on these conforming changes is unnecessary and thus we are issuing this document on an interim basis. We will respond to any comments received in the coming months.

F. Paperwork Reduction Act

The information collection requirements related to this policy directive and implementation plan were previously approved by OMB and assigned OMB control number 9000-0100. A revised information collection request has been submitted to OMB for approval under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

September 21, 1998.

MEMORANDUM FOR:

THE SECRETARY OF AGRICULTURE
THE SECRETARY OF DEFENSE
THE SECRETARY OF ENERGY
THE SECRETARY OF HEALTH AND HUMAN SERVICES
THE SECRETARY OF THE INTERIOR
THE SECRETARY OF TRANSPORTATION
THE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY
THE ADMINISTRATOR OF GENERAL SERVICES
THE ADMINISTRATOR OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
THE SECRETARY OF VETERANS AFFAIRS

SUBJECT: The Small Business Competitiveness Demonstration Program

1. *Purpose.* This memorandum provides policy direction to the participating agencies for implementation of the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), as amended by Sections 23-27 of the Business

Opportunity Development Reform Act Technical Corrections Act (Public Law 101-37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Section 108 of the Omnibus Consolidation Appropriation Act of 1997 (Public Law 104-208), and Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135).

2. *Authority.* This memorandum is issued pursuant to Section 715 of Public Law 100-656, which requires that the Office of Federal Procurement Policy (OFPP) and the Small Business Administration (SBA) issue a policy directive to ensure consistent government-wide implementation of Title VII in the Federal Acquisition Regulation (FAR); Section 202(i) of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), which requires appropriate modifications to the policy directive to conform to amendments made by that Act; Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135), which further amends Title VII; and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413, which provides for the testing of innovative procurement methods and procedures.

3. *Background.* Section 15(a) of the Small Business Act mandates that small businesses receive a fair proportion of Federal procurements. To achieve this goal, Subpart 19.5 of the FAR requires that Federal agencies reserve, or set aside, procurements for exclusive small business participation when a contracting officer determines that two or more small businesses are capable of providing the goods or services at reasonable prices. While restricting procurements for exclusive small business participation has been very effective in assuring a small business share of Federal contracts, one unintended result is a concentration of awards in certain industries often dominated by small businesses. A further result is that agencies expend resources in those industries that are conducive to high levels of small business participation rather than expand the base of small business contracting into areas where small businesses do not traditionally obtain a significant share of procurement awards.

4. *Policy.* The goals of the Program are to assess the ability of small businesses in certain designated industry groups to retain a fair proportion of procurement awards in unrestricted competition in those industry groups and to expand small business participation in a broader range of industry categories. The Act designates the Small Business Administration as OFPP's executive agent to monitor the Program. The procedures for implementing the Program are set forth in the attached implementation plan.

5. *Implementation.* This policy directive shall be implemented in FAR Part 19. Pursuant to Section 715(a) of the Small Business Competitiveness Demonstration Program Act, provisions of the FAR that are inconsistent with this policy directive and the attached implementation plan are hereby waived.

6. *Expiration Date.* The Small Business Competitiveness Demonstration Program has no expiration date.

Deidre A. Lee,

Administrator, Office of Federal Procurement Policy.

Richard L. Hayes,

Associate Deputy Administrator for Government Contracting and Minority Enterprise Development, Small Business Administration.

Small Business Competitiveness Demonstration Program Implementation Plan

I. Purpose

This document implements the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), as amended by Sections 23-27 of the Business Opportunity Development Reform Act Technical Corrections Act (Public Law 101-37), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Section 108 of the Omnibus Consolidation Appropriations Act of 1997 (Public Law 104-208), and Sections 401-405 of the Small Business Reauthorization Act of 1997 (Public Law 105-135). The Program seeks to assess whether or not the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts. In addition, the Program attempts to assess whether or not the use of targeted goaling and management techniques by procuring agencies, in conjunction with the Small Business Administration (SBA), will expand small business participation in Federal contracting opportunities that have been historically low despite adequate numbers of qualified small business contractors in the economy. The Program further seeks to assess whether or not expanded use of unrestricted competition adversely affects small business participation in certain industry groups, taking into consideration the numerical dominance of small firms, the size and scope of most contracting opportunities, and the competitive capabilities of small firms.

