proposed emission limit, the revision, which is a relaxation of current regulations, would not allow an actual increase in emissions. In fact, the source was prepared to install additional equipment to meet the proposed limit after it was approved, thereby reducing actual emissions significantly.

In 1986 Southern Coke Corporation purchased all assets of Chattanooga Coke, which had filed for Chapter 11 bankruptcy, and installed additional air pollution control equipment. The 1981 consent decree was also amended to reflect a new final compliance date, December 3, 1986.

After December 3, 1966, EPA conducted three more inspections of Southern Coke and each time the company failed to achieve and demonstrate compliance. On August 24, 1987, Southern Coke Corporation notified EPA that the plant would cease all operations as of August 31, 1987. As of now, portions of the plant have been dismantled and sold. Based on this information, EPA determined that there was no need to continue to process the RACT regulations and the visible emission limits for coke batteries. Therefore, EPA is hereby withdrawing the proposed approval of those revisions published December 23, 1985 (50 FR 52336).

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Particulate matter, Intergovernmental relations, Incorporation by reference.

Authority: 42 U.S.C. 7401–7642.

Dated: June 16, 1988.

Greer C. Tidwell,

Regional Administrator.

[FR Doc. 88–14385 Filed 6–29–88; 8:45 am]

BILLING CODE 6506-50-M

---

40 CFR Part 52

[FRL-3407-3]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this document, EPA proposes to approve a revision to the Missouri State Implementation Plan (SIP). The purpose of this revision is to reduce emissions of volatile organic compounds (VOC) into the air in the Kansas City ozone nonattainment area. VOCs react in the atmosphere to form ozone, and reducing VOC emissions is expected to result in the Kansas City area meeting the National Ambient Air Quality Standards (NAAQS) for ozone. Emissions will be reduced by sources of VOCs coming into compliance with two new emission limits which have been adopted by the state of Missouri as part of this plan. EPA's approval of these rules means that they will be enforceable against individual sources of air pollution by the federal government as well as by the state. The purpose of this document is to advise the public of EPA's preliminary finding and to invite comments on EPA's proposed approval.

DATE: Comments must be received by August 1, 1988.

ADDRESSES: Comments should be sent to Larry A Hacker, Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101. The state-submitted information and the EPA-prepared technical support document are available at the above address and at the Missouri Department of Natural Resources, Air Pollution Control Program, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri 65101.

FOR FURTHER INFORMATION CONTACT: Larry A. Hacker, (913) 236–2893; FTS 757–2893.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act (CAA), as amended in 1970, required states to submit, for all areas of the country, plans to implement the NAAQS which are set by EPA to protect health and welfare by limiting the amount of air pollution allowed in the air to which people are exposed. These plans were to show how the NAAQS would be attained by 1975. When Congress changed the CAA in 1977, it recognized that many areas of the country had not yet attained the NAAQS and required revised plans that would be adequate, in most cases, to attain the standards by 1982. Upon request, areas with severe problems were given until the end of 1987 to demonstrate attainment.

The SIP approved by EPA in 1972 did not result in attaining the ozone standard, and the Kansas City Metropolitan Area (KCMA) was officially listed as nonattainment with respect to the ozone standard on March 3, 1978 (43 FR 9009). The state of Missouri submitted a strengthened SIP on July 2, 1979. The SIP was approved by EPA on April 9, 1980 (45 FR 24140), with certain conditions, all of which were subsequently satisfied. This approved plan contained measures to reduce the emissions of the VOCs that react in the atmosphere to form ozone. These reductions were thought at the time to be adequate to reduce ambient ozone concentrations to the standard by December 31, 1982.

While there were no exceedances of the NAAQS for ozone in 1982, there were three exceedances during 1983. Additional monitored ozone exceedances in 1984 confirmed that the ozone standard had not been attained and on February 20, 1985, EPA notified the state that the SIP was inadequate and called for revisions adequate to attain the standard (see 50 FR 26198, June 25, 1985). On May 21, 1986, the state submitted a revised plan containing additional control measures which the state believes will attain the ozone NAAQS. Pursuant to this plan, the state submitted revised VOC control regulations on December 18, 1987.

Evaluation Criteria

EPA has evaluated these submissions to determine if they meet the requirements of Part D of the CAA using the *EPA Guidance Document for the Correction of Part D State Implementation Plans for Nonattainment Areas*, dated January 27, 1984, and the *Policy for Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension*, published January 22, 1981 (46 FR 7182). The discussion below follows the outline of Part D requirements as given in Section 172 of the CAA.

Attainment Demonstration

The basic requirement of section 172(a) is to demonstrate that the NAAQS will be attained. Section 172(a)(1) required a demonstration of attainment by 1982 for most areas of the country. Section 172(a)(2) requires attainment as expeditiously as practicable but not later than December 31, 1987, for areas that demonstrated in 1979 that they could not attain the ozone or carbon monoxide standard by 1982. For areas which did not make such demonstrations but did not attain, the guideline document presumes that such areas should be able to attain by December 31, 1987.

The Kansas City ozone SIP demonstrates attainment by December 31, 1987. The demonstration includes a new inventory of VOC emissions for the year 1984, including mobile source emission estimates based on the EPA motor vehicle calculation program, MOBILE3. The inventory was used as

input into the Empirical Kinetic Modeling Approach, which estimated that VOC emissions need to be reduced 16.8 percent in order to meet the ozone standard. A large portion of this reduction will occur due to the effect of older motor vehicles being replaced with new vehicles which are better controlled under the Federal Motor Vehicle Control Program (FMVCP). The state has adopted four new rules requiring controls on: (1) Gasoline loading from tank trucks into gasoline stations (Stage I); (2) paint manufacturing; (3) pesticide and herbicide manufacturing; and (4) application of automotive underbody deadeners. Also, the state has revised its existing VOC control rules to delete inappropriate source applicability cutoffs and to improve clarity and enforceability. The emission reductions from the new and revised existing VOC control rules and from the FMVCP together are sufficient for the SIP to demonstrate attainment.

The NAAQS for ozone is attained when the number of expected exceedances is less than or equal to one per year when averaged over the three most recent years of record (see 40 CFR 50.9). EPA's review of the air quality data from January 1, 1985, through December 31, 1987, shows that the KCMA has attained the NAAQS for ozone.

Public Hearing

Section 172(b)(1) requires that the plan be adopted by the state after reasonable notice and public hearing. The May 21 submittal, including the Stage I requirement, was adopted by the Missouri Air Conservation Commission (MACC) on April 10, 1986, after the public hearing of March 20, 1986, which had been advertised in several newspapers and in the MISSOURI REGISTER at least 30 days in advance. Similarly, the paint manufacturing rule was heard at a properly advertised hearing May 29, 1986, and was adopted by the MACC on August 21, 1986.

The December 18 submittal contained 11 rule actions. Four of these were adopted, after proper notice and public hearing, on October 15, 1987. The remaining seven rule actions were adopted by the MACC on November 18, 1987, again, after proper notice and public hearing. Reasonably Available Control Measures (RACM)

Section 172(b)(2) requires implementation of all RACM as expeditiously as practicable. EPA's policy for ozone nonattainment areas having a significant ozone generating potential requires reasonably available control technology (RACT) for all VOC sources covered by a control techniques guideline (CTG) document. Controls representing RACT are also required for all major non-CTG VOC sources.

The December 18 submittal contained additional RACT rules and rule amendments necessary to complete the section 172(b)(2) requirements. Additional VOC emission reductions will result from the implementation of these requirements; however, no quantification of the emission reductions expected from these control measures is assumed in the attainment demonstration. Seven existing state rules were revised to delete inappropriate source applicability cutoffs, improve clarity and enforceability, and to otherwise make them more consistent with the applicable CTGs.

In Rule 10 C.S.R. 10–2.230, Control of Emissions from Industrial Surface Coating, the Ford Motor Company's truck and passenger topcoat operations underwent emission limit and compliance date changes. The existing emission limit for both operations is 3.6 lb. VOC/gallon of coating minus water. As of December 31, 1988, the emission limit for the passenger topcoat operation is 15.1 lb. VOC/gallon of solids applied. The emission limit change is not a relaxation; only the units by which compliance is determined are being changed, i.e., lb. VOC /gallon of coating (excluding water) to lb. VOC/gallon of solids applied. Since the new emission limit is written in terms of solids applied, the extended schedule provides Ford time to make technological improvements to its paint application process at the plant and to demonstrate compliance. In order to demonstrate compliance on a solids applied basis, Ford will have to improve its application process which will reduce the amount of paint used per project, thereby reducing the amount of VOCs emitted into the atmosphere.

Also on December 31, 1988, the emission limit for the truck topcoat operation will change to 15.1 lb. VOC/gallon of solids applied unless, prior to that date, Ford submits to the state a formal commitment to modify its truck topcoat operation to meet the state or Federal New Source Performance Standards (NSPS-Subpart MM), whichever is more stringent, by no later than December 31, 1990. (See footnote (2) to Section (4) of this rule.) The other provisions of Subpart MM would not be applicable, for example, the 30-day averaging time for compliance determinations and the tabled transfer efficiency values. The compliance determination provisions of rule 10 C.S.R. 10–2.230 would continue to apply.

On March 23 and May 11, 1988, the state submitted letters which clarified the footnotes to section (4) of this rule. EPA proposes approval of these rule amendments with the understanding that the NSPS commitment in footnote (2) does not supersede a more stringent emission limit which might be required in accord with the state's new source review rule, 10 C.S.R. 10–6.060.

Also, with respect to rule 10 C.S.R. 10–2.230, the compliance method for determining the volatile and solids content of the coatings is 40 CFR Part 60, Appendix A, Reference Method 24 (RM 24). Formulation data may be used for air dried coating if the data have been verified for the volatile content to be equal to or greater than the results from RM 24. If there is a question as to which value to use, the RM 24 results will be the final values to determine compliance.

In rule 10 C.S.R. 10–6.020, definitions, numerous terms were added or revised. These terms are necessary for the state to be able to require compliance with its VOC regulations without question as to what sources are subject or what is required of them. The state exempts perchloroethylene from its definition of VOC. On October 24, 1983, EPA proposed that perchloroethylene be listed as negligibly photochemically reactive (48 FR 49097). This action has never been finalized, primarily from concern over perchloroethylene as an air toxics emission. During the state's public comment period, EPA recommended that the state not exempt perchloroethylene from its VOC definition. Given that EPA has proposed the listing of perchloroethylene as negligibly photochemically reactive, and has not rescinded that proposal, the state chose to retain the perchloroethylene exemption in its VOC definition.

New rules were adopted to address two non-CTG source categories: application of automotive underbody deadeners, and pesticide and herbicide manufacturing. Two existing rules, which addressed VOC emissions from petroleum refineries, were rescinded. There are no longer any petroleum refineries in the Kansas City area; any such facilities in the future would be subject to stringent new source review requirements. For a more complete discussion of the December 18 rule action submittal, the reader is referred to the EPA-prepared technical support document.

The state has submitted an evaluation of other nonstationary source control measures that might have been adopted, for example, a vehicle inspection/

maintenance program, State II vapor controls, and transportation control measures. The evaluation shows that such additional measures are either not reasonable, would have an insignificant benefit, or would be implemented too late to be of value. The state has, however, committed to adopting rules to implement any CTGs that EPA may publish in the future.

