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QA: N/A

August 20, 1996  
DC.CIE.EAH.08/96.151

Mr. Samuel Rousso  
Director of Waste Acceptance,  
Storage & Transportation, RW-40  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy  
1000 Independence Avenue, SW  
Washington, D.C. 20585

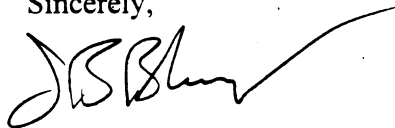
Dear Mr. Rousso:

Subject: DE-ACO1-91RW00134; Transportation External  
Coordination/Working Group Summary and Analysis of Section  
180(c) breakout sessions discussion. (W.B.S. 3.2.5, Activity No.  
N/A)

Enclosed please find subject document for your information. This transmittal is a contract deliverable under W.B.S. 3.2.5 - TEC/WG Section 180(c) comment summary. The document's purpose is to help capture stakeholder comments and suggestions on the Section 180(c) Notice of Proposed Policy and Procedures published in the Federal Register on May 16, 1996. These comments will be considered during development of the Section 180(c) Notice of Final Policy and Procedures although they will not become part of the docket. Only comments submitted in written form will become part of the docket.

If you have any questions, please do not hesitate to call me at (703) 204-8899 or Elizabeth Helvey at (303) 449-2955.

Sincerely,



James B. Blandford  
Deputy Assistant General Manager  
Waste Management and Integration

JBB:EAH:agc



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cc: Communications/Environmental/Institutional  
J. Booth, DOE/RW-45  
L. Desell, DOE/RW-45  
C. Macaluso, DOE/RW-45  
M. Popa, DOE/RW-45  
L. Smith, TES2/695  
E. Turner, DOE/RW-45  
C. Heath, TES2/695  
J. Poles, TES2/695  
Chron file  
RPC

**Summary and Analysis of Section 180(c) Discussions at TEC**  
Transportation External Coordination/Working Group  
Pittsburgh, Pennsylvania  
July 16-18, 1996

The Transportation External Coordination/Working Group (TEC) discussed the Section 180(c) Notice of Proposed Policy and Procedures at their last meeting. This document summarizes those comments and analyzes what response, if any, may be appropriate in developing the Section 180(c) Notice of Final Policy and Procedures.

Some participants strongly objected to parts of the proposal but the objections were tempered by several positive comments on various provisions. The Department of Energy (DOE) was also complimented for their progress on defining a Section 180(c) program. Overall, the participants recognized the proposed program's scope will likely not cover the range of activities or the level of funding many believe it is DOE's responsibility to provide. Several recommendations, if they can legally and practically be incorporated into the final policy, will strengthen the program and make it more workable.

The next section discusses the specific comments made about aspects of the proposed notice and analyzes the DOE's options for responding to the comments. The last section is an appendix, detailing each comment and identifying the commenter, in case the reader wants to track more closely the positions and tone of specific commenters.

### **Funding Mechanism**

#### *Summary*

The funding mechanism elicited strong opinions in two subject areas, the cost of administering another program and the use of population density to allocate funding. There was a strong feeling among some state representatives that the proposal added one more grants program without offsetting state costs to administer the grant. These representatives felt strongly that Section 180(c) should either be funneled through an existing program or should fund an additional state employee to administer the grant and oversee the training. These participants did not favor one funding mechanism over another, just that state personnel could not take on the additional administrative tasks of another program. A Waste Isolation Pilot Plant (WIPP) representative argued that cooperative agreements were a more efficient use of money. Another participant argued that the most popular funding mechanism depended on how the choices were phrased. One participant said the proposal was a nickel and dime approach that would cause political and public perception problems.

The second major topic was whether population should be used as a variable to determine funding levels. Jim Reed of the National Conference of State Legislatures (NCSL) along with several other participants, felt strongly that higher population areas are at higher risk and funding should target those areas. A participant voiced disagreement with the argument in the comment/response section of the *Federal Register* Notice that an accident in a populated area will not require more

emergency response personnel than a rural area. In contrast, representatives from the National Congress of American Indians (NCAI) said population requirements have often worked against tribes. They and several western state representatives concurred that population was not necessarily a good determiner of need.

