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# THE COUNCIL OF STATE GOVERNMENTS EASTERN REGIONAL CONFERENCE

Ms. Corinne Macaluso  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy  
c/o Patricia Temple  
Bechtel SAIC Company, LLC  
955 N. L'Enfant Plaza, SW, Suite 8000  
Washington, DC 20024

Dear Ms. Macaluso,

Enclosed please find the comments of the Northeast High-Level Radioactive Waste Transportation Task Force on the Notice of Revised Proposed Policy on the implementation of section 180 (c) of the Nuclear Waste Policy Act published in the Federal Register on July 23, 2007. The Task Force is comprised of governor-appointed executive agency officials from Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont.

Members the Northeast High-Level Radioactive Waste Transportation Task Force previously participated in the Transportation External Coordination (TEC) Working Group Section 180 (c) Topic Group. We appreciate the opportunity to provide continued input on Section 180 (c) policy.

Should you have questions regarding these comments, please contact Melissa Bailey of the Council of State Governments- Eastern Regional Conference at (802) 229-5117.

Sincerely,

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Division of Radiation  
CT Department of Environmental Protection  
Co-Chair, Northeast High-Level Radioactive  
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# Northeast High-Level Radioactive Waste Transportation Task Force comments on Draft 180 (c) Policy

## General Comments:

- The Northeast continues to support the recommendations that were made by the TEC Section 180 (c) Topic Group. We appreciate that DOE adopted the majority of the group's recommendations, but would like to see DOE address three additional Topic Group recommendations.

- 143-1-F | ○ It is necessary to address contingency re-routing in the implementation of Section 180 (c) so that all parties can be adequately prepared for the use of alternate routes due to unforeseen circumstances.
- 143-2-H | ○ DOE should work with states to ensure that shipment operations are adequately funded through Section 180 (c) funding or some other mechanism. This is necessary so that states can carry out inspections and monitoring, which contribute to the safety of shipments.
- 143-3-K | ○ The Northeast states would like to see the Section 180 (c) codified through rulemaking so that this policy is adhered to throughout the planning and implementation of DOE's shipping campaign.

- The issue of state eligibility needs to be clarified. According to the Draft Policy, a state is eligible for funding if a route runs through its jurisdiction, or if a route constitutes a border between that state and another state. The latter seems to be an unlikely scenario, because the route would actually be located within one state. However states which do not have shipments travelling within their borders may still need to provide planning and training for shipments that travel in close proximity to their borders. In some cases these states may have cross-deputization and mutual aid agreements with the state through which the shipment will pass; in some cases, no such agreement exists. These states would clearly need to prepare for shipments and train for emergency response situations and thus should be eligible for federal support. Preferably, any state that will be affected by shipments would be able to apply according to the Section 180 (c) mechanism. If neighboring states are deemed ineligible for funding under Section 180 (c), DOE should work directly with these states to provide funding.

- As a basic principle for this policy, states should not be competing for funds. Question 3 at the end of the Notice seems to imply that states will be competing for funds, especially where a route is on or near a border. If two states are requesting funding based on the same route, both states should be eligible for full funding; the funding amount should not be "adjusted."

- The Draft Notice should state that the amounts for the assessment and planning grant and annual training grants are in 2007 dollars so that the value of the grants does not diminish as time goes on.

- The proposed allocation formula should include intermodal transfer points as "shipping sites" for the purposes of calculating the variable portion of the training grant. States will need to provide additional training for inspecting and transferring SNF shipments at these intermodal transfer stations and should thus be eligible for increased funding.

- The Draft Notice does not mention what will be done with leftover grant funds that are not awarded to states. The Northeast believes that any excess funds be used to fund unmet needs. This will help ensure that all states are able to meet their training needs.

- States that will see the greatest volume of shipments should be considered good candidates for DOE's pilot testing of the Section 180 (c) grant application process.

Answers to DOE Questions:

Question 1

143-10-J (a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?

The amount of \$200,000 is the minimum amount that is appropriate for the assessment and planning grant. Some states, due to their size or expected volume of shipments may require additional funding to conduct a needs assessment. If possible, additional funds should be made available to these states. This money could come from leftover funds from states that do not apply for or are not awarded the entire amount for which they are eligible. At the very least, this numbers should be stated in 2007 dollars, and adjusted for inflation.

143-11-J (b) Should the amount be the same for each eligible State and Tribe?

Yes, states should be eligible for the same amount of assessment and planning funds. Through the application process DOE will determine whether a state qualifies for that level of funding.

143-12-J (c) Would there be a need to update the initial needs assessment and, if so, at what intervals and should funding be made available for this purpose and in what amount?

Yes, there may be situations where the needs assessment needs to be updated. For example, if there is a substantial lapse in shipments through a state, or if new routes through a state are added the state may wish to update the initial needs assessment.

Question 2

143-13-J (a) Would \$100,000 be an appropriate amount for the annual training grant?

The amount of \$100,000 seems to be an appropriate base amount for the annual training, provided that states can receive additional funding that is adequate through the variable component of the training grant.

143-14-J (b) Recognizing that, after commencement of shipments through an eligible State or Tribe, training to maintain capability may become less costly with increased expertise and efficiency, should the base amount of subsequent annual training grants be adjusted downward to reflect the number of years that annual training grants have been received?

No, grant amounts should not decrease with time. Training to maintain capability does not necessarily become less costly, especially when staff turnover is taken into account. The base amount of the training grant should remain the same (adjusted for inflation) throughout the shipping campaign.

143-15-J (c) What should be the allocation of available appropriated funds for a fiscal year between the base amount and the variable amount of the annual training grants?