Rules 10 CSR 10-2.230 and 10 CSR 10-2.290 provide for alternative compliance plans whereby compliance can be determined by a daily weighted average of emissions from a combination of source operations. EPA proposes approval of these rules with the understanding that any such alternative compliance plans must be submitted and approved by EPA as individual SIP revisions. In the absence of such approval, the enforceable requirements of the SIP would be the emission limits or reduction requirements stated in the rules. Reasonable Further Progress (RFP)

Section 172(b)(3) requires a demonstration that RFP will be made in the interim period prior to attainment. The SIP contains an RFP demonstration showing that progress will be made with the major reductions occurring at the attainment date. This back-end weighted schedule is an inevitable result of submitting a plan in 1986 showing attainment in 1987.

Emission Inventory

Section 172(b)(4) requires a current, comprehensive, and accurate inventory of actual emissions as well as updating of the inventory as often as necessary to track RFP. The SIP contains an inventory based on 1984 stationary source emission reports, a contractor report of area source emissions, and a mobile source inventory based on the most recent traffic counts, registration data, and other data needed to run the MOBILE3 calculations. The SIP also commits to annual updates for purposes of tracking RFP.

Emission Growth

Section 172(b)(5) requires identification of the emissions, if any, which would be allowed due to new sources. This revision notes a previously approved portion of the state's permitting rules which requires offsets or a demonstration that emission increases will be within a growth margin provided in the plan, prior to construction of any major source or major modification. The attainment demonstration allows for production variations from existing sources; however, there is no provision for new sources without offsets.

Permitting Program

Section 172(b)(6) requires a permitting program meeting the requirements of Section 173. That is, new or modified major sources must control emissions to the lowest achievable emission rate, the source must have emission offsets or growth must be built into the SIP, and all other sources in the state owned or operated by the same owner or operators must be in compliance. In this submission, the state again references its already approved permit rules which contain the required provisions.

Financial and Manpower Resources

Section 172(b)(7) requires identification and commitment of the necessary resources. The SIP identifies the resources needed to implement the ozone plan in Kansas City and commits to provide those resources to fully implement the plan.

Emission Limits and Compliance Schedules

Section 172(b)(8) requires emission limits, compliance schedules, and other measures as may be necessary. The new and amended rules contain limits and schedules for the affected sources. The final compliance dates for the SIP control measures vary from December 31, 1987, to December 31, 1988. These dates are consistent with the concept of demonstrating attainment by a near-term fixed date as discussed in EPA's General Preamble of July 14, 1987 (52 FR 26404).

Consultation and Involvement

Section 172(b)(9) requires evidence of public, local government, and state legislative involvement and consultation in accordance with Section 174. Also required are an identification of effects of the plan and a summary of the comments on the analysis. The SIP presents ample evidence of participation by state and local officials, primarily through their attendance at functions sponsored by the Mid-America Regional Council, the local planning agency certified by the state under Section 174. The SIP contains an analysis of the various effects of the provisions of the plan. This analysis was included in the draft plan and comments were invited on it. However, none of the comments received addressed this analysis.

Evidence of Legal Enforceability

Section 172(b)(10) requires evidence that the responsible governments have adopted the necessary requirements and are committed to implement and enforce the plan. The responsible agency is the Missouri Department of Natural Resources, which prepared the plan and which is legally obligated to enforce the rules adopted by the MACC. The plan contains the adopted rules as published in the MISSOURI REGISTER, the official publication of state regulations. There will be some local cooperation in this plan but the local agencies will be acting as agents of the state.

Other Section 172 Provisions

Sections 172(b)(11) and 172(c) refer to areas which made 1979 demonstrations that they could not attain by 1982. They do not apply to Kansas City.

Other Provisions

In addition to the specific statutory requirements of Part D, there are other provisions against which the plan must be evaluated. These are discussed below.

Transportation Control Measures (TCM)

The state analyzed 20 measures, but found that all would be either ineffective or unreasonable. Therefore, none are included in the SIP. The state did review basic transportation needs and determined that the Kansas City Area Transportation Authority would continue to operate an areawide bus system for the life of the SIP. There will be no adverse impacts due to TCMs because there will be no additional TCMs due to this SIP.

The state is required to consider inspection of motor vehicles if it will result in more expeditious attainment of if attainment before December 31, 1987, cannot be domonstrated. Because of the timing of the call for revisions and the attainment date, there is not enough time for an I/M program to be implemented and become effective before the attainment date. Therefore, there would be no value in attempting to begin I/M in Kansas City at this time.

Conformity of Federal Actions

Section 176(c) requires all federal projects and other activities to conform to the SIP. The state is to identify, to the extent possible, the emissions associated with major federal actions. The state was unable to identify any major federal actions that would have an appreciable effect on air quality in the near future. It did commit to review any that might be proposed.

Contingency Plan

Each SIP is to specify additional controls which will be implemented and what projects would be delayed during development of a new SIP if shortfalls in emissions reductions occur. The state's review found no projects that would

need to be delayed due to failure to attain the ozone standard. An appendix to the SIP presents information on what source categories would be regulated should the current plan fail to attain the standard and additional controls be needed.

Enforcement of Existing SIP

It is required that the existing SIP be enforced until the new SIP is in place. This submisssion is a revision to an existing plan. No existing limits are removed. Enforcement of the existing requirements is discussed once in the plan and is implicit throughout.

Summary

The Missouri submission of May 21, 1986, is based on a current emission inventory, has an emission reduction requirement developed using current guidance, will reduce actual emissions through implementation of new emission limits, and shows attainment of the ozone NAAQS by December 31, 1987. The submission of December 18, 1987, contained the additional state regulations necessary to meet the RACM requirements of section 172(b)(2) of the CAA. These basic requirements, along with the other elements described above, are necessary for a revision to be approved as part of a SIP.

Proposed Action

EPA proposes to approve the May 21, 1986, submittal of revisions to the Missouri ozone SIP for Kansas City. Also, EPA proposes to approve the December 18, 1987, submittal of revised VOC control regulations. These two submittals, together, constitute a complete ozone plan for the Missouri portion of the Kansas City metropolitan area.

The Administrator's decision to approve or disapprove this proposed SIP revision will be based on the comments received and on a determination of whether or not the revision meets the requirements of sections 110 and 172 of the CAA; or 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of State Implementation Plans; and of the 1982 SIP policy (46 FR 7184, January 22, 1981).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entitities.

The Office of Management and Budget has exempted this proposed rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Ozone, Nitrogen dioxide, Carbon monoxide, Hydrocarbons, Intergovernmental relations, and Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7642.

Date: March 30, 1988.

Morris Kay,

Regional Administrator.

[FR Doc. 88–14745 Filed 6–29–88; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

48 CFR Parts 1452 and 1480

Acquisition Regulations; Buy Indian Act; Procedures for Contracting Pursuant to the Act of June 25, 1910

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is publishing proposed rules to govern the implementation of section 23 of the Act of June 25, 1910, 25 U.S.C. 47 (often referred to as the "Buy Indian Act"). These rules support the policy and describe the procedures of the Bureau of Indian Affairs in its commercial acquisition relationships with self-certified eligible Indian economic enterprises.

DATE: Written comments must be received no later than August 1, 1988.

ADDRESSES: Written comments may be directed to U.S Department of the Interior, Bureau of Indian Affairs, Chief, Division of Contracting and Grants Administration, Code 660—MS 334A–SIB, 1951 Constitution Avenue, NW., Washington, DC 20245. The envelope front should bear the legend, "Buy Indian Act Comments," in the lower left corner.

FOR FURTHER INFORMATION CONTACT: Dr. Peter A. Campanelli, U.S. Department of the Interior, Bureau of Indian Affairs, Division of Contracting and Grants Administration, 1951 Constitution Avenue NW., Washington, DC 20245, telephone number (202) 343–3498; or by mail, at the address listed above.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of rulemaking authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual, Chapter 8. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301. The authorizing statute is section 23 of the Act of June 25, 1910 (25 U.S.C. 47).

The Bureau of Indian Affairs has published proposed rules in the **Federal Register** on two prior occasions in 1982 and 1984: 47 FR 44678 and 49 FR 45187, respectively. Public comments received by the Bureau of Indian Affairs were reviewed, addressed in the latter edition, and incorporated herein where applicable.

The Assistant Secretary—Indian Affairs has encouraged major initiatives for economic development and employment of Indian persons. In support of these initiatives, the previously proposed rules were rewritten and are published for public comment.

The policy of the Department of the Interior is to afford the pulic an opportunity, whenever practical, of participating in the rulemaking process. Accordingly, interested persons may submit written comments and suggestions regarding the proposed regulations to the location identified in the **ADDRESSES** section of this preamble. Comments must be received on or before the cited DATES section of this preamble. PRIMARY AUTHORS: The authors of this document are Dr. Peter A. Campanelli and Ms. Kimberly Armstrong, Division of Contracting and Grants Administration, Bureau of Indian Affairs, and Mr. William Opdyke, Office of Acquisition and Property Management, Office of the Secretary, U.S. Department of the Interior, Washington, DC 20245, telephone numbers (202) 343–3498, 343–3499, and 343–3433 respectively.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act.

The Department of the Interior had determined that this document is not a major rule under the criteria established by Executive Order 12291 and does not have a significant economic effect on a substantial number of small entities under the criteria established by the Regulatory Flexibility Act.

These proposed rules formalize an administrative procedure for all Bureau acquisition activities/locations to be applied uniformly for self-certified eligible Indian economic enterprises which respond in an offer to specific solicitations set-aside under the Act and this part.

The information collection requirements of the clauses referenced in Section 1480.501 regarding compliance with Section 7(b) of Pub. L. 93–638 (25 U.S.C. 452) have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.* and has been assigned clearance number 1084–0019. In addition, the contract office requires use of the

requirements in SF-129, Solicitation Mailing List Application; and, may require use of the SF-254, the Architect—Engineer and Related Services Questionnaire, and SF-255, the Architect-Engineer and Related Services Questionnaire for Specific Project. These referenced items have been assigned the OMB clearance numbers 3090-0009, 3090-0028, and 3090-0029 respectively, under the Federal Acquisition Regulation.

List of Subjects in 48 CFR 1452 and 1480

Indian economic enterprises, Government procurement.

For the reasons set out in the preamble, amendment to Part 1452 and a new Part 1480 are proposed to be added to Title 48 of the Code of Federal Regulations to read, as set forth below.

Date: May 3, 1988.

Ralph R. Reeser,

Acting Assistant Secretary, Indian Affairs.

1. The authority citation for 48 CFR Part 1452 continues to read as follows:

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 252(c)(2), AND 5 U.S.C. 301.

PART 1452—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Subpart 1452.2 is amended by adding new sections 1452.280-70, 1452.280-71, 1452.280-72, and 1452.280-73, as follows:

1452.280-70 Notice of Indian small business economic enterprise—small purchase set-aside.

As prescribed in 1480.402(b)(1), and in lieu of the requirements of FAR 19.508(a), insert the following provision in each written solicitation of quotations or offers to provide supplies or services when the acquisition is subject to small purchase procedures in FAR Part 13.

Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside ( )

Pursuant to the Buy Indian Act, 25 U.S.C. 47, quotations under this solicitation are solicited only from eligible Indian economic enterprises (48 CFR 1480.7) which must also be small business concerns. Any acquisition resulting from this solicitation will be from such a concern. Quotations received from enterprises that are not eligible Indian economic enterprises shall not be considered and shall be rejected.

1452.280-71 Notice of Indian economic enterprise set-aside.

As prescribed in 1480.403-1(b)(2), insert the following provision in solicitations and contracts involving Indian economic enterprise set-asides:

Notice of Indian Economic Enterprise Set-Aside ( )

(a) Definitions.

"Eligible" means that the majority owner of an Indian economic enterprise meets both the definitions of "Indian" and of "Indian economic enterprise" as set forth below.

"Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et. seq.).

"Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

"Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

"Self-certified" means the positive statement of eligibility as an Indian economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the procedures in 48 CFR 1480.7.

(b) General.

(1) Pursuant to the Buy Indian Act, offers are solicited only from eligible Indian economic enterprises. Therefore, the offeror must represent by written declaration at the time of submission of its offer to a specific solicitation that its economic enterprise is eligible to be considered for award. (If selected for award, the offeror shall comply with: the minimum 51 percent ownership and daily business management requirement criterion; and, the preference requirements contained in subparagraphs (c)(3) and (c)(4) below during performance of the contract if award is made to the economic enterprise; and, shall provide the required percentage of the work/costs with its own resources, exclusive of manufactured or leased items and/or supplies or materials produced off-site, as required in 48 CFR 1480.501).

(2) Offers received from non-Indian business enterprises or non-eligible Indian economic enterprises shall be considered non-responsive and shall be rejected.

(3) Any award resulting from this solicitation will be made to an eligible Indian economic enterprise, defined in paragraph (a) above.

(c) In response to this solicitation, the eligible Indian economic enterprise shall also provide the following:

(1) As required by the "Subcontracting Limitation" clause, a description of the required percentage of the work/costs to be provided by the contractor over the contract term.

(2) Description of the source of human resources for the work to be performed by the contractor;

(3) Description of the method(s) of recruiting and training Indian employees, indicating the extent of soliciting employment of Indian persons, as required by the "Indian Preference—Department of the Interior" and/or, "Indian Preference Program—Department of the Interior" clause(s);

(4) Description of how subcontractors (if any) will be selected in compliance with the "Indian Preference—Department of the Interior" and/or, "Indian Preference Program—Department of the Interior" clause(s). The offeror shall furnish the names of Indian persons or economic enterprises being considered for subcontracts (if any); indicate what percentage of the work/costs they would be performing; and provide qualifications of the key personnel (if any) that will be assigned to the contract.

(5) Description of method(s) for compliance with any supplemental Tribal employment preference requirements, if contained in this solicitation.

(6) A completed Representation Declaration provision (48 CFR 1452.280-73).

(d) Prior to Bureau award of an Act contract, as well as upon successful and timely completion of the contract but prior to acceptance of the work or product by the Bureau contracting officer, the contractor shall provide written assurance to the Bureau that it will or has complied fully with the requirements of this clause.

(e) Failure to provide the information required by paragraphs (c) and (d) of this section may cause the offer to be determined non-responsive and rejected, or result in cause for suspension and debarment, or result in default, respectively.

1452.280-72 Subcontracting limitation.

As prescribed in 1480.501, insert the following provision in each written solicitation of quotations or offers to provide supplies or services:

Subcontracting Limitation ( )

(a) Definitions.

(1) "Subcontract," as used in this clause, means any contract (as defined by FAR Subpart 2.1) entered into by a subcontractor to furnish supplies or services for performance of a prime contract or a subcontract. It includes but is not limited to purchase orders and changes and modifications to purchase orders.

(2) "Subcontractor", as used in this clause, means an individual, partnership, firm, corporation or any acceptable combination thereof, or joint venture, to which a contractor subcontracts part of the work under the contract. The term shall include subcontractors in any tier who perform work on the project site.

(b) In performance of the contract for—

(i) Services contracts (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(ii) Supplies contracts (other than procurement from a regular dealer in such supplies), the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(iii) General construction, the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(iv) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees. (FAR 52.219-14).

(c) Regardless of the contract type (for services or supplies), the contractor agrees to give preference to Indian organizations and Indian-owned economic enterprises in the awarding of subcontracts under this contract in accordance with the "Indian Preference—Department of the Interior" clause.

(d) The contractor agrees to carry out the requirements of this clause to the fullest extent and to cooperate in any study or survey conducted by the contracting officer or agents of the Bureau of Indian Affairs as may be necessary to determine the extent of the contractor's compliance with this clause.

(e) The contractor agrees to incorporate the substance of this clause, including this paragraph (e), in all subcontracts for services awarded under this contract.

1452.280-73 Representation Declaration for eligible Indian economic enterprises.

As prescribed in 1480.700, insert the following provision in each written solicitation of quotations or offers to supply supplies or services:

Representation Declaration Buy Indian Act (25 U.S.C. 47) and 48 CFR Part 1480

( )

I. A. *Instructions.* Offerors requesting participation under the Buy Indian Act (25 U.S.C. 47) shall prepare their Representation Declaration as prescribed therein. The declaration shall be submitted to the cognizant Contracting Officer by the offeror in responding to a specific Bureau solicitation under the Act and 48 CFR Part 1480.

B. *Procedure.* 1. The Buy Indian Act and its regulation authorize the Secretary of the Interior and the Bureau of Indian Affairs to contract with eligible Indian economic enterprises for the procurement of supplies and services. Before submitting this declaration, you are encouraged to read the regulations (48 CFR Part 1480). A copy is available upon request from Bureau of Indian Affairs' Contract Offices.

2. The information requested below is to be submitted only in an offer in response to a specific solicitation under the Act. The completed and signed Representative Declaration is to be returned with your offer to the Bureau Contract Office issuing the solicitation.

3. To be eligible for awards by the Bureau of Indian Affairs under the Buy Indian Act and 48 CFR Part 1480, economic enterprises must meet the eligibility and self-certification requirements as defined in the Act regulations. Offerors applying for awards under the Act authority must do so only in an offer responding to a specific Bureau solicitation under the Act.

II. The offeror represents and certifies as part of its offer that it ☐ is, ☐ is not (check one) an eligible Indian economic enterprise. As used in this provision, the offeror meets the following definitions:

(A) "Eligible" means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this Declaration.

(B) "Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et. seq.).

(C) "Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

(D) "Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

III. This Representation Declaration is to be completed and submitted *only* in your offer in response to a specific Bureau of Indian Affairs solicitation issued under the Buy Indian Act. Mail or deliver your offer by the required deadline to the Bureau of Indian Affairs Contract Office which issued the solicitation. If you have any questions, please contact that Bureau Contract Office.

A. I understand that any intentional false statement in this Representation Declaration, or willful misrepresentation relative thereto, is a violation of the law punishable by a fine of not more than $10,000 or imprisonment of not more than 5 years, or both (18 U.S.C. 1001).

B. Also, I understand that the provisions of the civil False Claims Act (31 U.S.C. 3729-3731) establishes civil liability for false claims and provides for a civil penalty of $2,000 per false claim and double the damages suffered by the Government.

C. I have read and understand the above statement. I certify that the information provided in this Declaration is true, accurate and complete to the best of my knowledge and belief. I am sure of the regulations for this Act as they appear in 48 CFR Part 1480.

D. *Economic Enterprise*
Firm Name: _____

Address of Firm, include zip code: _____

Signature
By: _____

(Typed name of majority owner)
By: _____
(Signature of majority owner)
Telephone number of firm, include area code:
Date: _____

3. A new Part 1480 is proposed to be added as follows:

PART 1480—ACQUISITIONS UNDER THE BUY INDIAN ACT

Subpart 1480.0—General

Sec.
1480.000 Scope of part.
1480.001 Buy Indian Act acquisition regulations.

Subpart 1480.1—Definitions

1480.100 Definitions.

Subpart 1480.2—Applicability

1480.200 Applicability.
1480.201 Restrictions on use of the Buy Indian Act.

Subpart 1480.3—Policy

1480.300 General.
1480.301 Deviations.

Subpart 1480.4—Procedures

1480.400 General.
1480.401 Order of precedence for use of Government supply sources.
1480.402 Small purchases.
1480.403 Other than full and open competition.
1480.403-1 Set-asides for eligible economic enterprises.
1480.403-2 Other circumstances for use of other than full and open competition.
1480.404 Debarment and suspension.

Subpart 1480.5—Contract Requirements

1480.500 Indian preference.
1480.501 Subcontracting limitations.
1480.502 Performance and payment bonds.

Subpart 1480.6—Contract Administration

1480.600 Contract administration requirements.

Subpart 1480.7—Representation by an Indian Economic Enterprise Offeror

1480.700 General.
1480.701 Representation Declaration provision.
1480.702 Declaration process.

Subpart 1480.8—Protests of Representation Declaration

1480.800 General.
1480.801 Receipt of protest.
1480.802 Award of protested contract.
1480.803 Protest not timely.

Appendix A—Set-Aside Program Order of Precedence

Appendix B—Class Justification for Use of Other than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry

Authority: 25 U.S.C. 47 (36 Stat. 861), 41 U.S.C. 252(c)(2), and 5 U.S.C. 301.

Subpart 1480.0—General

1480.000 Scope of part.

This part prescribes policies and procedures for the commercial acquisition of supplies and services from self-certified eligible Indian economic enterprises pursuant to the Buy Indian Act, 25 U.S.C. 47.

1480.001 Buy Indian Act acquisition regulations.

(a) Acquisition regulations under this part are under the Department of the Interior Acquisition Regulations (DIAR) System and are issued in order to supplement Federal Acquisition Regulation (FAR) and DIAR requirements to satisfy the specific and unique needs of the Bureau of Indian Affairs in the implementation of the Buy Indian Act.

(b) Except for solicitation provisions and contract clauses codified in 48 CFR 1452, regulations issued under this part shall be codified in 48 CFR 1480 in accordance with DIAR 1401.303(c) and shall conform to the requirements of FAR 1.3 and DIAR 1401.3.

(c) Regulations under this part are issued pursuant to the authority of the Secretary of the Interior under 5 U.S.C. 301. This authority has been redelegated to the Assistant Secretary—Indian Affairs under part 209, Chapter 8, of the Departmental Manual (209 DM 8).

(d) Regulations issued under this part are under the direct oversight and control of the Director, Office of Administration, Bureau of Indian Affairs, Department of the Interior, Washington, DC 20245, which is responsible for their review, preparation for issuance, implementation, and oversight.

(e) Acquisitions conducted under this part shall be subject to all applicable requirements of the FAR and DIAR, as well as internal policies, procedures or instructions issued by the Bureau of Indian Affairs. The provisions of the FAR shall govern in all instances where there may be a conflict or discrepancy.

Subpart 1480.1—Definitions

1480.100 Definitions.

As used throughout this part, the following words and terms are used as defined in this unless the context in which they are used clearly requires a different meaning; or, a different definition is prescribed for a particular subpart or portion of a subpart.

"Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior, or designee.

"Bureau" means the Bureau of Indian Affairs, Department of the Interior.

