

only minorities and women. An FDIC statement of policy¹ provides that if a significant period of time elapses following the publication of a proposed rule or policy without final action, the Board will consider withdrawing the proposal. Pursuant to this policy, the FDIC is formally withdrawing the proposal.

FOR FURTHER INFORMATION CONTACT: Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Equal Opportunity, (202) 416-2456; or Gladys C. Gallagher, Counsel, Legal Division, (202) 898-3833, FDIC, 550 17th Street, NW, Washington, DC 20429.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99-20127 Filed 8-5-99; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 361

RIN 3064-AC21

Minority and Women Outreach Program—Contracting

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Board of Directors of the Federal Deposit Insurance Corporation (FDIC) is proposing to amend its regulation establishing an outreach program for minority- and women-owned businesses and announcing its intention to utilize that portion of the Federal Affirmative Action Contracting Program, set forth in the Federal Acquisition Regulations, providing contracting benefits to Small Disadvantaged Businesses. The FDIC will no longer grant price evaluation adjustments based solely on race and gender criteria. The FDIC will, however, continue its outreach programs for minorities, women, and individuals with disabilities and entities owned by them.

DATES: Written comments must be received on or before October 5, 1999.

ADDRESSES: All written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th

Street NW., Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), between the hours of 7:00 a.m. and 5:00 p.m. on business days. Comments may also be faxed: (202) 898-3838 or submitted via Internet: comments@FDIC.gov. Comments will be available for inspection and photocopying in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Counsel, Legal Division, Corporate Operations Branch, Corporate Legal Issues Section, Contracting Law Unit (202) 736-0756; David McDermott, Acquisition and Corporate Services Branch, Division of Administration, (202) 942-3434; Rita Wiles Ross, Counsel, Legal Division, Corporate Operations Branch, Legal Operations Section, Outside Counsel Unit, (202) 736-3072; or Judith M. Wood, Chief, Diversity Branch, Office of Diversity and Economic Opportunity, (202) 416-2456.

SUPPLEMENTARY INFORMATION:

I. Background

FDIC Minority- and Women-Owned Business Outreach Program

In 1989, with enactment of the Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), Congress mandated that the FDIC augment its program for contracting activities by prescribing

“regulations to establish and oversee minority outreach program[s] * * * to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, * * * in all contracts entered into by the agency * * *” 12 USC 1833e(c).

In response, the FDIC adopted a regulation that obligates and requires the Corporation to engage in outreach efforts to identify and register minority- and women-owned businesses (MWOBs) that can provide the goods and services utilized by the FDIC. 12 CFR 361.6(b); Minority and Women Outreach Program—Contracting, 57 FR 15004 (April 24, 1992). In addition, to ensure that MWOBs are “being included in each solicitation, the solicitation process will include: * * * (3) Allowing qualified MWOBs a 3% price advantage and additional technical consideration for competitively bid services; * * *” 12 CFR 361.8(b)(3).¹

In soliciting and awarding contracts for legal services, the Legal Division “actively seeks to engage firms owned by minorities and women, both directly and in association with other firms.” 12 CFR 361.11(c). However, there is no price evaluation adjustment or other technical considerations available in contracting for legal services.

The Supreme Court has held that all racial classifications, whether imposed by federal, state, or local governments, must be analyzed by a reviewing court under strict scrutiny. *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 227; 115 S.Ct. 2097, 2113 (1995). To be sustained, federal racial classifications, like those of a State, must serve a compelling governmental interest and must be narrowly tailored to further that interest. 515 U.S. at 229. In this context, a compelling governmental interest may include past discriminatory barriers, whether such barriers were a result of intentional acts of the federal government or passive complicity in the acts of discrimination by the private sector. *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989). These decisions relate to programs that confer a benefit on the basis of race. They do not address outreach efforts where an agency only seeks to increase the pool of available MWOB contractors.

There does not appear to be a finding of discrimination underlying 12 U.S.C. 1833e. The FDIC does not believe such a finding is necessary to sustain an outreach program, because, unlike a program that awards financial benefits to contract with MWOBs, a pure outreach program has “no winners or losers.” It only increases the potential pool of MWOB contractors, and it does not affect the award process or favor one group of contractors over another based on considerations of race, ethnicity, or gender.