II. Authority

The Program is established pursuant to the Small Business Competitiveness Demonstration Program Act of 1988 (Title VII, Public Law 100-656), Sections 201 and 202 of the Small Business Credit and Business Opportunity Enhancement Act of 1992 (Public Law 102-366), Sections 401-405 of the Small Business Reauthorization

Act of 1997 (Public Law 105-135), and Section 15 of the Office of Federal Procurement Policy Act, 41 U.S.C. 413.

III. Program Requirements

A. Applicability

1. The Program began on January 1, 1989 and consists of two major components: (1) unrestricted competition in four Designated Industry Groups, and (2) enhanced small business participation in agencies' ten Targeted Industry Categories. Contracts resulting from solicitations issued on or after January 1, 1989 and any subsequent modifications to such contracts, are covered by this Program.

2. Contract awards in the following designated industry groups are covered by this Program:

a. Construction under standard industrial classification (SIC) codes that comprise major groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216);

b. Refuse systems and related services, including portable sanitation services, under SIC code 4212 or 4953, limited to FPDS service code S205;

c. Architectural and engineering (A&E) services (including surveying and mapping) under SIC codes 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act"); and

d. Non-nuclear ship repair—ship repair (including overhauls and conversions) performed on non-nuclear propelled and nonpropelled ships under SIC code 3731, limited to FPDS service codes J998 (repair performed east of the 108th meridian) and J999 (repair performed west of the 108th meridian).

3. Upon regulatory implementation by SBA and the FAR Council, the North American Industrial Classification (NAIC) Coding System will be substituted for SIC codes.

4. Targeted industry categories for enhanced participation are determined by each participating agency, in conjunction with SBA.

5. Contract awards under the Federal Schedule Program are not covered by the Program.

6. Contract awards to educational and non-profit institutions or governmental entities are not covered by the Program.

B. Participating Agencies

The following agencies are participants in the Program:

1. The Department of Agriculture,

2. The Department of Defense, except the National Imagery and Mapping Agency,

3. The Department of Energy,

4. The Department of Health and Human Services,

5. The Department of Transportation,

6. The Environmental Protection Agency,

7. The General Services Administration,

8. The National Aeronautics and Space Administration,

9. The Department of Veterans Affairs, and

10. The Department of the Interior.

C. Agency Goals for the Four Designated Industry Groups

1. Each participating agency shall have a small business participation goal that is 40 percent of the agency's total contract dollars awarded for construction major group 15, major group 16, and major group 17; A&E services; refuse systems and related services; and non-nuclear ship repair. The 40 percent goal applies to each construction major group. In addition, each participating agency must make a good faith effort to assure that emerging small businesses receive not less than 15 percent of the agency's total contract dollars awarded for each of the four designated industry groups.

2. The Small Business Competitiveness Demonstration Program Act of 1988 defines an emerging small business as one whose size is no greater than 50 percent of the numerical size standard applicable to the SIC Code assigned to the requirements of paragraph III.D.3 below, contract opportunities in the four designated industry groups, which have an estimated award value equal to or less than the reserve amount established for emerging small businesses, are reserved for such businesses.

3. Contract awards made to fulfill the 15 percent goal for emerging small businesses also count toward attainment of the 40 percent goal. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135); and sole source awards, count toward attainment of goals.

D. Procurement Procedures for the Four Designated Industry Groups

Participating agencies shall use the following procedures for procurements in the four designated industry groups.

1. Unrestricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. Subject to the requirements of the Competition in Contracting Act of 1984 and section 4201 of the Federal Acquisition Streamlining Act of 1994, participating agencies are required to use unrestricted competition for all solicitations in the four designated industry groups, if the anticipated award value exceeds the dollar amount reserved for emerging small businesses (unless the procurement is placed under section 8(a) of the Small Business Act; or is set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135). Each participating agency shall continue to use unrestricted competition as long as annual reviews show that the agency's 40 percent goal is being attained. The continued use of unrestricted competition is not affected by an agency's failure to meet its 15 percent award goals for emerging small businesses.

b. Notwithstanding the provisions of paragraph III.D.1.a., above, the Department of Defense shall solicit contracting opportunities for A&E services (including surveying and mapping), in accordance with the provisions of subsections (a) and (b) of section 2855 of title 10, United States Code.

2. Restricted Competition for Contracts in Excess of the Emerging Small Business Reserve Amount

a. If any participating agency's annual review of its awards to small businesses in the four designated industry groups shows that the agency has failed to attain its 40 percent goal for any of the groups, subsequent contracting opportunities, in excess of the amount reserved for emerging small businesses, shall be solicited through competition restricted to eligible small businesses only at the organizational unit(s) within the agency that failed to attain the small business participation goals. (Organizational unit(s) shall be no larger than the major agency components or services, e.g., Army, Air Force, Navy, etc. for Department of Defense, regional offices for the General Services Administration, or space flight and research centers for the National Aeronautics and Space Administration.) Such solicitations (unless placed under section 8(a) of the Small Business Act or set aside under 10 U.S.C. 2323, section 7102 of the Federal Acquisition

Streamlining Act of 1994, or the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135) shall be conducted in accordance with section 15(a) of the Small Business Act and Subpart 19.5 of the Federal Acquisition Regulation (FAR).

b. Agencies shall return to the use of unrestricted competition upon determining, after their annual review, that their contract awards to small business concerns again meet the required goals.

c. Modifications to agency solicitation practices (instituting restricted competition and reinstating unrestricted competition) shall be made as soon as practicable, but no later than 30 days following completion of the review indicating the need for such change. The reinstatement of restricted competition or unrestricted competition shall be announced to the public through a notice published in the **Federal Register** if restricted or unrestricted competition is to be reimposed broadly by a participating agency. "Special notices" in the *Commerce Business Daily* shall be used periodically to supplement such **Federal Register** notices, and may be used as an alternative means of providing such notices, if the reinstatement of restricted competition or unrestricted competition will affect only a limited number of buying activities.

3. Reserve Program for Emerging Small Businesses

a. The emerging small business reserve amount is \$25,000, or such higher amount as OFPP sets in the event that emerging small concerns are not receiving 15 percent of the total dollar value of contract awards in one or more of the four designated industry groups. The emerging small business reserve amount for architectural and engineering services is \$50,000 (56 FR 46656, September 13, 1991). Any required adjustments to the emerging small business reserve amount will be made annually by industry group.

b. Competition for all contract opportunities in the four designated industry groups with an estimated award value that is equal to or less than the emerging small business reserve amount shall be restricted to emerging small businesses, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, requirements will be processed in

accordance with FAR 19.5 or FAR 19.8. However, if no such reasonable expectation exists where OFPP has raised the small business reserve amount to a level over \$25,000, requirements over \$25,000 will be processed in accordance with paragraphs III.D.1 and III.D.2 above.

c. The use of simplified acquisition procedures is not required under the reserve program; any competitive source selection method may be used. The reserve program applies only to new awards within the emerging small business reserve threshold. Modifications within the scope of work of contracts having an initial award value in excess of the emerging small business reserve amount are not subject to the reserve program.

d. Each solicitation under the Program that utilizes simplified acquisition procedures shall include the applicable SIC code and size standard for the procurement.