"Bureau Central Office" means the Headquarters component located in Washington, DC, that serves as staff resource to the Assistant Secretary—Indian Affairs. For purposes of this section, the term refers specifically to the Office of Administration.

"Buy Indian Act" means section 23 of the Act of June 25, 1910 (25 U.S.C. 47), which is also referred to in this part as the Act.

"Buy Indian Contract" means any Bureau acquisition action (by contract, purchase order, delivery order, or modification) for the products of Indian industry or labor from a self-certified eligible economic enterprise pursuant to the authority of the Act and this part, except for the construction limitations stated in 1480.300(b).

"Chief of the Contracting Office" means the senior 1102 classification series contract specialist at a Bureau Area or Central Office.

"Contracting Officer" means an official designated in accordance with FAR 1.6 and DIAR 1401.6 of this title, having the authority to enter into, administer and/or terminate contracts, and make related determinations and findings or justifications and approvals.

"Day" means work day.

"Dealer (regular)" or "Manufacturer" means an Indian person who owns, operates or maintains a store, warehouse, factory or other establishment which meets the conditions in FAR 22.601.

"Eligible" means that the majority owner of an Indian economic enterprise (as defined herein) meets both the definitions of "Indian" and of "Indian economic enterprise" in this subpart.

"Fair market price" means a price based on reasonable costs under normal competitive conditions and not on lowest possible cost.

"Indian" means a person who is a member of an Indian Tribe, as defined herein, or an Alaska Native who is ¼ degree or more Alaska Native blood and either on or descended from someone on the roll of Alaska Natives prepared pursuant to the Alaska Native Claims Settlement Act of 1971 (43 U.S.C. 1601 et seq.).

"Indian Economic Enterprise" means any business entity (whether organized for profit or not) which: (1) Is at least 51 percent owned by one or more Indian(s) or (an) Indian Tribe(s); and (2) one or more of these owners must be involved in daily business management of the economic enterprise; and (3) the majority of the earnings of which accrue to such Indian person(s) (if for profit). The requirements cited herein must exist when an offer is made to a solicitation, at the time of award, and during the term of the contract.

"Indian land" means land over which an Indian tribe is recognized by the United States as having governmental jurisdiction and land owned by a Native corporation established under the Alaska Native Claims Settlement Act of 1971, so long as the corporation qualifies as an Indian economic enterprise. In the State of Oklahoma, or where there has been a final judicial determination that a reservation has been disestablished or diminished, the term means that area of land constituting the former reservation of the tribe as defined by the Secretary.

"Indian tribe" means any Indian tribe, band, nation, rancheria, pueblo, colony, or community which is recognized by the U.S. Government through the Secretary as eligible for the special programs and services provided by the Secretary to Indians because of their status as Indians.

"Interested party" means an Indian economic enterprise which is an actual or prospective offeror whose direct economic interest would be affected by the proposed or actual Bureau award of a particular contract set-aside under the Act.

"Products of Indian industry or labor" means any products, goods, supplies or services that can be provided by an eligible economic enterprise that either produces them with its own labor force, skills, or efforts, or is a regular dealer in such goods or services.

"Protest of representation" means an accurate, complete and timely written objection by an interested party to a proposed or actual Bureau award to an eligible Indian economic enterprise of a contract set-aside under the Act.

"Secretary" means the Secretary of the Interior.

"Self-Certified" means the positive statement of eligibility as an economic enterprise for preferential consideration and participation for acquisitions conducted pursuant to the Buy Indian Act, 25 U.S.C. 47, in accordance with the provisions in 48 CFR 1480.7.

"Small Purchase" means an acquisition of supplies or services pursuant to procedures in FAR Part 13.

"Tribal Governing Body" means the Federally recognized entity empowered to exercise the governmental authority of a Tribe, as the latter is defined herein.

Subpart 1480.2—Applicability

1480.200 Applicability.

Except as provided in 1480.300(b), this part is applicable to acquisitions (including small purchases) made by the Bureau of Indian Affairs, pursuant to 25

U.S.C. 47; and, those made by any other Bureau or Office of the Department of the Interior which is delegated the authority to make such acquisitions pursuant to 25 U.S.C. 47 and 1480.300(d).

1480.201 Restrictions on use of the Buy Indian Act.

(a) The authority of the Act and the procedures contained in this part are not to be used to award intergovernmental contracts to tribal organizations to plan, operate or administer authorized Bureau programs (or parts thereof) that are within the legislative and regulatory scope and intent of the Indian Self-Determination and Education Assistance Act, Pub. L. 93-638. The Buy Indian Act is used by the Bureau solely to award commercial contracts to eligible Indian economic enterprises in meeting Bureau program needs and acquisition requirements for its own operations.

(b) The authority of this Act may not be used to acquire construction, as defined in FAR, except as set forth in 1480.300(b).

Subpart 1480.3—Policy

1480.300 General.

(a) Except as provided in paragraph (b) of this section, it is the policy of the Department of the Interior to use the Act as authority to give preference to eligible Indian economic enterprises through the use of set-asides when acquiring supplies and services of Indian industry and labor in meeting Bureau needs and requirements.

(b) Construction, as defined in FAR 36.102, shall be acquired using full and open competition, except that construction of Indian reservation roads (other than those located in the State of Oklahoma) may be acquired under the authority of the Act and this part pursuant to 23 U.S.C. 204(e), as amended, and 41 U.S.C. 252(c)(2), as amended. Indian reservation road construction located in the State of Oklahoma acquired pursuant to the Act is prohibited by court injunction and shall be acquired only by using full and open competition or small business set-aside if required by 1419.503-70 of this title. [*Glover v. Andrus*, 446 U.S. 608 (1980)].

(c) The authority of the Secretary under the Act has been delegated to the Assistant Secretary and is exercised by the Bureau in support of its mission and program activities and as a means of fostering Indian employment and economic development.

(d) The authority of the Secretary under the Act may be delegated to a bureau or office within the Department of the Interior other than the Bureau of Indian Affairs only by Secretarial Order pursuant to Part 012 Chapter 1 of the Departmental Manual (012 DM 1).

(e) The Deputy to the Assistant Secretary—Indian Affairs (Operations), as the head of the contracting activity, is responsible for ensuring that all acquisitions made by the Bureau pursuant to the Act are in compliance with the requirements of this part.

1480.301 Deviations.

(a) Except as provided in paragraphs (b) and (c) of this section, the Assistant Secretary—Indian Affairs is authorized to approve deviations from the requirements of this part. This authority has been redelegated to the Deputy to the Assistant Secretary—Indian Affairs (Operations) who may also authorize an exception to the requirement for use of the Act in fulfilling an acquisition requirement of the Bureau when it is determined that such action is in the best interests of the Government. Requests for deviations or exceptions shall be submitted in writing from the contracting officer before the fact by the appropriate Area Office Director to the Bureau Central Office for review. After this review, the request shall be submitted to the Deputy to the Assistant Secretary—Indian Affairs (Operations) for approval/disapproval.

(b) The contracting officer may also authorize an exception for use of the Act for an acquisition of the Bureau, when it is determined that:

(1) In accordance with 1480.402(b)(2), there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises; or

(2) In accordance with 1480.402(b)(3), only one quotation is received from a responsible, eligible small business economic enterprise and the quotation is unreasonable; or

(3) In accordance with 1480.403-1(c), there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises at reasonable prices; or

(4) In accordance with a tribal resolution from the governing body or bodies of the cognizant Indian tribe or tribes that requests a waiver of the Act authority with justification.

(c) Other exceptions to use of the Act may be made by the officials specified in, and under the conditions prescribed by, 1480.403-1(f) or 1480.403-2(c).

Subpart 1480.4—Procedures

1480.400 General.

All acquisitions made under this part, including small purchases, shall conform to all applicable requirements of the FAR and DIAR.

1480.401 Order of precedence for use of Government supply sources.

Except as required by FAR 8.002, acquisitions made under this part shall be from the sources of supplies and services listed in order of precedence in Appendix A of this part, providing the Indian economic enterprise can meet the Bureau specifications and delivery requirements, and the anticipated cost is determined to be reasonable and at a fair market place.

1480.402 Small purchases.

(a) Subject to the limitations in 1480.300(b), each acquisition of supplies and services that is subject to small purchases procedures under FAR 13 and DIAR 1413, shall be set-aside exclusively for eligible Indian economic enterprises which are also small business concerns under the criteria and size standards of 13 CFR Part 121. This preference action shall be accomplished by use of Indian small business economic enterprise—small purchase set-asides.

(b)(1) Each written solicitation under an Indian small business economic enterprise—small purchase set-aside shall contain the provision at DIAR 1452.280-70, Notice of Indian Small Business Economic Enterprise—Small Purchase Set-Aside. However, if the solicitation is oral, information substantially identical to that which is in the provision shall be given to potential offerors.

(2) If the contracting officer determines there is no reasonable expectation of obtaining quotations from two or more responsible, eligible Indian economic enterprises which are small business concerns (or at least from one such enterprise, if the purchase amount does not exceed the dollar threshold prescribed in FAR 13.106(a) for obtaining competition) that will be competitive in terms of market price, quality, and delivery, the contracting officer shall proceed with an unrestricted small business—small purchase set-aside as prescribed in FAR 13.105.

(3) If the contracting officer proceeds with an Indian small business economic enterprise—small purchase set-aside and receives a quotation from only one such responsible economic enterprise at a reasonable price (see FAR Subpart 13.1069c)), the contracting officer shall make an award to that concern. However, if the contracting officer does not receive a reasonable quotation from such an economic enterprise, the

contracting officer shall cancel the set-aside and complete the purchase by using an unrestricted small business—small purchase set-aside as prescribed in FAR Subpart 13.105.

(4) When proceeding under the circumstances in 1480.402(b)(2) or (b)(3), the contracting officer shall ascertain the availability of small business suppliers by telephone or other informal means.

(5) If the purchase is to proceed in accordance with 1480.402(b)(2) or (b)(3), the contracting officer shall document the reason(s) in the file for such purchase.

(c) The clause at DIAR 1452.204–71, Indian Preference—Department of the Interior, and the clause at DIAR 1452.280–72, Subcontracting Limitation, shall be included in each solicitation of quotations and resulting purchase orders.

(d) Small purchases under this section shall conform to the competition and price reasonableness documentation requirements of FAR Subpart 13.106 and DIAR 1413.106.

1480.403 Other than full and open competition.

1480.403–1 Set-asides for eligible economic enterprises.

(a) Each proposed commercial acquisition for supplies or services that has an anticipated dollar value in excess of the small purchase threshold amount in FAR 13 shall be set-aside exclusively for eligible Indian economic enterprises (and referred to as an "Indian Economic Enterprise Set-Aside") when there is a reasonable expectation that offers will be received from two or more responsible enterprises and award will be made at a reasonable price except when:

(1) The acquisition is for construction, other than construction permitted by 1480.300;

(2) An exception from use of the Act has been obtained in accordance with 1480.301; or

(3) Use of other than full and open competition has been justified and approved in accordance with 1480.403–2.