However, as noted above, the FDIC program has gone beyond the pure outreach mandate of section 1833e, and through the regulation, applies a price evaluation adjustment to awards to MWOB contractors for non-legal services. To pass strict scrutiny, such a program requires findings of past discrimination establishing a compelling governmental interest, *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 493 (1989), but there was no finding of past discrimination in the rulemaking adopting part 361. Thus, to the extent it included a price evaluation

establishing policies and procedures in contracting for non-legal services. The APM provides for the application of the 3% price evaluation adjustment for awards of \$50,000 or more. APM at Chapter 6, §D.6. There is no provision for the award of “additional technical consideration(s).”

¹ Development and Review of FDIC Regulations and Policies, 63 FR 25157 (May 7, 1998).

¹ The FDIC’s Division of Administration has issued an Acquisition Policy Manual (APM)

adjustment for MWOB firms, the FDIC program could well fail the first half of the Adarand test.

Even assuming, *arguendo*, that there is an adequate compelling governmental interest, the next phase of the Adarand test requires consideration of whether the benefit conferred is sufficiently narrowly drawn to satisfy the constitutional standard. The Court lists five factors that may be relevant to the determination of whether an affirmative action remedy is narrowly drawn to achieve its goal. They are: "(i) the efficacy of alternative remedies; (ii) the planned duration of the remedy; (iii) the relationship between the percentage of minority group members in the relevant population or workforce; (iv) the availability of waiver provisions if the hiring plan could not be met; and (v) the effect of the remedy upon innocent third parties." *United States v. Paradise*, 480 U.S. 149, 187 (1986).

Applying these standards to the 3% price evaluation adjustment established in the regulation, it does not appear that alternative remedies have been attempted; there is no time limit on the price evaluation adjustment; the price evaluation adjustment is unrelated to the percentage of minority firms in the industry or area; the price evaluation adjustment is automatically awarded to all eligible firms in all circumstances; and the remedy may well result in the loss of a potential contract by non-MWOB firms despite more cost-effective bids. Thus, the 3% price evaluation adjustment may not be sufficiently narrow to satisfy the constitutional standard.

Affirmative Action in Federal Procurement

In 1996, the Department of Justice invited public comments on a system designed to reform affirmative action in federal procurement in response to Adarand. 61 FR 26042, May 23, 1996. Continuing in that vein, in 1998, the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration published a revision to the Federal Acquisition Regulations (FAR) implementing a new program of affirmative action in federal procurement. 63 FR 52426, September 30, 1998.

In this program, each year, the Department of Commerce will make a determination as to which industries demonstrate the results of past discrimination and are thereby eligible for a benefit in federal contracting. The Department of Commerce will also determine the size of a price evaluation adjustment, not to exceed 10%, to be

available in those industries. In the first year of the program, eligible industries that are generally used by FDIC include accounting firms, asset managers, information technology contractors, office services, and building services. The amount of the price evaluation adjustment for 1999 is 10%.

The price evaluation adjustment is available to firms certified as Small Disadvantaged Businesses (SDBs) by the Small Business Administration (SBA). An SDB is a small business firm that is at least 51% owned by individuals who are both socially and economically disadvantaged. Socially disadvantaged individuals include Black Americans, Hispanic Americans, Asian Pacific Americans, Subcontinent Asian Americans, and Native Americans as a class, as well as other groups that the SBA may from time to time designate, and individuals that can prove by a preponderance of the evidence previous discrimination on a case-by-case basis. Economically disadvantaged individuals have an individual net worth of less than \$750,000.² The standard for determining whether a firm qualifies as "small" varies between industry classifications and may be based on revenue or number of employees.

The price evaluation adjustment of 10% is available to qualified SDBs bidding in competitive procurements over \$100,000 for services within the eligible industries as determined by the Department of Commerce.