4. Solicitation Provisions for Procurements in the Four Designated Industry Groups

a. The provision set forth in FAR 52.219-19 entitled "Small Business Concern Representation for the Small Business Competitiveness Demonstration Program" shall be inserted in full text in all solicitations issued by the participating agencies under the Small Business Competitiveness Demonstration Program for the four designated industry groups.

b. The provision set forth in FAR 52.219-20 entitled "Notice of Emerging Small Business Set-Aside" shall be inserted in full text in all solicitations and resulting contracts restricted to emerging small businesses pursuant to paragraph III.D.3.

c. The face of each award issued by a participating agency under the Small Business Competitiveness Demonstration Program for the four designated industry groups shall contain a statement that the award is being issued pursuant to such Program.

E. Agency Programs for Targeted Industry Categories With Limited Small Business Participation

1. Each participating agency is required to select ten industry categories (four-digit SIC Code or some segmented portion(s) of such code(s), as identified by FPDS product or service code) as targeted categories for expansion of small business participation.

2. In order to achieve such expanded participation, agencies shall select categories that represent products and services purchased in substantial

quantities by the agency; that historically have had a small business participation rate of less than 10 percent by category, and in which there is a significant amount of small business productive capacity that has not been utilized by the Government.

3. Each participating agency shall consult with the Administrator of SBA in selecting the ten targeted categories, developing the plan for expanded small business participation, and establishing the goals for the Program. Upon completion of their consultation with SBA, participating agencies shall publish in the **Federal Register**, an announcement soliciting public comment on that agency's program for expansion of small business participation in the targeted categories. Each participating agency shall notify SBA of any additions or deletions to the ten targeted industry categories. Subsequent to the SBA notification, the participating agency shall publish the changes in the **Federal Register**.

4. Each plan shall be submitted to the Administrator of SBA and shall contain a detailed time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures shall be included. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability. Such joint ventures or teams shall comply with the applicable small business guidelines. (See 13 CFR §§ 121.103(f) and 121.105(b)).

5. Participating agencies shall report to SBA on the results of the expansion program regarding the ten targeted categories on the same annual schedule as required for the four designated industry groups.

6. Goal attainment for the ten targeted industry categories shall be determined on the basis of awards to U.S. business firms. Participating agencies may use the format in Attachment A to report accomplishments.

7. The provision set forth in FAR 52.219-21 entitled "Small Business Size Representation For Targeted Industry Categories Under the Small Business Competitiveness Demonstration Program" shall be inserted in full text in any solicitation issued in each of the ten targeted industry categories under the Small Business Competitiveness Demonstration Program that is expected to result in a contract award in excess of \$25,000.

8. The face of each award issued in any of the ten targeted industry

categories under the Small Business Competitiveness Demonstration Program shall contain a statement that the award is being issued pursuant to such Program.

IV. Monitoring and Reporting for Four Designated Industry Groups

A. Monitoring of Goals for the Four Designated Industry Groups

1. Each participating agency shall monitor attainment of its small business and emerging small business participation goals on an annual basis and provide the information in a written report to SBA. The report shall specify the industry groups for which restricted or unrestricted competition have been imposed. Agencies shall complete their annual reviews and submit their reports not later than January 31 of each year, based on the data for the preceding fiscal year, from October 1 through September 30. The Department of Defense shall submit a report that separately identifies performance by the Army, Air Force, Navy and the Defense Agencies. The report submitted by the General Services Administration shall separately identify performance by the Public Building Service.

2. Monitoring and reporting of goal attainment will be based on awards (and any subsequent modifications to those awards) in the individual codes comprising the industry, as specified in paragraph IV.B., below.

3. Any necessary modifications to agency solicitation practices for the purpose of achieving the agency's small business participation goals (instituting restricted competition or reinstating unrestricted competition) will be accomplished for each of the industry groups as follows:

- a. Construction (excluding dredging)
 - i. Major group 15
 - ii. Major group 16
 - iii. Major group 17
- b. Refuse systems and related services.
- c. A&E services (including surveying and mapping), limited to contracts awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act").
- d. Non-nuclear ship repair.