(b) When using an Indian economic enterprise set-aside under this section, the contracting officer shall:

(1) Synopsize the acquisition in the Commerce Business Daily (CBD) as required by FAR Subpart 5.2 and identify it as the Indian Economic Enterprise Set-Aside;

(2) Insert the provision at DIAR 1452.280–71, Notice of Indian Economic Enterprise Set-Aside, in each solicitation of quotations or offers and resulting contracts;

(3) Insert the provision at DIAR 1452.280–72, Subcontracting Limitation, and the provision at DIAR 1452.204–71, Indian Preference—Department of the Interior, in each solicitation of offers and resulting contracts.

(4) Insert the provision at DIAR 1452.204–72, Indian Preference Program—Department of the Interior, in each solicitation of quotations or offers and resulting contracts where it is determined by the contracting officer, prior to solicition, that the work will be performed in whole or in part on or near Indian land. Tribal employment preference requirements may be added to the requirements of the provision in accordance with DIAR 1404.7005;

(5) Insert the provision at DIAR 1452.280–73, Representation Declaration, in each solicitation of quotations or offers in order that offerors to a specific solicitation can provide a declaration of eligibility to participate under the Act and this part.

(6) Use the Class Justification for Use of Other Than Full and Open Comeptition in Acquisition of Supplies and Services from Indian Industry (contained in Appendix B to this part) to meet the requirements of FAR 6.302–5(c)(2);

(7) By separate memorandum, certify that the supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises; the anticipated cost to the Bureau of the required supplies or services is determined to be reasonable; and, the information in the Class Justification for Use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry in Appendix B to this part is accurate and complete as it pertains to the proposed acquisition;

(8) Solicit bids using sealed bidding in accordance with FAR Part 14 whenever the conditions in FAR 6.401(a) are met. If sealed bids are not appropriate, competitive proposals shall be solicited in accordance with FAR Part 15;

(9) Reject as nonresponsive all bids which are received from concerns that do not have a positive statement as eligible Indian economic enterprises. The contracting officer may also request (as part of a normal pre-award audit) the Office of the Inspector General (OIG) to: (i) assist in determining the bona fide status of the low responsive and responsible offeror on Act contracts; and, (ii) determine whether the work will be performed by the labor force required under 1480.501. Such requests to the OIG should be made on the standard audit request form, DI–1902, as required by DIAR 1415.805–5.

(10) When using sealed bidding, determine that the price offered by the prospective contractor is considered to be reasonable and at a fair market price as required by FAR 14.407–2 before awarding a contract;

(11) When using competitive proposals, solicit proposals in accordance with FAR Subpart 15.4 and select sources in accordance with FAR Subpart 15.6 and DIAR 1415.6;

(12) When using competitive proposals, or when negotiating modifications which impact the cost of a contract awarded by sealed bidding, conduct proposal analysis including cost or price analysis in accordance with FAR Subpart 15.8; negotiate profit or fee in accordance with the procedures in DIAR Subpart 1415.8, and prepare a negotiation memoradum in accordance with DIAR 1415.808.

(13) When acquiring architect-engineer services, solicit proposals and evaluate potential contractors in accordance with FAR Part 36 and DIAR Subpart1436.6; and

(14) When acquiring services to be performed in whole or in part on Indian land, give written notice to the governing body or bodies of the cognizant Indian tribe or tribes. The notice shall be provided simultaneously with publication of the synopsis required by subparagraph (b)(1) of this section with information to the Tribe(s) of the Bureau's intent to contract if there are Indian economic enterprises which are eligible, interested, responsive and responsible, and the award can be made at a reasonable price. A tribal resolution or response to this notice shall be advisory only for the Bureau.

(c) When the contracting officer determines that there is no reasonable expectation that offers will be received from two or more responsible, eligible Indian economic enterprises and award cannot be made at a reasonable and fair market price, the basis for such a determination shall be documented in writing by the contracting officer and placed in the contract file. The contracting officer shall proceed with the acquisition using the sources identified in Appendix A to this part as listed in order of precedence.

(d) In the event an interested eligible Indian economic enterprise in identified after a market survey has been performed and a solicitation has been issued (which is not restricted to participation of eligible Indian economic enterprises) but prior to the date established for receipt of offers, the contracting officer shall provide a copy of the solicitation to this enterprise. In such cases, preference under the Act

will not be given to the eligible Indian economic enterprise. Under these conditions, the contracting officer may extend the date for receipt of offers when such action is determined to be practicable.

(e) When only one offer is received from a responsible, eligible Indian economic enterprise at a reasonable price in response to an acquisition set-aside under paragraph (a), the contracting officer shall make an award to that enterprise. However, the contracting officer shall initiate action to increase competition in future solicitations as required by FAR14.407-1(b).

(f) In response to an acquisition set-aside under 1480.403-1(a), when using sealed bid procedures, and when all otherwise acceptable bids received from responsible, eligible Indian economic enterprises are at unreasonable prices; or, when only one bid is received from such an enterprise and the contracting officer cannot determine the reasonableness of the bid price; or, when no responsive bids have been received from such enterprises, the chief of the contracting officer shall cancel the solicitation and reject all bids pursuant to a written determination in accordance with FAR 14.404-1(c). After notice of rejection to all bidders has been made pursuant to FAR 14.404-3, completion of the acquisition shall be made:

(1) Using negotiation (see FAR 14.404-1(e)(1) and 15.103), provided the contracting officer has determined that completion through use of negotiation is authorized in the written determination required by FAR 14.404-1(e) and approval has been obtained as required by DIAR 1414.404-1; or

(2) Using a new solicitation and the sources identified in Appendix A to this part, as listed in order of precedence if the use of negotiation is not authorized in the written determination required by FAR 14.404-1(c) and DIAR 1414.404-1.

(g) In response to a set-aside acquisition, when using competitive proposals, proposals may be rejected pursuant to a written determination by the chief of the contracting office under the conditions set forth in FAR 15.608(b) and DIAR 1415.608.

§ 1480.403-2 Other circumstances for use of other than full and open competition.

(a) Other circumstances may exist with regard to fulfilling an acquisition requirement of the Bureau where the use of an Indian economic enterprise set-aside under 1480.403-1(a) and FAR 6.302-5 is not feasible. In such situations, the requirements of FAR Subparts 6.3 and 6.4 and DIAR Subparts 1406.2 and 1406.3 shall be applicable in justifying the use of the appropriate authority for other than full and open competition.

(b) Except as provided in FAR 5.202, all proposed acquisition actions under this section and FAR Subpart 6.3 shall first be synopsized in the Commerce Business Daily (CBD) in accordance with the requirements of FAR 5.207 and DIAR 1405.207.

(c) Justifications for use of other than full and open competition (other than the Class Justification in Appendix B to this part) under this section shall be approved for a proposed contract, or for a modification increasing the scope of the work of an existing contract, by:

(1) A supervisory contract specialist (Level IV Warrant holder) when the anticipated dollar value of the action is not over $25,000; and

(2) The Chief, Division of Contracting and Grants Administration (Central Office) when the anticipated dollar value of the action is over $25,000 and less than $100,000; and

(3) The Bureau Competition Advocate (Central Office) when the anticipated dollar value of the action is over $100,000 but does not exceed $1,000,000; and

(4) The Deputy to the Assistant Secretary—Indian Affiars (Operations) when the anticipated dollar value of the action is over $1,000,000 but does not exceed $10,000,000; and

(5) The Director, Office of Acquisition and Property Management, Office of the Secretary, when the dollar value of the action is over $10,000,000.

1480.404 Debarment and suspension.

Violation of the regulations in this part by an offeror or an awardee may be cause for debarment or suspension in accordance with FAR 9.406-2(b)(1) and 9.407.2(a)(3). Recommendations for possible debarment or suspension shall be referred to the Director, Office of Acquisition and Property Management, Department of the Interior, pursuant to DIAR 1409.406-3 and 1409.407-3 through the Division of Contracting and Grants Administration (Central Office) and concurred in by the Deputy to the Assistant Secretary—Indian Affairs (Operations).

Subpart 1480.5—Contract Requirements

1480.500 Indian preference.

(a) As prescribed in DIAR 1404.7003(a), solicitations of quotations or offers and resulting contracts awarded pursuant to the Act shall include the provision at DIAR 1452.204-71, Indian Preference—Department of the Interior (see 1480.402(c) and 1480.403-1(b)(3)).

(b) As prescribed in DIAR 1404.7003(b), solicitations of offers and resulting contracts, which may exceed $50,000 and where it is determined by the contracting officer (in advance of the solicitation) that the work under the contract will be performed in whole or in part on or near Indian land shall include the provision at DIAR 1452.204-72, Indian Preference Program—Department of the Interior (see 1480.403-1(b)(4)).

1480.501 Subcontracting limitation.

(a) In contracts awarded pursuant to the Act and this part, the eligible Indian economic enterprise must agree to the following in performance of the contract for—

(1) Services contracts (except construction), at least 50 percent of the cost of contract performance incurred for personnel shall be expended for employees of the concern;

(2) Supplies contracts (other than procurement from a regular dealer in such supplies), the concern shall perform work for at least 50 percent of the cost of manufacturing the supplies, not including the cost of materials;

(3) General construction, the concern will perform at least 15 percent of the cost of the contract, not including the cost of materials, with its own employees; and

(4) Construction by special trade contractors, the concern will perform at least 25 percent of the cost of the contract, not including the cost of materials, with its own employees. (FAR 52.219-14)

(b) The contracting officer shall insert the provision at 1452.280-72, Subcontracting Limitation, in all purchase orders and contracts for services or supplies awarded to eligible Indian economic enterprises pursuant to this part.

1480.502 Performance and payment bonds.

Pursuant to section 11 of Pub. L. 98-449, the contracting officer may accept alternative forms of security in lieu of performance and payment bonds required by FAR 28.102, if such forms of security provide the Government with adequate security for performance and payment. Each solicitation requiring performance and payment bonds shall contain the information required by FAR 28.102-3 and 28.103-2(b) and authorize use of any of the types of security acceptable under FAR Subpart 28.2.

Subpart 1480.6—Contract Administration

1480.600 Contract administration requirements.

The contracting officer and the contracting officer's representative (see DIAR 1401.670) shall monitor performance and progress to ensure contractor compliance with FAR Part 42 regarding all contract requirements. Attention shall be directed also to ensure contractor compliance with the following provisions of this part:

(a) Maintenance of the minimum 51% ownership and daily management criterion requirement of subparagraph (b)(1) of the provision at 1452.280–71; and

(b) Maintenance of the limitations required by the provision at 1452.280–72 when acquiring services and supplies; and

(c) Implementation and enforcement of Indian preference requirements contained in DIAR 1404.7003, as prescribed by 1480.500.

Subpart 1480.7—Representation by an Indian Economic Enterprise Offeror

1480.700 General.

(a) The coantracting officer shall insert the provision at 1452.280–73. Representation Declaration, in all solicitations set aside for Indian economic enterprises under this part.

(b) To be considered for an award under an acquisition set-aside under 1480.402 or 1480.403–1, an offeror must provide a positive statement that it is an eligible Indian economic enterprise by submitting the Representation Declaration provision at 1452.280–73. An offeror must represent that it meets both the definitions of "Indian" and "Indian economic enterprise" (as defined in 1480.100) and only in response to a specific solicitation set-aside under the Act and this part.