#### *Analysis*

Several options can be investigated to address the concern of increased state administrative costs. Research can continue to find an existing program to administer the Section 180(c) program, including surveying field offices about their funding programs. The application package can be developed to limit recipient administrative costs as much as possible. The DOE can provide more extensive technical assistance, including sending out trainers if requested to help recipients bridge the cost gap. Or estimates of the cost of the program could be increased to help offset recipients' costs.

Regarding population as a variable to determine funding allocations, the commenters have a valid point in that population is considered in risk assessments on hazardous materials transportation. However, nothing in the current proposal limits recipients from focusing funding on population centers.

#### **Allowable Use of Funds**

##### *Summary*

Comments on the allowable use of funds were primarily in three topics, the purchase of equipment, the conduct of drills and exercises, and route and risk assessments. There was near unanimous agreement that equipment purchases should be an allowable expense. The debate was over whether ten percent of annual funding was sufficient, whether Federal grant regulations allowed more than ten percent of the funding for equipment purchases, and what type of equipment recipients would be allowed to purchase. A variety of participants encouraged DOE to develop a standardized list of allowable equipment rather than argue during the application process.

Commenters were also fairly unified in the opinion that drills and exercises are critical to effective training. DOE was encouraged to not rely on other Federal agencies to fill training and equipment gaps because the Federal Emergency Management Agency (FEMA) is closing its state radioactive equipment calibration offices and other agencies are threatening to limit funding.

Several commenters said route and risk assessments should be an allowable activity because it helps recipients determine where to focus training. One person cautioned DOE about the potential scope of risk assessments noting they can be either a huge undertaking or a cursory affair.

A participant questioned the philosophy of incremental assistance in cases where no basic infrastructure exists to build another increment of safety. Another questioned who would decide the appropriate increment for each recipient.

Two comments dealt with what types of responders may receive training. One asked whether private sector emergency response personnel such as emergency medical technicians, private hospitals and even private fire and police stations would be eligible for training. Another asked whether “local” in the Section 180(c) language precluded state employees from receiving training.

#### *Analysis*

The question whether Federal grant regulations limit equipment purchases should be investigated. A standardized list of allowable equipment may be the best resolution; however, if the ten percent rule stands, there will not be sufficient funding under the current proposal for more than basic equipment.

The decision has been made to make drills and exercises an allowable expense but there are other issues to resolve similar to the equipment issue. Under the current proposal, sufficient funding will not be available to support much in the way of drills or exercises. Another question to resolve before writing the final policy is whether there should be any definitional bounds on drills and exercises. For example, will a jurisdiction be able to develop a large scale exercise, similar to TRANSAX, or only to develop smaller exercises and participate in Federally sponsored exercises.

The point about the size of risk assessments is well taken. If risk assessments become an allowable expense, should they be limited in scope and, if so, what are appropriate limitations. The original argument in the Notice of Proposed Policy and Procedures remains, is a risk assessment sufficiently related to “funds and technical assistance for training” to be, legally, an allowable expense under Section 180(c).

Regarding incremental assistance, the annual available funding determines the additional increment of preparedness. Once jurisdictions receive the grant, they can target it to their greatest needs. The question of incremental assistance to jurisdictions with no infrastructure or personnel is a difficult one. Additional research may be needed to find additional assistance from other sources for these jurisdictions and to define what additional assistance the DOE may be able to provide.

The question of using 180(c) funds to train private sector public safety officials will need a legal judgement from the Office of General Counsel. However, if large numbers of officials are not trained simply because they are not government employees (i.e. they are private sector emergency response personnel) the public perception is one of gross unpreparedness for our shipments -- a community relations nightmare and possibly a public safety one as well. Whether “local” in the Section 180(c) language means only county and city employees, not state employees, has been answered by the DOE’s willingness to fund state-level public safety officials.