In lieu of the price evaluation adjustment, an SDB may take advantage of an SDB participation factor, if the contracting agency includes such a factor in the procurement. An SDB participation factor may be offered at the discretion of the contracting agency in competitive procurements over \$500,000, or \$1,000,000 for construction contracts. The contracting agency assigns a value to this factor.³ A non-SDB may take advantage of the factor by proposing to partner with an SDB or to use SDB subcontractors. An SDB can also take advantage of this factor as the prime contractor. However, the SDB would only be eligible for the participation factor if it first waives the price evaluation adjustment. Utilization of SDBs as subcontractors may also be encouraged, at the discretion of the contracting agency, by offering prime contractors a financial incentive to exceed the proposed SDB

subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

II. Utilization of SDB Program

It is unlikely that the FDIC MWOB price evaluation adjustment, as implemented, would pass the Constitutional tests enunciated by the Supreme Court in Adarand. There has been no articulation of a compelling governmental interest as required by that case, and it does not appear that the benefit conferred by the program is sufficiently narrowly drawn to survive judicial scrutiny. On the other hand, the FAR program appears to satisfy the Adarand tests. The benefits are only available in industries where there is a compelling governmental interest based on findings of past discrimination, and the 10% price evaluation adjustment is related to the degree of under-representation within the industry. Moreover, the benefit is not solely available on the basis of race or ethnicity. Rather, to qualify, small firms must also be owned and operated by socially and economically disadvantaged individuals.

Although the FDIC is not subject to the FAR, the FDIC believes that the FAR's affirmative action contracting program provides a constitutionally sustainable means of enhancing the opportunities for SDBs in FDIC contracting. Accordingly, the FDIC intends to voluntarily utilize that program in lieu of the constitutionally questionable price evaluation adjustments based on race and gender that have been awarded in the past. With this in mind, the FDIC solicits public comment on whether the FDIC's proposed regulation should specifically reference the regulations that implement the federal government's SDB procurement program, in addition to such references in the FDIC's acquisition policies and procedures. We will, of course, continue to maintain an Outreach Program to ensure, to the maximum extent possible, that minorities and women and entities owned by minorities and women are given the opportunity to fully participate in contracts to provide both legal and other services. In addition, the FDIC will continue to follow its policy of including individuals with disabilities in the Outreach Program.

The program, to be included in the FDIC Acquisition Policy Manual (APM), will provide that, for goods and services

² The \$750,000 excludes individual equity in a primary residence and the value of the individual's ownership interest in the firm seeking SDB status.

³ Only SDB participation within eligible industries may be considered under this factor.

acquired under Formal Contracting Procedures, as defined in the APM, generally involving expenditures of \$100,000 or more, a price evaluation adjustment will be available to technically qualified SDB bidders in the following circumstances: (a) The bidder has been certified as an SDB by the SBA under procedures set forth in 13 CFR part 124; and (b) the Standard Industrial Classification (SIC) code for the prime contract is one in which the Department of Commerce has authorized the use of a preference. The eligible SICs and amount of the price evaluation adjustment is established annually by the Department of Commerce pursuant to 48 CFR 19.201(b).

Moreover, solicitations issued under the Formal Contracting Procedures involving awards of \$500,000 or more (\$1,000,000 for construction contracts) may also include an evaluation factor for SDB participation in the performance of the contract. The value to be assigned this factor, if any, is determined by the contracting officer on a contract-by-contract basis. The prime contract need not be in an SIC code identified as authorized by the Department of Commerce for the use of preferences, but only SDB participation in authorized SIC codes would be considered in the evaluation of the participation factor. SDB participation may be in the form of subcontracts, joint ventures or teaming partners.⁴ Where the SDB is bidding as a prime contractor in response to a solicitation that includes an SDB participation factor, the SDB will not be eligible for the participation factor unless it first waives its price evaluation adjustment.⁵

Utilization of SDBs as subcontractors may also be encouraged, at the FDIC's discretion, by offering prime contractors a financial incentive to exceed the proposed SDB subcontracting. An additional payment can be authorized where the prime contractor promises a particular monetary target of SDB

⁴ Any joint venture in which an SDB undertakes to perform a portion of the work could qualify for consideration under the SDB participation factor. The technical value assigned to such joint ventures under the SDB participation factor would, of course, depend on the proportion of the work to be performed by the SDB joint venturer. In other circumstances, a joint venture may itself qualify as an SDB under SBA regulations. Generally, for a joint venture to qualify, the SDB participant must have at least a 51% ownership share, perform 51% of the work, and the managing partner must be from the SDB participant.