(c) The contracting officer shall accept an offeror's representation in a specific bid or proposal that it is an eligible Indian economic enterprise unless (i) another interested party challenges the economic enterprise representation; or (ii) the contracting officer has reason to question the representation. Challenges of and questions concerning a specific Representation Declaration shall be referred to the chief of the contracting office in accordance with Subpart 1480.8.

(d) The contracting officer shall maintain files complied from submissions by eligible Indian economic enterprises of the Solicitation Mailing List Application (SF–129); the SF–254 and SF–255, as applicable; and, the Representation Declaration provision in 1452.280–73.

1480.701 Representation Declaration provision.

(a) The Representation Declaration provision shall be available from all Bureau contracting offices.

(b) The submission of a Solicitation Mailing List Application (or SF–254 and SF–255 for Architect-Engineer services, when applicable) by such an economic enterprise does not remove the requirement for it to submit the completed Representation Declaration provision also required by this part if it wishes to be considered as an offeror for a specific solicitation. Contracting officers are responsible for determining the validity of the contents of the applicant's declaration.

(c) Any false or misleading information submitted by an economic enterprise when submitting an offer in consideration for an award set aside under the Act is a violation of the law punishable under 18 U.S.C. 1001. False claims submitted as part of contract performance under the Act authority are subject to the penalties of 31 U.S.C. 3729–3731.

1480.702 Declaration process.

(a) It is the policy of the Bureau that only eligible Indian economic enterprises are to participate in acquisitions set-aside under the Act and this part.

(b) Eligibility is based on information furnished by the economic enterprise to a Bureau contracting officer on the Representation Declaration provision at 1452.280–73 in response to a specific solicitation under the Act. Offerors must submit their completed Declaration provisions to the Bureau contracting office issuing the specific solicitation.

(c) The eligibility declaration remains in effect until:

(1) Voluntarily surrendered;

(2) Revoked for cause if the offeror or contractor information was falsified;

(3) The circumstances of the economic enterprise change so that it is no longer an eligible entity;

(4) Department and suspension proceedings have been instituted for a contractor; or

(5) A contractor has been debarred or suspended.

(d) The Bureau procedure supports responsible Indian economic enterprises and seeks to prevent circumvention or abuse of the Act. These negative aspects are considered detrimental to the legitimate, eligible Indian economic enterprises and contrary to the intent of the Congress.

(e) Declarations from economic enterprises may be reviewed by the appropriate Regional Solicitor when the contracting officer believes such review is necessary.

(f) Representation declaration of an Indian economic enterprise does not relieve the contracting officer of the obligation for determining contractor responsibility and its capability to perform, as required by FAR Subpart 9.1.

Subpart 1480.8—Protest of Representation Declaration

1480.800 General.

(a) The contracting officer shall accept an offeror's written representation declaration of being an eligible Indian economic enterprise (as defined in section 1480.100 of this part) only with an offer in response to a specific solicitation under the Act. Another interested party may challenge the representation declaration status of an offeror (or, awardee in a specific offer) by filing a written protest to the cognizant contracting officer in accordance with the procedures in 1480.801.

(b) After offers are opened, the contracting officer may question the eligibility declaration of any offeror in a specific offer by filing a formal objection with the chief of the contracting office.

1480.801 Receipt of protest.

(a) Any contracting officer who receives a protest, whether timely or not, or who, as the contracting officer, wishes to object to the representation declaration of an offeror, shall promptly forward the protest to the chief of the contracting office for the location.

(b) The protest shall be in writing and shall contain the basis for the protest with accurate, complete, specific and detailed evidence to support the allegation that the offeror is neither eligible nor does not meet both the definitions of "Indian" and of "Indian economic enterprise" cited in section 1480.100 of this part. The chief of the contracting office will dismiss any protest that is deemed frivolous or that does not meet the conditions in this section.

(c) In order to affect a specific solicitation, a protest must be timely. That is, the protest must be received by the contracting officer (see paragraphs (c) (1) and (2) of this section below) by the close of business (local time) of the fifth day after bid opening (in sealed bid acquisition) or receipt of the special notification required by FAR 15.1001(b)(2) from the contracting officer

that identifies the apparently successful offeror (in negotiated acquisitions).

(1) A protest may be made orally if it is confirmed in writing within the five-day period after bid opening (or receipt of notification) or by letter postmarked no later than one day after receipt of the special notification in paragraph (b) above of this section.

(2) A protest may be made in writing if it is delivered by hand, telegram, or letter postmarked within the five-day period after bid opening (or receipt of notification).

(3) A contracting officer's objection is always considered timely, whether filed before or after award.

(d) Upon receiving a timely protest, the chief of the contracting office will—

(1) Notify the protestor of the date it was received, and that the representation declaration of the economic enterprise being challenged is under consideration by the Bureau; and

(2) Furnish to the economic enterprise (whose representation declaration is being challenged) a request to provide detailed information on its eiligibility by certified mail, return receipt requested.

(e) Within three days after receiving a copy of the protest and the Bureau's request for detailed information, the challenged offeror must file with the chief of the contracting office a completed statement answering the allegations in the protest, and furnish evidence to support its position on representation. If the offeror does not submit the required material within the three days, or another period of time granted by the chief of the contracting office, the Bureau may assume that the offeror does not intend to challenge the protest and the Bureau shall not award to the challenged offeror.

(f) Within ten days after receiving a protest, the challenged offeror's response and other pertinent information, the chief of the contracting office will determine the representation declaration status of the challenged business concern and notify the protestor and the challenged offeror of the decision by certified mail, return receipt requested.

(g) If the declaration accompanying an offer is challenged and subsequently upheld by the chief of the contracting office, the written notification of this Bureau action shall state the reason(s) and also make known the option to appeal the determination to the Director, Office of Administration (Central Office). A copy of this written notification shall be provided within five days to the chief of the contracting office (Central Office) for review for possible suspension and debarment proceedings.

§ 1480.802 Award of protested contract.

(a) Award of a protested contract may be made on the basis of the determination by the chief of the contracting office. This determination is final for the Bureau unless it is appealed to the Director, Office of Administration, and the contracting officer is notified of the appeal before award. If an award was made before the time the contracting officer received notice of appeal, the contract shall be presumed to be valid.

(b) After receiving a protest involving an offeror being considered for award, the contracting officer shall not award the contract until (i) the chief of the contracting office has determined the validity of the representation, or (ii) ten days have expired since the chief of the contracting office received the protest, whichever occurs first. However, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest, or the mateials and services are urgently required, or a prompt award will otherwise be advantageous to the Government.

(c) If a protest on representation declaration is filed with the contracting officer and received before award in response to a specific offer and solicitation, the contracting officer shall provide notice to eligible offerors within one day that the award will be withheld and time extension for acceptance requested.

(d) If a protest on representation declaration is filed with the contracting officer and received after award in response to a specific offer and solicitation, the contracting officer need not suspend contract performance or terminate the awarded contract unless the contracting officer believes that an award may be invalidated and a delay would not prejudice the Government's interest. However, if contract performance is to be suspended, a mutual no-cost agreement will be sought.

1480.803 Protest not timely.

In the event of a protest of representation declaration which is not timely, the contracting officer shall notify the protestor that the protest cannot be considered on the instant acquisition but has been referred for consideration in any future actions. However, the contracting officer may quetion at any time the representation declaration status of a self-declared Indian economic enterprise.

APPENDIX A—SET-ASIDE PROGRAM ORDER OF PRECEDENCE

Source preference	Reference (48 CFR)
Supplies:	
1. Bureau of Indian Affairs inventories or excess from Federal agencies.	Subpart 8.1
2. Federal Prison Industries, Inc	Subpart 8.6.
3. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7
4. Indian economic enterprise set-aside under the Buy Indian Act.	Section 8.001(a) and 1480.402 and 403.
5. Wholesale Supply Sources (Stock Programs and Inventory Control Points such as GSA, VA and DOD depots).	41 CFR 101-26.3, 26.6 and 26.704.
6. Mandatory Federal Supply Schedules.	Subpart 8.4.
7 Optional Use Federal Supply Schedules.	Subpart 8.4.
8. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
9. Small Business—Small Purchase Set-Aside.	Sections 13.105 and DIAR 1413.103.
10. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
11. Total Set-aside for Small Business concerns.	Section 19.504.
12. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
13. Partial Set-aside for Small Business concerns.	Section 19.504.
14. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
15. Other Commercial Sources (including educational and non-profit institutions).	Subpart 6.1
Services:	
1. Purchase from the Blind and Other Severely Handicapped.	Subpart 8.7
2. Indian economic enterprise set-aside under the Buy Indian Act, including Indian roads and bridges.	Sections 8.001(a) and 1480.402 and 403; 23 U.S.C. 204(e), and 41 U.S.C. 252(c)(2), as amended.
3. Mandatory Federal Supply Schedules.	Subpart 8.4.
4. Optional Use Federal Supply Schedules.	Subpart 8.4.
5. Federal Prison Industries, Inc	Subpart 8.6.
6. Contracts under Section 8(a) of the Small Business Act.	Subpart 19.8.
7 Small Business—Small Purchase Set-Aside.	Sections 13.105 and 1413.103.
8. Total Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.
9. Total Set-aside for Small Business concerns.	Section 19.504.
10. Partial Set-aside for Small Business concerns located in Labor Surplus Areas.	Section 19.504.

APPENDIX A—SET-ASIDE PROGRAM ORDER OF PRECEDENCE—Continued

Source preference	Reference (48 CFR)
11. Partial Set-aside for Small Business concerns.	Section 19.504.
12. Total Labor Surplus Area Set-aside for concerns that are not Small Businesses.	Section 19.504.
13. Other Commercial Sources (including educational and non-profit institutions).	Subpart 6.1.

Appendix B—Class Justification for use of Other Than Full and Open Competition in Acquisition of Supplies and Services from Indian Industry

(1) Section 23 of the Act of June 25, 1910 (referred to as the "Buy Indian Act" and codified as 25 U.S.C. 47) provides discretionary authority to the Secretary of the Interior to acquire products and services of Indian industry. This authority has been delegated to the Assistant Secretary—Indian Affairs. It is exercised by the Bureau of Indian Affairs (BIA) in support of its mission and program activities and as a means of fostering economic development and employment for Indian persons.

(2) Pursuant to 25 U.S.C. 47 and the implementing regulations of 48 CFR Part 1480, the BIA may solicit offers and award contracts to eligible Indian economic enterprises to the exclusion of non-eligible offerors for supplies or services that the eligible enterprises either produce through their own labor, skills, or efforts, or provide as regular dealers in such supplies or services. The authority permitting use of other than full and open competition for acquisitions made pursuant to the Buy Indian Act is 41 U.S.C. 253(c)(5). Such acquisitions shall be referred to as "Indian Economic Enterprise Set-Asides."

(3) Offers may not be solicited from non-eligible enterprises except as may be specifically authorized by the Deputy to the Assistant Secretary—Indian Affairs (Operations) or the Contracting Officer.

(4) The authority of the Buy Indian Act and this Class Justification shall not be used to acquire construction of any type or form except as permitted for Indian reservation roads (but not roads in the state of Oklahoma).