#### **Timing and Eligibility**

##### *Summary*

The concerns about timing and eligibility were varied. With no pass-through requirements, local governments wondered whether they would receive any funds or assistance. One suggestion was

to allow local governments to apply if state governments failed to do so. Some participants cautioned there might not be sufficient funds to make it worth a state's efforts to apply.

A tribal participant cautioned that four years may not be sufficient time for some tribal governments to prepare emergency response programs and therefore make use of the funding. Similarly, announcing routes three years prior was not seen as sufficient time for western states to prepare.

The question about who receives funding when a route is very near or on a border between jurisdictions was also raised.

#### *Analysis*

Allowing local governments to apply for grants if states decline is intriguing but probably not legal given the language of Section 180(c). Maybe the Office of General Counsel could also investigate this possibility. It could lead to very lopsided levels of preparedness as one town receives funding and the next does not. Research into what types of grants are worth a state's effort to apply for may help estimate if the current proposal is a realistic one.

Regarding preparation time for tribes, the DOE could work more closely with tribes likely to be along transportation routes in an effort to make them aware of the program and help them find additional assistance. Information could be funneled back and forth through the field office who generally have these types of programs already established. Since states already have the legal right to choose alternate routes, it is within their power to resolve this issue.

If a radioactive materials accident occurs close to or on a border, both jurisdictions are going to respond. It will be a rare case when one jurisdiction does not bother to respond. Therefore, each jurisdiction should probably be eligible for the Section 180(c) program. However, this needs to be researched to discover how often this situation could occur, and what types of mutual aid agreements are in place in these instances, in essence, how are they currently handling emergency response along those routes.

#### **Definitions**

##### *Summary*

The primary area of concern was that the definition of safe routine transportation did not fully reflect TEC's definition. One participant in particular expressed great frustration at not seeing his work reflected in the proposed definition.

##### *Analysis*

While the DOE is not bound to adopt TEC's positions, more communication about what is likely to be adopted or not by the DOE might lessen misunderstandings such as this one. In this case, time was spent developing a position, the larger TEC body adopted the position, and DOE did not register its disagreement until a couple years later. It would be worth analyzing again how much of TEC's definition could be adopted and at least strengthening the arguments for why certain

phrases were not used.

## **Other Topics Discussed**

### *Summary*

Several comments dealt with the practicality of creating an implementable and effective program. One participant said that if the goal is to increase community confidence in the shipments, training state level employees may be too high level a focus. Similarly, another participant observed that unless volunteers are sufficiently trained and equipped, even though volunteers seldom have the time or the funds to achieve this, they may panic and refuse to respond to a hazardous materials accident.

Another commenter said training efforts should be more aware of tribal cultural and jurisdictional concerns. Lastly, a participant encouraged DOE to quickly implement the program with an eye towards near-term interim storage, or to shut down the effort until a repository opened in the next century.

### *Analysis*

Whether the proposed policy will increase confidence in the shipments is a good question. Is there anything else that could be done within the scope of Section 180(c) to increase stakeholder confidence. Is there anything that has been overlooked that could make the program more workable and more of a confidence-builder in OCRWM's shipment preparations.

The question of training rural and volunteer responders is a problem much larger than can be solved by the Section 180(c) program. However, the proposal does include sending first responders awareness training materials to public safety personnel along all routes. Development of these materials should focus on either obtaining or developing the best, most effective training materials. This includes following efforts to develop distance learning through satellite hookups and the Internet.

One way to make the Section 180(c) program more effective and efficient may be to develop the training modules and information packets in conjunction with the TEC training subcommittee and other frontline emergency responders. This would help OCRWM include the information most useful to first responders and to help build bridges with the public safety officials most on the line if there is an accident.

## Appendix A Comment Summary

The following describes in more detail specific comments made on each subject. This description attributes the comment whenever the commenter's name was known. Otherwise, the commenter is listed as unknown. This description also groups the comment by subject, combining the comments from all three breakout groups.