⁵ In evaluating this factor, the contracting officer may consider the specificity of the proposal, the enforceability of the commitments, the complexity and variety of the work to be performed by SDBs, the realism of the proposal, and the contractor's past performance in complying with SDB participation goals.

subcontracting and its actual performance exceeds that promise. The monetary incentive can be up to 10% of the SDB subcontracting dollars in excess of the target amount.

The FDIC will not certify SDBs. That process will be carried out by the Small Business Administration under procedures established in the SBA's regulations, 13 CFR part 124. SDBs responding to FDIC solicitations are responsible for identifying themselves and certifying their current status as an SDB. An SDB that has applied for but not yet received SBA certification may be entitled to treatment as an SDB where certification can be obtained before the contract is awarded. It is the intention of the FDIC to enter into a memorandum of understanding with the SBA, to establish procedures whereby the SBA will treat FDIC contractors seeking SDB certification in the same manner as contractors with FAR agencies that are similarly situated. However, if certification cannot be obtained in a timely manner, the contract may be awarded to another bidder.⁶

III. Notice of Proposed Rule Making

To facilitate the implementation of the policy enunciated above, we propose to repeal the provisions of part 361 that confer a price evaluation adjustment, 12 CFR 361.8(b)(3), as well as make other conforming amendments to the regulations. The FDIC Office of Diversity and Economic Opportunity (ODEO) will continue to have overall responsibility for providing the FDIC with technical assistance and guidance to facilitate the identification, registration and solicitation of minority- and women-owned firms including minority- and women-owned law firms (MWOLFs). ODEO is also responsible for the Corporation's outreach efforts, such as:

- (1) Identifying MWOBs and MWOLFs that can provide legal or other services to FDIC;
- (2) Conducting seminars, meetings, workshops and other various functions to promote the identification of MWOBs and/or MWOLFs; and
- (3) Participating in conventions, seminars, meetings, workshops and other functions to promote the

⁶ The FDIC will communicate with the SBA to ensure that FDIC contractors seeking certification as SDBs are given the same consideration as other contractors seeking similar certification. In FAR contracting, the SBA has committed itself to expedited treatment of certification applications where an award is pending, and if certification is not granted within that fifteen-day period, the contracting officer may make the award to the next best bidder.

identification and inclusion of MWOBs and MWOLFs.

Moreover, ODEO has specific responsibility for the Outreach Program with respect to providers of non-legal services, and in addition to the functions noted above, it will distribute information concerning the FDIC program for outreach to minority- and women-owned businesses. Generally, ODEO will work with contracting officials to ensure that minority- and women-owned firms are included on FDIC solicitation lists.

ODEO will also collect information from each FDIC office and division that performs contracting or outreach activities, on a quarterly basis or upon request, including statistical information on contract awards and solicitations by designated demographic categories and related outreach activities. The FDIC will request and maintain information on firms that have represented themselves as minority- or women-owned for purposes of outreach efforts and statistical reporting.

The Legal Division will perform outreach efforts targeted at providers of legal services. Generally, in addition to the functions listed above, the Legal Division's National Outreach Coordinator will require, at a minimum, quarterly submissions of statistical information on legal fees and expenses paid to outside counsel by designated demographic categories. FDIC will also encourage use of minority and women lawyers within other firms and partnering of firms with MWOLFs. Moreover, specific procedures and activities will be detailed in the Legal Division's Outside Counsel Deskbook as well as the FDIC's web site at: www.fdic.gov.

Proposed Rule Changes

In addition to a general editorial updating and simplification of the rule, the FDIC proposes to amend § 361.3 to remove unnecessary definitions and to conform the definition of a minority to the SBA definition. Section 361.4 would remain essentially unchanged.