The variable amount should be at the very least equal to the base amount, to account for the wide variation in need among eligible states.

143-16-J  
**(d) Should the entire training grant be variable based on the funding allocation formula described herein?**

No, the base amount allows states that will be affected by shipments to achieve the necessary basic level of preparedness. Having the total amount based on the variable formula could exclude states that will not have shipments, but have mutual aid agreements with states through which shipments will travel.

**Question 3**

143-17-J  
**(a) Should the amount of funding be adjusted where a route forms a border between two States, a State and a Tribal reservation, or two Tribal reservations?**

It seems highly unlikely that a route would actually form a border between two states. The route would actually be located within one state, although it could be located along a border, or in close proximity to a neighboring state. In these instances, the neighboring state may need to plan and train for routine transportation and emergency preparedness. Neighboring states should therefore be eligible for 180 (c) funding if they can justify this need in their grant application. Funding for an eligible state should not be adjusted downward to provide funding for a legitimate need in a neighboring state. Funds should be made available for each state that has a legitimate need.

143-18-J  
**(b) Should States or Tribes with mutual aid responsibilities along a route outside their borders be eligible for 180(c) grants on the basis of the mutual aid agreement?**

Yes, these jurisdictions will need to train and prepare for shipments in order to fulfill these agreements. The Draft Notice states that these non-shipment jurisdictions may "work with DOE to receive funding." More detail is needed regarding how these states will receive funding. Ideally these states would be eligible to apply for the annual training base grant, and additional funds if warranted.

143-19-J  
**(c) If so, how should the amount of funding be calculated, and should the calculation take into account whether or not the State or Tribe would otherwise be eligible for a grant?**

The amount of funding should be determined based on need and should not take into account whether the applicant would otherwise be eligible for a grant.

143-20-J  
**(d) Should the State or Tribe that received notification of eligibility from DOE indicate in their grant application that a neighboring State or Tribe has a mutual aid agreement along a particular route, whereupon DOE would then notify the neighboring State or Tribe of its eligibility?**

States and Tribes should be asked to provide this information in their grant applications. However DOE should also solicit this information prior to issuing grant eligibility notices, in order to accurately establish the number of eligible states and tribes that may request funding.

**Question 4**

143-21-J  
**(a) Do assessment and planning grants need to be undertaken four years prior to an initial scheduled shipment through a State or Tribe's jurisdiction?**

Yes, states should be given the option of utilizing these grants at least four years prior to shipments. Needs assessments could be used by DOE to estimate how much total funds to request from Congress for annual training grants.

143-22-J (b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?

Yes, states should be given the option of utilizing these grants three years prior to shipments.

143-23-J (c) Do training grants need to be provided every year that shipments are scheduled?

Yes, states may want to provide trainings each year, and thus training grants should be available annually. Continual training may be needed to maintain skill levels of existing staff and to train new staff.

Question 5

143-24-J (a) Should the Section 180(c) grants be adjusted to account for fees levied by States or Tribes on the transportation of spent nuclear fuel or high-level radioactive waste through their jurisdiction?

No, under DOE's current interpretation of Section 180 (c), DOE is not required to fund state shipment operations. Thus, many states use fees to fund operations, such as emergency management, security, and escorts.

Were DOE to accept the Topic Group's recommendation by funding shipment operations, completely or in part, it would be necessary to distinguish what portion of operations would be funded by DOE, and which portion would be funded by state fees or other state sources.

143-25-J (b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?

The states should document how their fees are being used to fund any areas covered by 180 (c) funding. For states that collect fees to cover a broad range of activities, including training, it could be argued that DOE would be justified in deducting a portion of the state fee from the state's award. However, the fact that states use fee revenue for training does not mean that DOE should adjust their grants, because the states' needs for funding may legitimately exceed what DOE is providing under the proposed policy. The instructions require applicants to explain how the proposed funding does not duplicate existing funding sources. Applicants are thus required to explain how the requested funding will be used differently than existing fees.

143-26-J (c) Is the language in this policy, requiring States and Tribes to explain in their grant application how the fees and Section 180(c) grant awards are separate and distinct, sufficient to prevent DOE from paying twice for the same activity?

DOE has a legitimate interest in ensuring that federal funds aren't used to pay twice for the same activity. The Northeast agrees with the Midwest's recommendation that state fees be explicitly mentioned as a source of state funding. Once that change is incorporated into the Notice, the language will be sufficient to prevent DOE from paying twice for the same activity.

**Question 6**

145-27-J (a) How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other Federal agencies for training for safe routine transportation and emergency response procedures?

Section 180(c) grants should not be adjusted to reflect other funding or technical assistance. The instructions require applicants to explain how their proposed activities are specific to NWPA shipments, how the proposed funding does not duplicate existing funding sources, and how the training and technical assistance will be integrated with assistance received from other federal government sources. In order to satisfy these criteria, applicants will explain how Section 180(c) grants are to be used to supplement, rather than duplicate existing funding and technical assistance.

145-28-J (b) In particular, how should DOE account for TEPP and other similar programs that provide funding and/or technical assistance related to transportation of radioactive materials?

If other funding that is directly related to NWPA shipments is provided, that should be taken into account. Technical assistance that is provided through programs such as TEPP should not trigger an adjustment in 180 (c) funds.

145-29-J (c) To what extent is Section 180(c) funding necessary where funding and/or technical assistance are being or have been provided for other DOE shipping campaigns such as to DOE's Waste Isolation Pilot Plant?

Additional funding and training will be necessary for states that have received funding and technical assistance for previous shipping campaigns, given the nature of the NWPA shipping campaign. Different modes of transport and different routes will be utilized.