### **Funding Mechanism**

#### *Population as a determiner of variable funding*

Jim Reed, NCSL: Population density along the routes should be considered when allocating funds. It is an important variable in determining risk.

Carol Lynn Mintz, International Association of Fire Fighters: It is not true, as stated in the comment/response section of the proposal, that it takes equal numbers of people to respond to an accident in a populated area as it does a rural area. An emergency in a populated area will take more media people, more people possibly going to hospitals, therefore more hospitals involved, and more road blockages and detours which require more highway patrol.

John Dossett, NCAI: High population density is not a good method to allocate funds. Population requirements often work against tribes.

Ron Ross, Western Governors' Association (WGA): An accident along a major transportation route will still cause a huge disruption and require many response staff even if it occurs in a rural area.

#### *Cooperative Agreements versus Grants*

Ralph Smith, Waste Isolation Pilot Plant (WIPP): The DOE will use its fund more efficiently through cooperative agreements. Both WIPP and the Office of Environmental Management use cooperative agreements that fence funds specifically allocated by Congress, such as the Nuclear Waste Fund. The Office of Civilian Radioactive Waste Management (OCRWM) could do this with Nuclear Waste Fund monies and go through regional offices who are already providing money to states.

Rick Moore, Wyoming: As far as the comments reflecting which funding option is the most popular, it depends on how the question is framed. The type of question will impact the results on who prefers what funding option. *Judith Holm, Office of Environmental Management (EM-76) suggested that if states don't have the staff to apply for more grants, maybe some funds could go through the existing Motor Carrier Safety Assistance Program (MCSAP) program.*

Unk: Tribes do not have access to MSCAP funds, so they will need more training in safe routine



transportation than states. Tribes have almost no background in inspection and enforcement.

Robert Holden, NCAI: NCAI is talking to the Federal Emergency Management Agency (FEMA) about working more closely with tribes. This outreach will also begin with the Department of Transportation's MCSAP and Hazardous Materials Transportation Act programs.

#### *Sufficient Funding Levels*

Robert Deegan, Sierra Club: What order of magnitude funding will be available?

Rick Moore, Wyoming: What is the estimated cost of this program? Back of the envelope calculations would indicate about \$80,000 a state. (*Corinne Macaluso, RW-45, wrote down the funding formula for each breakout group as:  $B = x(tr. + Tu) + P\&C$ , where  $B$  is the base amount,  $x$  is the number of people trained,  $Tr.$  is the estimated cost of travel, and  $Tu$  is the estimated cost of tuition. The variable funding would be determined by  $V = 3(Tr. + Tu)$  for every 160 miles.*)

Bob Halstead, Nevada: Nevada's estimate of the proposal is quite a bit less than \$80,000.

Rick Moore, Wyoming: The number of inspectors that can be trained under this proposal is not sufficient. Depending on the number of ports of entry in a state, inspectors cannot move at will and they can't work 24 hours a day.

Bob Halstead, Nevada: More staff will be needed to conduct the necessary training than this proposal allows. State budget and staff cuts have hit states hard and they won't be able to handle the preparations for these shipments without a larger funding source. This is a nickel and dime approach that does not increase the larger programmatic capability in each state. This proposal is guaranteed to cause us perception and political troubles.

Bob Halstead, Nevada: Two hours is not a realistic response time for 160 miles (*the breakout groups were notified that 80 miles was the intended figure*). Participants will give better responses to the proposal if they have more information. DOE needs to release information about the number of shipments the road each week, the routes they will take, the ports of entry they will take and the modes they will use.

#### **Allowable Use of Funds**

##### *Drills and exercises*

Ron Ross, WGA: Drills and exercises should be an allowable expense. Neither the states nor the DOE can rely on FEMA to fill the gaps because FEMA have backed out in the west. They have closed most of their state radiation detection equipment calibration centers and have almost no funding available for drills and exercises.