However, if goal attainment for any individual FPDS service code within the A&E services or non-nuclear ship repair industry groups falls below 35 percent, the agency shall reinstitute set-asides for that individual service code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the industry group is 40 percent or

more. In addition, if goal attainment for any individual SIC code within one of the major groups comprising the construction industry group falls below 35 percent, the agency shall reinstitute set-asides for that individual SIC code at the organizational unit(s) within the agency that failed to achieve the 35 percent goal, even if overall goal attainment in the major group is 40 percent or more.

4. Agencies shall monitor goal attainment in the four designated industry groups by reviewing total prime contract award dollars to (a) all U.S. business firms, (b) small U.S. business concerns and (c) emerging small U.S. business concerns. Awards to educational and non-profit institutions or governmental entities are not part of the Program and do not count towards goal attainment.

5. SBA will closely monitor the Program to ensure that each participating agency makes a consistent effort to achieve goals evenly across all individual codes that comprise a designated industry group. Data shall be monitored using the format set forth at Attachment A.

6. All prime contract awards to small businesses, including awards under section 8(a) of the Small Business Act; 10 U.S.C. 2323; section 7102 of the Federal Acquisition Streamlining Act of 1994; the HUBZone Act of 1997 (Title VI of the Small Business Reauthorization Act, Public Law 105-135); and sole source awards, count toward attainment of goals.

B. Codes for Monitoring and Reporting Goal Attainment for the Four Designated Industry Groups

1. Refuse Systems and Related Services

The Small Business Competitiveness Demonstration Program Act of 1988 outlines the SICs that are included in the designated industry groups. However, in the area of refuse systems and related services, SIC codes 4212 and 4953 include services that should not be included in the Program. The Program is designed to assess small firms' competitiveness generally in procurements for the collection, transportation, and disposal of residential and nonhazardous commercial garbage, refuse, and waste materials. For example, contracts for the regular collection and disposal at publicly or privately operated landfills of residential and nonhazardous commercial solid waste, garbage, debris, or other refuse from military installations, federal office buildings, and other federal facilities, and garbage processing and recycling activities,

should be included. Contracts for the operation of those facilities, collection and disposal of acid, radioactive, or other hazardous waste should not be included. Therefore, participating agencies shall use FPDS service code S205 (trash/garbage collection services—including portable sanitation services) to monitor goal attainment for refuse systems and related services.

2. Architectural and Engineering Services

a. The Small Business

Competitiveness Demonstration Act of 1988 provides that A&E services (including surveying and mapping) shall include contracts assigned SIC codes 8711, 8712, 8713, and 7389 (if identified as mapping), and awarded under the qualification-based selection procedures required by 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act"). Since SIC code 7389 includes many more services than mapping, participating agencies shall use the following FPDS service codes to monitor goal attainment for mapping services:

T002 Cartography services
T004 Charting services
T008 Photogrammetry services
T009 Aerial photographic services
T014 Topography services

b. Participating agencies shall use the following FPDS service codes to monitor A&E services under SIC codes 8711, 8712, and 8713:

C111 Administrative and Service Buildings
C112 Airfield, Communication and Missile Facilities
C113 Educational Buildings
C114 Hospital Buildings
C115 Industrial Buildings
C116 Residential Buildings
C117 Warehouse Buildings
C118 Research and Development Facilities
C119 Other Buildings
C121 Conservation and Development
C122 Highways, Roads, Streets and Bridges
C123 Electric Power Generation (EPG)
C124 Utilities
C129 Other Non-Building Structures
C130 Restoration
C211 Architect—Engineer Services (non-construction)
C212 Engineering Drafting Services
C213 A&E Inspection Services (non-construction)
C214 A&E Management Engineering Services
C215 A&E Production Engineering Services
C216 Marine A&E Services
C219 Other Architect and Engineering Services

R404 Land Surveys, Cadastral Services—non-construction

3. Non-nuclear Ship Repair

Non-nuclear ship repair is included within SIC code 3731. Since this SIC includes all ship repair as well as shipbuilding, participating agencies shall use the following FPDS service codes to monitor goal attainment for non-nuclear ship repair: J998 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships East of the 108th Meridian) or J999 (Ship Repair, Including Overhauls and Conversions, Performed on Non-nuclear Propelled and Nonpropelled Ships West of the 108th Meridian).

