

Section 180(c): Questions for Discussion

- Funding Allocation Method:
 - Formula or needs-based? Does either choice impact a set-aside?
- Eligibility:
 - What happens if a Tribe has no emergency response or law enforcement capability? Can they be eligible for Section 180(c) funds?

Funding Allocation Method

- What we've heard:
 - Population is not an appropriate measure for funds
 - Funding should protect all aboriginal lands
 - Don't use the ½ mile of a route measure used in the EIS
 - Consider a set-aside of funds for Tribes, higher than the 3% used by DOT's HMEP assistance program.

Funding Allocation Method

- Formula Approach
 - Factors in a formula should measure risk and need
 - What factors might be appropriate?
 - How can a formula account for varying levels of tribal authority over a route? For example, what if one tribe has minimal emergency response (ER) capability and another tribe has extensive ER capabilities?

Funding Allocation Method

- Formula Approach (cont'd)
 - Formulas need to measure sufficient quantities of each factor or the sample size will be too small and funding amounts will be skewed
 - Tribes may not have sufficient sample size e.g, route miles, population, etc.

Funding Allocation Method

- Needs Assessment Approach
 - Can accommodate variations in Tribal capabilities more easily than a formula approach.
 - Can more easily accommodate Tribal preferences and priorities.
 - Existing needs assessments could be used in conjunction with technical assistance from DOE. An example is the Tribal Capability Assessment for Readiness (NCAI and FEMA).

Funding Allocation Method

- Needs Assessment Method (cont'd)
 - Needs assessments can be very labor intensive.
 - Some form of assessment will be done with either a formula or a needs assessment approach to dividing the funds.

Eligibility

- Definition in 1998 Federal Register Notice of Proposed Revised Policy and Procedures:

“Responsible jurisdiction, for emergency response procedures, means a governmental entity at any level of government, whether state or tribal, that has the authority to conduct part or all of an emergency response to a radiological materials transportation accident or incident. Responsible jurisdiction for safety and enforcement inspections means a governmental entity, whether state or tribal that has the authority to conduct safety inspections and initiate law enforcement using the appropriate federal or jurisdiction’s laws and regulations.”

Eligibility

- How to handle Tribes with no ER or law enforcement capability?
 - DOE will continue to work with these Tribes.
 - Would providing Section 180(c) assistance to a Tribe with no ER or law enforcement capability be a violation of government financial assistance regulations?
 - What other types of assistance might be available?
 - What other types of assistance might be needed?

BACKGROUND INFORMATION

Background:

What is Section 180(c)?

- Section 180(c) of the Nuclear Waste Policy Act requires the Department of Energy (DOE) to provide funding and technical assistance to States and Tribes for training public safety officials of appropriate units of local government through whose jurisdictions the Department plans to transport spent nuclear fuel or high-level radioactive waste
 - The training shall cover both safe routine transportation and emergency response procedures
 - Covers all modes of transport
 - Funding will come from the Nuclear Waste Fund

Work To Date on 180(c)

Section 180(c) Implementation:

Staff proposed recommendations in 2005, not yet accepted by DOE management.

- Funding Distribution Method:
 - Grants directly to States and Tribes
- Allowable Activities:
 - Effort to balance between DOE's need to account for funds and Tribes' need for flexibility. See Discussion Paper, pp. 4.

Section 180(c) Implementation

- Contingency Re-routing:
 - DOE will work with affected jurisdictions on a case-by-case basis.
- Issue Section 180(c) as a Policy or as a Rule-making.
 - Issue policy statements, then proceed to rule-making so as not to delay program implementation.
- Will fees levied on shipments reduce 180(c) award?
 - DOE will work with affected jurisdictions on a case-by-case basis.