Steve Gunderson, Colorado: Don't rely on other Federal programs to fill the funding and training gaps. The Hazardous Materials Transportation Act (HMTA) funding may not continue. FEMA

is being reorganized and refocused. In addition, the line between training and drills is fuzzy.

Brad Mettam, Inyo County: Drills and exercises should be an allowable activity. The responders, especially rural fire departments, need training retention. Drills and exercises are the best way to learn. (*Judith Holm, EM-76, stated there is a question on the definitional bounds of drills and exercises. It may be appropriate to hold some drills and exercises but not necessarily a huge expense such as a TRANSAX.*)

Unk.: Exercises need to be conducted in local community where the team can practice together. It takes funding to get local responders together, but it's the best hands-on way to learn. (*Corinne Macaluso, RW-45, said this restriction in the proposal has been dropped. Exercises and drills will be an allowable expense.*)

### *Equipment*

Brad Mettam, Inyo County: Up to ten percent for "training-related" equipment doesn't sound sufficient, especially since emergency response equipment is very expensive. TEC had wanted equipment built into the technical assistance definition but the proposal does not put it there. Does this mean no emergency response equipment can be purchased, or only those items needed for a classroom? A standardized list of approved equipment may be a better approach. Don't train responders on equipment if they won't have that equipment during an actual response. (*Susan Klein, DOE-General Counsel (GC), said equipment purchases may be limited to ten percent of funds by Federal grant regulations. Once you purchase equipment with Federal dollars, it may become Federal property.*)

John Dossett, NCAI: Tribes need flexibility on equipment spending to make the program effective.

Steve Gunderson, Colorado: The WIPP staff have been sticklers on equipment purchases. Their approach is not a good model. (*Elizabeth Helvey, TESS, stated that WIPP recently dropped the ten percent rule. It was too difficult to administer. Lynn Eaton (WIPP/Westinghouse) has suggested using a standardized list of approved equipment.*)

Unk.: FEMA has a 50/50 program to purchase equipment, that may be a model to study.

Scott Solomon, International Association of Fire Fighters: DOT uses the same measure for equipment purchases with their grants.

Jim Cruikshank, EM-76: EM is trying to develop a list of standard equipment needed for each response level that may settle the question of appropriate equipment purchases.

Unk.: Equipment requirements may be reduced if each shipment has someone on board with the knowledge and equipment to evaluate the scene and advise the local responders.

Unk.: There is a variation in how each state handles what level of responder is trained on what equipment. Every highway patrolman carries radiation detectors, and the medical community will want full decontamination units which are very expensive.

Bob Halstead, Nevada: Equipment purchases at 10% of the grant is too small. And jurisdictions need emergency response equipment, not just training equipment.

#### *Route and risk assessments*

Jim Reed, NCSL: Route and risk assessments should be an allowable expense. States need to determine where the risks are so they know where to focus training.

Steve Gunderson, Colorado: Risk assessments can be cursory affairs or huge, multi-discipline affairs. The scope must be decided on prior to commencing work.

Bob Halstead, Nevada: To be effective, the program needs to fund state liaisons and regional coordinators. The RSAs may be a place to pay for routing assistance if it is not included in the Section 180(c) program.

#### *Other allowable activities*

John Dossett, NCAI: The philosophy of providing incremental assistance on existing infrastructure does not work for tribes. There needs to be flexibility in the policy to fund basic emergency response preparation such as hiring a staff person.

Unk.: Regarding the proposal's philosophy on incremental assistance, who will decide what the increment is? There is not enough flexibility in the program.

Elgan Usrey, Tennessee: The administrative cost of applying for separate grants is prohibitive. States need to be able to recover staff costs.

Kevin Blackwell, Federal Railroad Administration (FRA): DOE personnel may be able to fill state staff training positions on a temporary basis.

Unk.: Trainers from outside the state aren't familiar with how each state operates and the expertise goes away when the training is completed.