(5) By separate memorandum, the Contracting Officer shall certify that:

(a) The supplies or services to be acquired are available from two or more responsible and eligible Indian economic enterprises;

(b) The anticipated cost to the BIA of the required supplies or services is determined to be reasonable and at a fair market price; and

(c) The information in this Class Justification is accurate and complete as it pertains to the proposed acquisition.

(6) This Class Justification is made in accordance with Federal Acquisition Regulation 6.3 and is approved pursuant to section 303(f)(1)(B) of the Federal Property and Administrative Services Act of 1949, as amended and 41 U.S.C. 253(f). The expiration date of this justification is _____.

Date: May 3, 1988.

Ralph R. Roeser,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 88-14583 Filed 6-29-88; 8:45 a.m.]

BILLING CODE 4310-02-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. FS-101; Notice 1]
RIN 2137-AB46

Natural Gas and Hazardous Liquid Pipeline Damage Prevention Program

AGENCY: Office of Pipeline Safety (OPS), RSPA, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to require operators of buried onshore hazardous liquid pipelines to conduct excavation damage prevention programs in accordance with criteria adopted previously for gas pipeline damage prevention programs. In addition, this notice proposes to extend the existing rule governing gas pipeline damage prevention programs to cover all buried onshore gas pipleines, with a few exceptions. Also, operators of buried gas transmission lines and mains would no longer be exempt from installing permanent line markers in populated areas of operation where a damage prevention program is in effect. The proposed rule changes are in response to statistics that show excavation damage to be the largest single cause of gas pipeline incidents and hazardous liquid pipeline accidents. There is widespread agreement that damage prevention programs are the most effective method to reduce excavation damage to pipelines. The intended effect of this proposed action is a reduction of the deaths, personal injuries, property and environmental damage and commodity loss in areas currently not protected by pipeline damage prevention programs that meet DOT criteria.

DATE: Interested persons are invited to submit written comments in duplicate by August 29, 1988. Late filed comments will be considered to the extent practicable. Interested persons should submit as part of their written comments all the material that is considered relevant to any statement of fact or argument made.

ADDRESS: Send comments to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed materials will be available for inspection and copying in Room 8426 between 8:30 a.m. and 5:00 p.m. each working day. Non-Federal employee visitors are admitted to DOT headquarters building through the southwest quadrant at Seventh and E Streets.

FOR FURTHER INFORMATION CONTACT: A.C. Garnett, (202) 366-2036, regarding the subject matter of this notice, or Dockets Unit (202) 366-5046, for copies of this notice or other material in the docket.

SUPPLEMENTARY INFORMATION:

The Problem

This rulemaking proposal addresses the recurring damage to gas and hazardous liquid pipelines caused by excavators other than the pipeline operators. Sources of excavation damage include equipment rupturing lines, blasting, demolition, boring, tunneling, backfilling, and removal of above and below ground structures. Reducing excavation damage and the accidents that result should substantially improve the overall safety record of gas and hazardous liquid pipelines.

A summary of hazardous liquid pipeline accidents caused by excavation damage by others and reported to DOT on DOT Form 7000-1 for the years 1983 through 1987 is presented in the following table. Prior to October 21, 1985, these excavation damage accidents were reported on the previous Form 7000-1 under Item D, Equipment Rupturing Line, and those reports may have included some damage caused by the operator of its contractor. On the revised form, for accidents occurring on or after October 21, 1985, these accidents were reported under Part J, Damage by others.

HAZARDOUS LIQUID PIPELINE ACCIDENTS

	1983	1984	1985	1986	1987	Total
Accidents caused by excavation damage by others	52	49	50	56	52	259
Deaths	6	0	1	1	0	8
Injuries	4	16	3	0	2	25
Property damage ($000)	459	689	772	3,832	8,866	14,618
Barrels spilled (000)	72	47	50	89	73	331
Accidents from all causes	162	186	183	210	228	969

During this 5 year period, excavation damage by others accounted for 26.7 percent of all reported accidents, including 8 deaths, 25 personal injuries, and $14,618,000 property damage with some 331,000 barrels of product spilled.

The regulations for reporting accidents on hazardous liquid pipelines are set forth in Part 195, Subpart B—Accident Reporting. It should be noted that for the years 1983, 1984, and until October 21, 1985, accidents on intrastate pipelines were not required to be reported. Also, Subpart B does not require reports of accidents that involve the loss of less than 50 barrels (2,100 gallons) or escape to the atmosphere of 5 barrels (210 gallons) a day or less of highly volatile liquids; or only $5,000 or less in property damage. Therefore, the table does not purport to show all the accidents or all the property damage or the total volume of liquids spilled due to excavation damage by others during the 5 year period.

The accident reports for hazardous liquid pipelines do not indicate the population density in the vicinity of the accidents. However, an analysis of the incident statistics for gas pipelines (presented below) shows that 35.3 percent of the excavation damage by other incidents occurred in rural or less populated areas of operation. Therefore, it is reasonable to assume that excavation damage accidents reported for hazardous liquid pipelines have occurred in rural as well as nonrural areas of operation. Accordingly, the largest reduction in excavation damage to hazardous liquid pipelines would result from a damage prevention program that is applicable over the entire length of hazardous liquid pipelines.

Gas pipeline incidents must be reported to DOT on Form RSPA F 7100.1 (Gas Distribution Systems) and on Form RSPA F 7100.2 (Gas Transmission and Gathering Systems). These report forms were revised effective July 1, 1984, to identify incidents by class locations, to increase the reporting threshold of property damage from $5,000 to $50,000, and to eliminate other minor reporting events.

A summary of the gas pipeline incidents reported to DOT on the forms described above as caused by excavation damage by others is presented in the following table. Incidents on pipelines in Class 1 and 2 locations, the less populated areas (see below), are stated separately, because DOT's current gas pipeline damage prevention program requirements under § 192.614 do not apply to these pipelines.

GAS PIPELINE INCIDENTS CAUSED BY EXCAVATION DAMAGE BY OTHERS

[7/1/84 thru 12/31/87]

	Distribution		Transmission & Gathering		Total	
	Class 1 & 2 locations	All locations	Class 1 & 2 locations	All locations	Class 1 & 2 locations	All locations
Incidents	72	318	80	112	152	430
Deaths	6	25	3	3	9	28
Injuries	31	140	1	8	32	148
Property damage ($000)	$707	$13,560	$2,946	$5,208	$3,653	$18,768

During the 3½ year period, the number of reported incidents due to excavation damage by others in Class 1 and 2 locations amounted to 35.3 percent of all such reported incidents, including 32.1 percent of all the deaths, 21.6 percent of all the injuries, and 19.5 percent of all the property damage.

For this same 3½ years, there were 686 distribution incidents and 353 transmission/gathering incidents reported from all causes, totaling 1,039 gas pipeline incidents. Therefore, the incidents of excavation damage by others for Class 1 and 2 locations amounted to 10.5 percent of incidents reported for distribution pipelines, 22.7 percent of incidents reported for transmission/gathering pipelines, or 14.6 percent of the total incidents reported.

The regulations for reporting gas pipeline incidents are set out in Part 191. It should be noted that an incident involving only property damage to the operator or others is not required to be reported if it amounts to less than $50,000. Therefore, the table does not purport to show all the incidents or the value of all the property damage caused by excavation damage by others during the 3½ year period.

Background

The most widely accepted approach to reducing excavation damage to buried pipelines is a damage prevention program employing a one-call system. A conventional one-call system is a communication system established by two or more utilities (or pipeline companies), governmental agencies, or other operators of underground facilities to provide one telephone number for excavation contractors and the general public to call for notification and recording of their intent to engage in excavation activities. This information is then relayed to appropriate members of the one-call system, giving them an opportunity to communicate with excavators, to identify their facilities by temporary markings, and to follow-up the excavation with inspections of their facilities. These latter features of the program are usually handled separately by each member, but may be handled

jointly by the one-call system or by a separate contractor.

At present, there are some 112 one-call systems in the U.S., operating in 46 States and the District of Columbia. Approximately 37 States have statewide one-call coverage, served mostly by 1 or a maximum of 2 centers. About 9 States have incomplete coverage. The one-call systems in Minnesota, North Dakota, and South Dakota have been suspended, but are expected to become active in the near future. Only Hawaii and Puerto Rico have never had one-call coverage available. In addition to the extensive voluntary use of one-call systems, there is an increasing trend for the States to enact legislation requiring the use of one-call systems by utilities and excavators, usually with penalties for non-compliance. OPS believes this type of supporting legislation developed at the State level is a very effective means of increasing the benefits of one-call systems.

In the Pipeline Safety Act of 1979 (Pub. L. 96-129), Congress amended section 3 of the Natural Gas Pipeline Safety Act of 1968 (49 App. U.S.C. 1672) to direct DOT to issue new safety standards requiring gas pipeline operators to conduct or participate in damage prevention programs. At the same time Congress gave DOT specific authority under section 203 of the Hazardous Liquid Pipeline Safety Act of 1979 (49 App. U.S.C. 2002) to set similar standards for operation of hazardous liquid pipelines.

In response to the Congressional mandate for gas pipelines, on March 25, 1982, DOT issued a final rule (Amendment No. 192-40; 47 FR 13818, April 1, 1982) establishing § 192.614, "Damage prevention program," effective April 1, 1983. This rule required (with minor exceptions) each operator of a buried gas pipeline in Class 3 and 4 locations (the more populated areas) to establish and carry out, or otherwise participate in, a damage prevention program.

Section 192.614 currently requires that operators: (1) Identify excavators operating in the area; (2) notify the public and excavators of the details of the program; (3) provide a means for receiving and recording notification of planned excavations; (4) if an operator has buried pipelines in the area of planned excavation, notify the excavator of that fact and the type of temporary markings to be provided; (5) provide temporary marking of buried pipelines; and (6) provide inspection of pipelines that could be damaged by the excavation.

An excavation damage prevention program established under DOT criteria may differ from a program employing a conventional one-call system in one princpal way. A one-call system, as the definition given earlier indicates, is a multiple underground utility program. Since DOT lacks jurisdiction over utilities other than natural gas and hazardous liquid pipelines, the damage prevention program rule under § 192.614 allows gas pipeline operators to run their own programs rather than participate in a one-call system, even if one is available. OPS believes that if such participation were mandatory for pipeline operators alone, they might be unable to control the management of the system as freely as the voluntary participants who are not subject to DOT regulation. In addition, they might have to bear a disproportionate share of program costs.

Nevertheless, participation in a one-call system can be used by an operator to meet, to the extent possible, the requirements of DOT's excavation damage prevention program criteria. When a one-call system is used in this way, the operator is still responsible for compliance with any criteria that are not satisfied by participation in the one-call system. For example, all operators participating in one-call systems must follow-up with marking and needed inspection activities in a timely manner.

Support for One-Call Systems

The efficacy of damage prevention programs for buried pipelines is well established. The draft economic evaluation of the impact of this rulemaking action examined the effect of extending DOT's gas pipeline damage prevention program regulation to cover hazardous liquid pipelines. Based on data from selected pipeline operators, the evaluation found that there was a reduction of 21 percent in the aggregate excavation damage accident rates per mile for pipelines participating in one-call system programs over those that did not participate. In a notice of proposed rulemaking preceding the adoption of § 192.614 (44 FR 65792, November 15, 1979), the considerable safety benefits achieved in 6 States during the initial years following the adoption of excavation damage prevention programs were cited. For example, the Connecticut Underground Utility Protection Plan was reported to have "reduced damages to facilities of the participating utilities by 38 percent during its first two years of operation." In addition, pipeline safety recommendations which are published after investigation of pipeline accidents by the National Transportation Safety Board (NTSB) have continued to urge the adoption and adherence to excavation damage prevention programs that have one-call systems.