The FDIC proposes to remove §§ 361.7–361.10 because the FDIC will no longer grant price evaluation adjustments based on race and gender criteria. Statistics based on self-certification of minorities and women and entities owned by them will be used in conjunction with survey efforts solely for monitoring the FDIC's outreach efforts.

The FDIC seeks public comment on these proposed rule changes.

IV. Matters of Regulatory Procedure

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. Public comment and OMB approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority status. This information collection, approved under OMB control number 3064-0072, is valid until August 31, 2001 and will not be changed by this proposed rulemaking.

Regulatory Flexibility Act

The FDIC has determined that this proposed rule may 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.*, because the amendment repeals the 3% price evaluation adjustment that FDIC rules had provided to minority- and women-owned businesses, including small businesses. Accordingly, this initial regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 603.

In *Adarand Constructors, Inc. v. Peña*, 115 S.Ct. 2097 (1995), the Supreme Court applied strict judicial scrutiny to federal affirmative action programs that use racial or ethnic criteria as a basis for decision making. The FDIC has determined that its price evaluation adjustments for minority- and women-owned businesses may not pass the Constitutional tests enunciated by the Supreme Court in *Adarand*. Therefore, in this proposed rulemaking, the FDIC proposes to amend its regulation to repeal that part of the regulation which provides a 3% price evaluation adjustment to minority- and women-owned businesses that bid on FDIC contracts. The FDIC believes that this approach is the only readily apparent solution, because providing any price incentive without meeting the criteria of the Court would be constitutionally suspect.

The Federal Acquisition Regulations (FAR), 63 FR 52426, (September 30, 1998), Reform of Affirmative Action in Federal Procurement, provide a constitutionally sustainable means of enhancing opportunities for small and disadvantaged businesses. The FDIC will voluntarily utilize the FAR's affirmative action program.

The objective of this proposal is to implement an outreach and affirmative action procurement program consistent with the Supreme Court's decision in *Adarand*.

The 3% price evaluation adjustment being proposed for repeal was available to minority- and women-owned firms without regard to whether such firms were also "small" businesses. 12 CFR 361.8(b)(3). In 1998, the FDIC awarded 4,628 contracts, including 1,287 (28%) to minority- or women-owned firms. However, the overwhelming majority of those contracts were awarded without reference to the price evaluation adjustment because the contract was for less than the \$50,000 threshold in the rule, or the purchase was made off the Federal Supply Schedule. Of the 537 awards that were subject to the price evaluation adjustment, 75 (14%) went to minority- or women-owned firms. Based on a self-certification, the majority of those firms (about 62%) identified themselves as small business concerns. The FDIC anticipates that there will be no significant change in its contracting activity for 1999. Thus, there may be some adverse effect on small entities that enjoyed the price evaluation adjustment under the regulation, principally small, women-owned firms. However, given the FDIC's record of contract awards where the price evaluation adjustment was not applicable as well as the benefits being conferred on Small Disadvantaged Businesses under the federal affirmative action contracting program, it is anticipated that the economic impact on small businesses may be substantially attenuated.

Repeal of regulations establishing a 3% price evaluation adjustment will not impose any new paperwork burden. Public comment and Office of Management and Budget approval has previously been obtained for an FDIC collection of information titled "Acquisition Services Information Requirements" which includes questions regarding contractors' minority- and/or women-owned status. This information collection, approved under OMB control number 3064-0072 is valid until August 31, 2001 and will not be changed by the rule changes proposed herein. This rule does not duplicate, overlap, or conflict with any other federal rules.

Because the 3% price evaluation adjustment for minority- and women-owned businesses would likely fail the constitutionally mandated strict scrutiny test established in the *Adarand* case, the only readily apparent alternative is to repeal the regulation. Nevertheless, parties may wish to

address the impact of repeal on contract awards to small businesses.

Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this proposed amendment will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act of 1999 (Public Law 105-277).

List of Subjects in 12 CFR Part 361

Government contracts, Lawyers, Legal services, Minority businesses, Reporting and recordkeeping requirements, Women businesses.