4. Construction

Goal attainment for construction shall be monitored through the use of the SIC codes identified in Attachment A.

V. FPDS Data Collection Requirements

Participating agencies shall maintain and report procurement data to the Federal Procurement Data System (FPDS) in order to determine the level of small business participation in the four designated industry groups and the ten targeted industry categories for the small business expansion program.

A. Awards in Excess of \$25,000

For contract awards in excess of \$25,000, the FPDS (1) has information on the SIC code of the procurement and (2) can distinguish awards to small business concerns and small disadvantaged business concerns, as required by section 714(c) of the Small Business Competitiveness Demonstration Program Act of 1988. However, for purposes of the Program, the FPDS reporting requirements have been revised to also:

1. Distinguish awards resulting from solicitations issued under the Program from awards resulting from solicitations issued prior to January 1, 1989, in the four designated industry groups. A distinction must be made between contract actions awarded from solicitations issued under the Program and contract actions awarded from solicitations issued prior to January 1, 1989.

2. Distinguish emerging small business firms from other small businesses. Participating agencies must make a good faith effort to award not less than 15 percent of the dollar value

of awards in the four designated industry groups to emerging small businesses.

3. Distinguish awards to emerging small business firms in the small business reserve program. Participating agencies must reserve for exclusive competition among emerging small business concerns all contracts of \$25,000 or less in the four designated industry groups or a greater amount set by OFPP if the 15 percent goal is not attained. Emerging small businesses can also receive awards above the small business reserve threshold.

4. Provide the size of the small business concern in terms of number of employees or dollar volume of sales for awards in the four designated industry categories and ten targeted industry categories. Section 714(c) of the Small Business Competitiveness Demonstration Program Act requires each participating agency to collect data pertaining to the size of the small business concern receiving any award for services in the four designated industry groups and products or services in the ten targeted industry categories. The number of employees shall be based on the average of the pay periods for the last twelve months. The volume of sales shall be based on the average annual gross revenue for the last three fiscal years (See FAR 19.101).

5. Limit A&E services to contracts awarded under the qualification-based selection procedures of 40 U.S.C. 541 *et seq.* (the "Brooks A-E Act").

6. Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

B. Awards of \$25,000 or Less

Each award of \$25,000 or less made by a participating agency for the procurement of a service in the four designated industry groups shall be reported to the Federal Procurement Data Center in the same manner as if the award was in excess of \$25,000. This means that all applicable data collected in the FPDS via the Individual Contract Action Report (SF 279), or agencies' equivalent computer-generated format, shall be reported for these purchases. It should be noted that awards of \$500 or less are not reportable to the FPDS.

Specific details outlining the FPDS changes have been included in the FPDS Reporting Manual (September 1997).

Attachment A

Report on Small Business Participation Under the Small Business Competitiveness Demonstration Program for Designated Industry Groups

Fiscal Year _____ Quarter _____

Agency: _____

Subagency (if applicable) _____

Table with 8 columns: Designated Groups, Total U.S. Business actions/dollars, Small business actions/dollars*, Percentage of dollars, Small disadvantaged business actions/dollars, Percentage of dollars, Emerging small business actions/dollars, Percentage of dollars. Rows include categories like I. Construction, II. Refuse Systems, and III. Architectural and Engineering Services.

| Designated Groups | Total U.S. Business actions/dollars | Small business actions/dollars* | Percentage of dollars | Small disadvantaged business actions/dollars | Percentage of dollars | Emerging small business actions/dollars | Percentage of dollars |
|--|-------------------------------------|---------------------------------|-----------------------|--|-----------------------|---|-----------------------|
| PSC C213 | | | | | | | |
| PSC C214 | | | | | | | |
| PSC C215 | | | | | | | |
| PSC C216 | | | | | | | |
| PSC C219 | | | | | | | |
| PSC R404 | | | | | | | |
| Subtotal | | | | | | | |
| Grand Total | | | | | | | |
| IV. Non-nuclear Ship Repair (Dollars in Thousands; Percentages in Whole Numbers) | | | | | | | |
| SIC 3731: | | | | | | | |
| PSC J998 | | | | | | | |
| PSC J999 | | | | | | | |
| Total | | | | | | | |

*Small Business Dollars include dollars to Emerging Small Businesses.

