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NATIONAL CONFERENCE OF STATE LEGISLATURES

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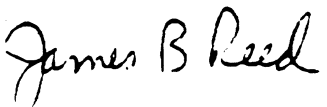
July 25, 1996

Ms. Corinne Macaluso
US Department of Energy
c/o Lois Smith
TRW Environmental Safety Systems
600 Maryland Ave., SW
Suite 695
Washington, DC 20024

Dear Ms. Macaluso:

Attached please find comments from the National Conference of State Legislatures on the proposed NWSA section 180(c) program. We would appreciate confirmation of your receipt of these comments. Thank you for the opportunity to submit comments. If you have any questions, please call.

Sincerely,



James B. Reed
Program Principal, Transportation

Enclosure

Comments
Submitted by the National Conference of State Legislatures
July 25, 1996

In response to "Notice of Proposed Policy and Procedures"
for safe transportation and emergency response training
Issued by the Office of Civilian Radioactive Waste Management
U. S. Department of Energy (DOE)
61 *Federal Register* 24772, May 16, 1996

The National Conference of State Legislatures (NCSL) submits the following comments based on NCSL's radioactive waste management policy and NCSL staff analysis:

NCSL commends the Office of Civilian Radioactive Waste Management (OCRWM) for an open and participatory process in developing the policy and procedures for the implementation of section 180(c) of the Nuclear Waste Policy Act, as amended. The program of technical and financial assistance to states for training of public safety officials in jurisdictions where spent nuclear fuel and/or high-level radioactive waste are transported, as mandated by section 180(c) is of vital interest to the nation's state legislators.

NCSL supports the concept of the proposed OCRWM grants program. This approach would appear to ensure greater flexibility and less administrative burden than other options considered. In previous comments on section 180(c), NCSL stated, "States should have the flexibility to apply the OCRWM funds within the state emergency management structure in a manner that is both administratively efficient and effective in accomplishing the mission of protecting public safety." The OCRWM grants program appears to meet this test. In general, the proposed process and time frame for grant applications seems reasonable.

NCSL supports the DOE proposal that applicant states will decide who receives training, the level of training obtained and the organization that administers the training. NCSL assumes that the training of state personnel is allowed. Allowing 10 percent of each year's budget to be spent on equipment is a sensible provision and one that has been consistently requested by front line emergency response officials. However, DOE should also assist grant recipients to interpret and apply federal requirements that relate to ownership of federally-purchased equipment. Flexibility should be retained at the state level to apply resources where they are most needed. NCSL would not support a mandatory pass-through to local governments

There are, however, a number of elements in the notice with which NCSL disagrees that could, potentially, imperil full realization of section 180(c) benefits to recipient agencies.

1. NCSL questions the wisdom of the policy that allows no use of section 180(c) funds for the conduct of drills and exercise (page 24774). DOE's view of drills and exercises as purely a means of measuring preparedness, and beyond the scope of section 180(c) is entirely too narrow. Drills and exercises often have a very direct training component, particularly relating to the coordination of the resources and personnel of various responding jurisdictions in an emergency situation. DOE's final policy should allow funds to be spent for drills and exercises related to NWPA shipments.

2. Generally, NCSL agrees with the philosophy to provide assistance "in an increment above current preparedness, rather than to supply complete...capabilities." However, exceptions should be made for jurisdictions where the current level is unacceptably low. Survey responses from the 1990 Nuclear Regulatory Commission study, *Survey of State and Tribal Emergency Response Capability for Radiological Transportation Incidents*, showed 10 states and numerous Indian tribes with "deficient" response capability. DOE's policy should be flexible enough to allow funds to be spent to provide basic capabilities in jurisdictions that lack an adequate program. Otherwise, the burden of NWSA shipments will amount to another unfunded federal mandate.

3. NCSL urges DOE to allow the use of section 180(c) funds for route and risk assessments. The proposed policy (p. 24777) disallows such use. In fact, such assessments are not beyond the scope of training for emergency response and safe routine transportation. Such assessments are vital in determining what "increment" of additional training might be needed in areas where spent fuel shipments might travel. Specific assessments relative to NWSA shipments would increase knowledge of specific hazards, resources, and related information to more efficiently deploy section 180(c) technical and financial assistance. Disallowing route and risk assessments would place a short-sighted limitation on a state's flexibility to address specific, local public safety hazards. Grant recipients should be able to use their judgment in determining whether grant money is to be spent on such assessments.

4. Section 180(c) states that funding is available only to jurisdictions where DOE plans to transport spent fuel and high-level radioactive waste. DOE reiterates this on page 24777 of the notice. Yet, there are several areas where response to a transportation emergency might come from a neighboring jurisdiction, due to the proximity of the road or railroad. DOE should work to identify those potential situations and devise a way to support adjacent affected jurisdictions. One possibility is to use the 80-mile criteria contained in the appendix to the OCRWM notice to determine the amount of variable funding for which a jurisdiction would be eligible. In this case, transportation routes identified as NWSA routes would be analyzed to determine if an out-of-jurisdiction response along any particular segment is likely, using the 80-mile criteria. If so, some accommodation of the adjacent jurisdictions' needs should be examined. Alternatively, how "jurisdiction" is defined by DOE might aid such situations. Geographic boundaries constitute one aspect of jurisdictional authority; perhaps DOE could identify others. Implementation of mutual aid arrangements is another potential approach.

5. The notice includes this statement on page 24778: "Population was not used to determine funding levels because the same level of effort is required in responding to an emergency no matter how many people are affected." Since NWSA shipments will traverse many miles in sparsely populated areas, NCSL generally agrees with a mileage-based allocation process for grant money. However, places and situations exist where a larger number of trained public safety officials will need to respond to a radiological transportation emergency based on the numbers of people residing, working, visiting or traveling in the vicinity of the emergency. An evacuation of 10,000 people, for example, would require many more public safety officials than an evacuation of 1,000 people. DOE should retain some flexibility for special population situations and possibly allow larger jurisdictions to train more personnel.

6. As noted on page 24778, section 180(c) does not provide funding for infrastructure improvements. Once routes are identified, however, DOE should work with states where infrastructure is deficient to identify funding sources for necessary infrastructure improvements.

7. NCSL disagrees with the statement that "a jurisdiction's lack of emergency response infrastructure does not compromise shipment safety when a jurisdiction is aware of the steps taken to ensure safety and the department's readiness to provide on-site assistance" (p. 24779). If no immediate local response is available in case of an accident, shipment safety is indeed compromised. The presence of DOE shipments obligates DOE to help local areas that lack basic capabilities. As noted above, DOE should modify the funding formula to allow development of basic capabilities in jurisdictions where such a need exists.

8. Legislators who are active on this issue are adamant in their belief that section 180(c) funds should be available to all states where spent fuel and high-level radioactive waste shipments travel that will ultimately be placed at an NWPA facility, even if those shipments are transported to and stored on an interim basis at a private facility. A different interpretation of section 180(c) by DOE is requested to allow such assistance to be provided.

The National Conference of State Legislatures is a bipartisan organization dedicated to serving the lawmakers and staffs of the nation's 50 states, its commonwealths and territories. NCSL is a source for research, publications, consulting services, meetings and educational seminars. Its goals are to improve the quality and effectiveness of state legislatures, foster interstate communication and cooperation, and ensure legislatures a strong voice in the federal system. NCSL has a cooperative agreement with DOE-OCRWM to facilitate communication on civilian radioactive waste management issues between state legislators, federal officials and other involved parties.

NCSL appreciates the opportunity to comment and looks forward to continued consultation with DOE-OCRWM on this important issue.