

Section 180(c) Policy

I. INTRODUCTION

This paper forms the basis of the policy that Office of Civilian Radioactive Waste Management (OCRWM) Office of National Transportation (ONT) staff proposes for the upcoming *Federal Register* Notice on the Draft Section 180(c) Program of Funding and Technical Assistance. The detail on each subject is derived from two sources, the Transportation External Coordination (TEC) Topic Group's work and the 1998 *Federal Register* Notice on Section 180(c).

In most cases, the staff recommendations are consistent with Topic Group recommendations. There was one issue where Topic Group members, including Department of Energy (DOE) staff, did not reach agreement: the funding allocation method. There were two issues where DOE staff has not responded yet to the Topic Group's recommendation: state fees, and funding for operational activities. The respective papers present the divergent positions and relevant information.

Consultations with American Indian tribes have just begun. The outcome of those consultations will be reflected in a separate paper on implementing Section 180(c) for tribes and in the corresponding *Federal Register* Notice on the Draft Section 180(c) Program of Funding and Technical Assistance.

II. PROPOSED POLICY STATEMENT

It is DOE's policy that, in order to help ensure the safe and secure transport of shipments under the Nuclear Waste Policy Act (NWPA), the overall objective of the 180(c) program is to assist states in developing the capability to help prevent accidents and respond in a timely, appropriate fashion to accidents involving spent fuel and high-level waste shipments. In preparing to meet this objective, DOE acknowledges the following:

- a) The shippers take many measures to make these shipments safe. Such measures include regulatory requirements and the consultations with states and tribes that have, in past DOE programs, resulted in additional measures aimed at enhancing safety and reassuring the public about the safety of these shipments. The historical record of similar shipments also indicates that these measures contribute to safety.
- b) Although an accident resulting in a release of radioactive material from the NWPA shipments is highly unlikely, the objective of the OCRWM program is to do what reasonably can be done to reduce the likelihood of an accident and to make sure that public safety officials will be prepared to respond to accidents. It is also the objective of the OCRWM program that training received through the Section 180(c) program should help reassure the public that all reasonable steps are being taken to ensure safety during transportation.

- c) Although states and tribes have primary responsibility for public health and safety, the NWPA requires the provision of funding and technical assistance for training for accident prevention and emergency response.
- d) As stated in the ONT Strategic Plan, DOE will work closely with the State Regional Groups, the states, and the tribes as it makes operational decisions regarding the OCRWM transportation system. DOE recognizes that the successful implementation of the Section 180(c) program will depend upon timely decisions with regard to routes, and shipping schedules.
- e) DOE will strive for predictability in the funding stream to ensure program continuity for the grant recipients.
- f) Understanding that a predictable shipment schedule improves the efficient use of Federal, state, local, and tribal resources for planning and emergency response, DOE will strive for a predictable and efficient shipment schedule.
- g) In recognition of the experience that the states and tribes have in meeting their responsibility to protect public health and safety, DOE will strive for flexibility in letting the states and tribes decide how best to use Section 180(c) assistance to meet their unique needs within the limits of the NWPA and the DOE's and Federal government's financial assistance regulations.
- h) DOE recognizes that states and tribes will conduct activities and incur expenses related to planning and operational activities that the Department considers beyond the scope of the Section 180(c) program. The states have expressed their expectation that they should be reimbursed for these costs.
- i) Training will be in the increment necessary to prepare for these shipments, including, where it is determined to be necessary or appropriate, hazardous materials training to the Occupational Health and Safety Administration (OSHA) awareness or operations level. Any deficiency in basic emergency response capability will be addressed through additional consultations and technical assistance.
- j) DOE will fund only that equipment necessary for training for response to the specific hazards presented by these shipments.
- k) DOE's requests to Congress for Section 180(c) assistance will be derived from state and tribal assessments of projected needs and the likely impact of planned shipments based on measurable risk-related factors. DOE will work with the affected states and tribes in developing its funding request.

The initial request to Congress will be based on the \$200,000 planning grant multiplied by the number of eligible jurisdictions. Subsequent requests will be based on the information gathered from the needs assessments conducted under the planning grant and information provided by the affected states and tribes.

- l) DOE will issue a policy and then promulgate a rule for implementation of some portion of the policy and grant application. DOE will announce a schedule and scope of the rulemaking by the end of December 2005.

- m) Everything in this policy is intended to be consistent with the National Preparedness Goal, the National Preparedness Guidance, the National Incident Management System, and National Response Plan.