[FR Doc. 98-26060 Filed 9-28-98; 8:45 am]
BILLING CODE 3110-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 34-1, Fuel Venting and Exhaust Emissions Requirements for Turbine Engine Powered Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: This notice invites public comment on a proposed Advisory Circular that provides guidance for implementing the fuel venting and exhaust emission requirements for turbine engine powered airplanes.

DATES: Comments must be received on or before December 1, 1998.

ADDRESSES: Send all comments on the proposed Advisory Circular to: Curtis Holsclaw, Manager of Research and Engineering, AEE-110, Office of Environment and Energy, 800 Independence Ave., S.W., Washington, DC 20591. Comments may be examined at the above address between 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward McQueen, Research and Engineering Branch, AEE-110, Office of Environment and Energy, 800 Independence Ave., S.W., Washington, DC 20591; telephone (202) 267-3560; E-mail: edward.mcqueen@faa.gov

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject Advisory Circular may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**.

Interested persons are invited to comment on the proposed Advisory Circular by submitting such written data, views, or arguments, as they may desire. Commentors must identify the title of the Advisory Circular and submit comments in duplicate to the address specified above. All comments received on or before the closing date for comments will be considered before issuing the final Advisory Circular.

Discussion

Advisory Circular (AC) 34-1, Fuel Venting and Exhaust Emission Requirements for Turbine Engine Powered Airplanes, has been written to provide section-by-section guidance on 14 CFR Part 34. The AC is intended to provide a better understanding of the provisions of the Part 34, and to facilitate standardized implementation of the Part 34 throughout the aviation industry. The AC contains information concerning the standards and requirements for aircraft fuel venting and engine emission certification, and presents explanatory information and guidance, as necessary, to identify acceptable means of compliance. The information contained in the AC sets forth acceptable means, but not the sole means, by which compliance may be shown with the requirements of Part 34.

Pursuant to the Clean Air Act, Sections 231 and 232, Part 34 must conform to 40 CFR part 87 as issued by the United States Environmental Protection Agency. Potential users of this proposed AC, as well as Part 34, should be alert to any changes to 40 CFR part 87 that have not yet been included in either Part 34 or this AC. In such instances the requirements of 40 CFR part 87 are considered controlling.

In addition to the section-by-section explanations, the AC includes three chapters that explain specific appendices from the International Civil

Aviation Organization (ICAO), Annex 16, Volume II, Aircraft Engine Emissions. Since Annex 16 is specifically referenced in Part 34, these chapters are included to make the AC a more complete reference source.

The ICAO appendices deal with detailed technical issues regarding instrumentation and measurement techniques and, as such, are relatively complex. Thus, they have been kept distinct from the rest of the AC as separate chapters. Typically, only those readers who are interested in specific equations and/or details regarding measurement techniques will need to read these sections.

Issued in Washington, DC on September 22, 1998.

James D. Erickson,

Director of Environment and Energy.

[FR Doc. 98-25864 Filed 9-28-98; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Amateur-Built Aircraft Registration

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:

Sharon Ashford, Civil Aviation Registry, Aircraft Registration Branch, AFS-750, Post Office Box 25504, Oklahoma City, Oklahoma 73125, Telephone: 405-954-3284.

SUPPLEMENTARY INFORMATION: In response to a recommendation by the National Transportation Safety Board and consistent with 14 CFR 47.33(c), With respect to aircraft built from kits, the Aircraft Registration Branch is