Unk.: If a state applies for a grant, can they give training to private sector employees? Many emergency medical technicians, hospitals, and even first responders are now being handled by private companies.

Brad Mettam, Inyo County: The law says "local", therefore, can DOE even train state level people? Inyo County takes the view that Section 180(c) can only be used to train local public safety personnel. (*Judith Holm, EM-76, said recipients can also think about using the training as a team concept and tie it into other programs such as FEMA and DOE training.*)

### **Timing and Eligibility**

Unk., Local government: States may decide the program offers too little money to bother applying for the funds. We suggest the state have a time limit to apply and if they don't apply by the deadline, then allow local governments to apply. (*Judith Holm, EM-76, said DOE recognizes that some states won't have the staff or funds to apply for grants.*)

Steve Gunderson, Colorado: One suggestion would be to require that local governments be beneficiaries of the training even if no actual pass-through of funds is required.

Jim Reed, NCSL: What happens in cases when the route is right on the border of two jurisdictions? (*Susan Klein, DOE-GC, responded that the question becomes who has authority to respond. If there are mutual aid agreements then funds should go to those with the authority to respond.*)

Robert Holden, NCAI: The application process may not leave enough time for some tribes to become aware of the program and get a sufficient handle on emergency response matters that they can effectively use the funds.

Ron Ross, WGA: Choosing routes in the west takes about four years, the three year process outlined in the proposal is not enough.

Chris Wentz, New Mexico: Will tribes be funded directly? (*Corinne Macaluso, RW-45, responded affirmatively.*)

### **Definitions**

Unk., state representative: Be careful in the definition of safe routine transportation, that it does not commit DOE to follow local regulations that are inconsistent with Federal regulations. Clearly in the policy that DOE will only follow state, local and tribal regulations that are consistent.

Rick Moore, Wyoming: What is purpose of TEC if DOE does not adopt our recommendations. The definition of safe routine transportation leaves out an important part of the definition TEC spent eighteen months developing.

### **Other Topics Discussed**

John Dossett, NCAI: If DOE's goal is to have communities feel comfortable about these shipments, then the state may be too high a level to focus training and funding.

Unk.: Emergency responders, especially volunteers, don't know what to expect when they come upon a radioactive materials accident so they panic when an accident occurs. It takes information and training to avoid this outcome.

Steve Gunderson, Colorado: It doesn't make sense to train rural volunteers when they have so

little to start with. They don't have the equipment, they have a high turnover rate, and they often don't receive training even in the basics. Getting volunteers trained to a level where they can respond correctly or at all, is a huge problem. *(Judith Holm, EM-76, responded that assessing a release is not a first responder's job. First responders at the most make a go/no go decision and go/no go equipment is very expensive. Possibly technology development may help solve this problem.)*

Robert Deegan, Sierra Club: Will the Nuclear Waste Fund be the source of funds? *(Corinne Macaluso, RW-45, answered that it would.)*

Unk.: How are other DOE programs coordinating with Section 180(c)? *(Judith Holm responded that DOE staff are building incremental pieces onto each other and taking an all hazards approach.)*

Robert Holden, NCAI: Not all training takes into account tribal jurisdictions and cultural considerations. While tribes need to do a better job of discussing these matters with trainers, training programs need to be more aware of tribal circumstances.

Bill Sherman, North East/Council of State Governments (COSG): The process needs to move faster than it is. If transportation occurs in 2010, we can all go home, but with legislation looming please consider implementing 180(c) on the fast track for selected routes. *(Judith Holm, EM-76, said OCRWM may not be able to do a pilot of Section 180(c) because of their shipping schedule, but maybe EM could pilot the program for an EM shipment.)*

Unk.: Who looks at the comments and determines the final response and policy? *(Corinne Macaluso, RW-45, responded that OCRWM staff and management review the final policy and coordinate with other DOE offices.)*

Bob Halstead, Nevada: The proposal is not flexible enough. Maybe the RSAs can work with the states on these matters and go beyond the realm of Section 180(c).