For the reasons set forth above, the Board of Directors of the Federal Deposit Insurance Corporation proposes to revise part 361 of chapter III of title 12 of the Code of Federal Regulations as follows:

PART 361—MINORITY AND WOMEN OUTREACH PROGRAM CONTRACTING

Sec.	
361.1	Purpose.
361.2	Policy.
361.3	Definitions.
361.4	Scope.
361.5	Oversight and monitoring.
361.6	Outreach.

Authority: 12 U.S.C. 1833e.

§ 361.1 Purpose.

The purpose of the FDIC Minority and Women Outreach Program (MWOP) is to ensure that minority- and women-owned businesses (MWOBs) are given the opportunity to participate fully in all contracts entered into by the FDIC.

§ 361.2 Policy.

It is the policy of the FDIC that minorities and women, and businesses owned by them have the maximum practicable opportunity to participate in contracts awarded by the FDIC.

§ 361.3 Definitions.

For purposes of this part:

(a) The term "minority" has the same meaning as the term "socially disadvantaged individuals" as set out in the Small Business Administration regulations at 13 CFR 124.103(b).

(b) *Legal Services* means all services provided by attorneys or law firms (including services of support staff).

§ 361.4 Scope.

The FDIC outreach program applies to all contracts entered into by the FDIC. The outreach program is incorporated into FDIC policies and guidelines governing contracting and the retention of legal services.

§ 361.5 Oversight and monitoring.

(a) The FDIC Office of Diversity and Economic Opportunity (ODEO) has overall responsibility for nationwide outreach oversight, which includes, but is not limited to, the monitoring, review and interpretation of relevant regulations. In addition, the ODEO is responsible for providing the FDIC with technical assistance and guidance to facilitate the identification, registration, and solicitation of minority- and women-owned businesses.

(b) Each FDIC office that performs contracting or outreach activities shall submit information to the ODEO on a quarterly basis, or upon request. Quarterly submissions will include, at a minimum, statistical information on contract awards and solicitations by designated demographic categories.

§ 361.6 Outreach.

(a) Each office engaged in contracting with the private sector will designate one or more MWOP coordinators. The coordinators will perform outreach activities for MWOP and act as liaison between the FDIC and the public on MWOP issues. On a quarterly basis, or as requested by the ODEO, the coordinators will report to the ODEO on their implementation of the outreach program.

(b) Outreach includes the identification and registration of MWOBs who can provide goods and services utilized by the FDIC. This includes distributing information concerning the MWOP.

(c) The identification of MWOBs and minority- and women-owned law firms (MWOLFs) will primarily be accomplished by:

(1) Obtaining various lists and directories of minority- and women-owned firms maintained by other federal, state, and local governmental agencies;

(2) Participating in conventions, seminars and professional meetings comprised of, or attended predominately by, MWOBs and/or MWOLFs;

(3) Conducting seminars, meetings, workshops and other various functions to promote the identification and registration of MWOBs and/or MWOLFs;

(4) Placing MWOP promotional advertisements indicating opportunities with FDIC in minority- and women-owned media; and

(5) Monitoring to assure that FDIC staff interfacing with the contracting community are knowledgeable of, and actively promoting, the MWOP.

By order of the Board of Directors.

Dated at Washington, D.C., this 27th day of July 1999.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 99-20126 Filed 8-5-99; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 98-NM-260-AD]

RIN 2120-AA64

Airworthiness Directives; Bombardier Model CL-600-2B19 (Regional Jet Series 100) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to certain Bombardier Model CL-600-2B19 (Regional Jet Series 100) series airplanes, that currently requires revising the Airplane Flight Manual (AFM) to require the flight crew to check, and reset, if necessary, certain instrument settings prior to each takeoff and after any event during which generators are switched. This action would add a new revision to the AFM and would revise the applicability of the existing AD. This action also would require modification of the air data reference systems. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent uncommanded changes in certain instrument settings on the pilot's and co-pilot's instrument displays, which could result in confusion among the flight crew about the correct position and flight configuration of the airplane.

DATES: Comments must be received by September 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98 NM-260-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Aerospace Engineer, Systems and Flight Test Branch, ANE-172, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256-7506; fax (516) 568-2716.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-260-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-260-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.