In an advance notice of proposed rulemaking (ANPRM), "Proposals for Pipeline Safety; Request for Comment," (52 FR 4361, February 11, 1987), OPS solicited public comments on 18 safety proposals for gas and hazardous liquid pipelines. Proposal No. 17, in the ANPRM "Require operators to create or participate in one-call systems," received strong support by a broad segment of the commenters, but not to the exclusion of other damage prevention programs, particularly those run by a single company, and some objections were raised regarding their value in sparsely populated areas. Several commenters pointed out that one-call systems are most effective when all underground facility operators are members, and also asserted that their effectiveness can be improved by holding excavators responsible for utilizing the one-call systems.

Proposal No. 17 was in response to H.R. 262, "Pipeline Safety Act of 1987," which has been introduced in the 100th Congress, 1st Session by Congressman Vento. Section 10 of H.R. 262, would require DOT to develop regulations to require pipeline operators to participate in one-call systems in the States where these systems currently exist or otherwise to participate in the creation of one-call systems. In addition, Seciton 11 of H.R. 262 would require persons to contact the appropriate one-call system prior to commencement of excavation to ascertain the exact location of any underground pipelines or utilities. Persons who failed to contact the appropriate one-call system, where such systems exists, would assume liability for damage to underground pipelines or utilities from that person's excavation.

At a meeting on September 24, 1987, in Washington, DC, the Technical Hazardous Liquid Pipeline Safety Standards Committee (comprised of representatives form public, government and industry having expertise in buried pipelines) considered Proposal No. 17. The Committee discussed the proposal including the problem of the lack of comprehensive legislation requiring all excavators to utilize the one-call system with appropriate penalties for noncompliance. Furthermore, since OPS lacks jurisdiction over persons other than pipeline operators, statutes to require broader compliance with one-call systems would have to be enacted at the State level. Nevertheless, the Committee approved a motion that the concept of the damage prevention programs contained in § 192.614 for gas

pipelines shoud also apply under Part 195 to hazardous liquid pipelines.

Other statements supporting the broader application of one-call systems have been made by prominent pipeline industry representatives. On October 6, 1987, when appearing before the Senate Committee on Commerce, Science, and Transportation, Surface Transportation Subcommittee, Mr. John Allen, representing the American Gas Association, testified that "A.G.A. supports the concept of one-call systems where such systems are the best means of preventing third-party damage." Additionally, Mr. Allen urged the participation in one-call systems by all owners of subsurface facilities.

Also appearing before the same Senate Subcommittee was Mr. Bob McMahan, representing the Association of Oil Pipe Lines and the American Petroleum Institute. Mr. McMahan testified that—

> One-call systems have become a proven method of alerting the excavator to the existence and location of underground facilities and have contributed to the reduction of pipeline accidents where they have been used effectively. It is our position that one-call systems should be encouraged and supported, and participation by pipeline companies, utilities, and public works agencies and excavator alike should be mandatory.

Additionally, Mr. McMahan stated that—

> Community awareness of pipelines is another area in which greater attention and uniformity are warranted. We believe that closer communication between pipeline companies and the local and State public safety organizations would improve the coordination which must take place in the event of a pipeline emergency. Also, a greater awareness of pipelines on the part of the general public and particularly people who live adjacent to pipeline rights-of-way possibly could contribute to the prevention and effective reaction to pipeline incidents.

Extending the Existing Rules

Most gas and hazardous liquid pipeline operators currently conduct or participate in some form of a damage prevention program like that mandated by § 192.614 for gas pipelines in Class 3 and 4 locations. For example, most hazardous liquid pipeline operators have a procedure for handling notices of impending excavations and marking the locations of their facilities. However, at present, DOT does not require operators of hazardous liquid pipelines or operators of gas pipelines in less populated areas to conduct damage prevention programs, and DOT does not regulate the programs that are being conducted voluntarily. In view of the continuing high incidence of excavation damage to both gas and liquid pipelines and the apparent success of damage prevention programs that adhere to criteria like that prescribed by § 192.614, OPS believes further rulemaking is appropriate. By this notice, OPS is proposing to extend the current DOT damage prevention program rule, as discussed below. It appears that an extension of the damage prevention program rule may reduce the incidents and accidents caused by excavation damage by others.

For gas pipelines, the proposal would expand the current § 192.614 damage prevention regulations to cover all buried onshore gas pipelines in Class 1 and 2 locations, with a few exceptions. This rule change would be effected by removing the exception for Class 1 and 2 locations for onshore pipelines from § 192.614(c)(1). The Class 1 and 2 location pipelines not covered by the proposal are identified by the existing § 192.614(c) (3) and (4) as those to which access is physically controlled by the operator and those that are part of certain petroleum gas or master meter systems. A class location unit is described in § 192.5 as an area extending 220 yards on either side of any continuous 1-mile length of pipeline. A Class 1 location has 10 or less buildings intended for human occupancy. A Class 2 location has more than 10 but less than 46 buildings intended for human occupancy.

In addition, § 192.614(c)(2), which excludes from damage prevention program coverage certain Class 3 pockets in otherwise Class 1 and 2 locations, would be removed. This exception was established to alleviate the burden or running a program in Class 1 and 2 areas just for these isolated pockets. Under this proposal, this exception would no longer be needed.

For hazardous liquid pipelines, OPS is proposing adoption of a new § 192.442, which would use the existing rule for gas pipelines as the basis for applying damage prevention requirements to all onshore pipelines subject to Part 195, except pipelines to which access is physically controlled by the operator.

Because there is growing support for mandatory participation in one-call systems, OPS is interested in receiving responses to two questions: (1) Should DOT make pipeline participation in one-call systems mandatory even though other utilities are not subject to such a requirement? (2) Should DOT make pipeline participation mandatory in cases where State or local laws make such participation mandatory for the other utilities? Because State laws may only apply to interstate pipelines, the second question is primarily relevant with regard to participation by interstate pipelines. Any action OPS might propose to make participation mandatory as a result of comments would be part of a future rulemaking.

Line Markers

As further protective measure against excavation damage, permanent line makers must be placed and maintained over gas mains and transmission lines at locations required by § 192.707. There is a similar requirement for hazardous liquid pipelines in § 195.410. However, § 192.707(b)(2) excludes from this line marking requirement pipelines in Class 3 and 4 locations "where a damage prevention program is in effect under § 192.614." This exclusion was adopted in the belief that a damage prevention program alone would be a sufficient safeguard against damage, and that operators need not meet both §§ 192.614 and 192.707. Now, however, in view of recurring incidents, OPS believes that gas mains and transmission lines may be better protected from excavation damage by others if operators were required to install line markers in addition to conducting damage prevention programs. In fact, many gas operators voluntarily maintain line markers in Class 3 and 4 locations when it is practical to do so. Accordingly, OPS proposes to revise § 192.707(b)(2) to require operators to install line markers in Class 3 and 4 locations even though a damage prevention program is in effect in those locations under § 192.614. Thus, line markers would be required (with some exceptions) along the complete length of gas mains and transmission lines in the same manner as they are now required for hazardous liquid pipelines (with some exceptions) under § 195.410.

Paperwork Reduction Act

This proposed rulemaking contains collection of information requirements in §§ 192.614 and 192.707, and 195.442. These requirements will be submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. Chap. 35) and 5 CFR Part 1320. Persons desiring to comment on this information collection requirements should submit their comments to:

Desk Officer, Research and Special Programs Administration, Office of Regulatory Policy, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503

Persons submitting comments to OMB are also requested to submit a copy of

their comments to OPS, as indicated above under **"ADDRESS."**

Impact

The proposed rules are expected to be nonmajor under Executive Order 12291. That order defines a major rule as one which has an annual effect on the economy of $100 million, a major increase in costs, or a significant adverse effect on the economy. As shown by the draft evaluation of the costs and benefits of this proposal, these proposed rules will have no such impact. The proposal is also not significant as defined by the Department of Transportation Policies and Procedures (44 FR 11034, February 26, 1979). Also, based on the facts available about the impact of this rule making action, I certify purusant to section 605 of the Regulatory Flexibility Act that the action will not, if adopted as final, have a significant economic impact on a substantial number of small entities.

OPS has analyzed this action in accordance with the principles and criteria contained in E.O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects

49 CFR Part 192

Pipeline safety, Damage prevention program, Line markers.

49 CFR Part 195

Pipeline safety, Damage prevention program, Excavation.

In consideration of the foregoing, OPS proposes to amend 49 CFR Part 192 and 195, as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. In 192.614, paragraph (c)(1) would be revised to read as follows, paragraph (c)(2) would be removed, and paragraphs (c)(3) and (c)(4) would be redesignated (c)(2) and (c)(3), respectively:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(1) Pipelines located offshore.

* * * * *

3. Section 192.707(b)(2) would be revised to read as follows:

§ 192.707 Line markers for mains and transmission lines.

* * * * *

(B) * * *

(2) In Class 3 or Class 4 locations where placement of a marker is impractical.

* * * * *

PART 195—[AMENDED]

4. The authority citation for Part 195 is revised to read as follows:

Authority: 49 App. U.S.C. 2002; and 49 CFR 1.53.

5. A new § 195.442 would be added to read as follows:

§ 195.442 Damage prevention program.

(a) Except for offshore pipelines and pipelines to which access is physically controlled by the operator, each operator of a buried pipeline shall carry out in accordance with this section a written program to prevent damage to that pipeline by excavation activities. For the purpose of this section, "excavation activities" include excavation, blasting, boring, tunneling, backfilling, the removal of above ground structures by either explosive or mechanical means, and other earth moving operations. An operator may comply with any of the requirements of paragraph (b) of this section through participation in a public service program, such as a "one-call" system.

(b) The damage prevention program required by paragraph (a) of this section must, at a minimum:

(1) Include the identity, on a current basis, of persons who normally engage in excavation activities in the area in which the pipeline is located.

(2) Provide for notification of the public in the vicinity of the pipeline and actual notification of the persons identified in paragraph (b)(1) of this section of the following as often as needed to make them aware of the damage prevention program: (i) The program's existence and purpose; and (ii) How to learn the location of underground pipelines before excavation activities are begun.

(3) Provide a means of receiving and recording notification of planned excavation activities.

(4) If the operator has buried pipelines in the area of excavation activity, provide for actual notification of persons who give notice of their intent to excavate of the type of temporary marking to be provided and how to identify the markings.

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before, as far as practical, the activity begins.

(6) Provide as follows for inspection of pipelines that an operator has reason to believe could be damaged by excavation activities:

(i) The inspection must be done as frequently as necessary during and after the activities to verify the integrity of the pipeline; and

(ii) In the case of blasting, any inspection must utilize leakage surveys applicable to the liquid transported.

Issued in Washington, DC, on June 27, 1988.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 88-14759 Filed 6-29-88; 8:45 am]

BILLING CODE 4910-60-M