

Overview

The comments of the Western Interstate Energy Board High-Level Radioactive Waste Committee are divided into the following categories:

- Regional Stakeholder Process
 - Stakeholder Involvement Directives
 - Primary External Coordination Mechanism
 - State Regional Group Collaboration
- General Comments
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Regional Stakeholder Process

Stakeholder Involvement Directives

The WIEB HLW Committee appreciates DOE's references to stakeholder documents and processes that were utilized in the development of this proposed 180(c) policy.

In addition, we draw your attention to a federal directive that assures stakeholder involvement, and to the Memorandum of Agreement (MOA) that founded the formation of the Transportation External Coordination Working Group (TEC/WG). The TEC/WG, which, regarding Section 180c, has served its intended purpose as the *key stakeholder group* by which DOE interfaces in matters dealing with the transportation of radiological waste:

Executive Order 12327:

Executive Order 12372, "Intergovernmental Review of Federal Programs" (July 14, 1982) was issued to "foster intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development".

Regarding the national transportation campaign for transport of spent nuclear fuel and high-level waste, western states expect DOE to meet the provisions of Executive Order 12327, which provides that federal agencies:

- *Shall provide opportunities for consultation by elected officials that would be directly affected by proposed Federal financial assistance or direct Federal Development;*
- *Shall make efforts to accommodate State concerns with proposed Federal financial assistance and direct Federal development;*
- *Shall seek the coordination of views of affected State officials in one State with those of another State when proposed Federal financial assistance or direct Federal development has an impact on interstate metropolitan urban centers or other interstate areas. [1]*

The DOE TEC Foundational MOA:

The document that established the TEC/WG is entitled "Memorandum of Agreement Between the OCRWM, Environmental Restoration and Waste Management, and Defense Programs, concerning the TEC/WG Involvement with DOE Radioactive Materials Transportation Activities." The DOE TEC/WG has been active since 1992, fulfilling the original objective: "to solicit the aid of various stakeholder groups in resolving common transportation issues, and focus and coordinate the DOE program efforts." [2]

Primary External Coordination Mechanism for 180 (c)

The US Department of Energy has chosen to utilize, as it's *primary external coordination mechanism for 180(c)*, the Transportation External Coordination Working Group (TEC/WG).

Through the TEC/WG, DOE interacts with representatives of organizations at the state, tribal, and local levels who are working cooperatively with DOE, to obtain input for program needs assessment, development and management, and to enhance their capability to carry out transportation emergency preparedness and safety activities specifically related to radioactive materials shipments. [3]

The TEC/WG membership is comprised of 43 national, international, state, industry, tribal, union, and professional organizations as well as state regional groups. The state regional groups represent the Governors of states through whose jurisdictions transportation of commercial spent nuclear fuel is being contemplated. The state regional groups and their member states were actively involved in identifying and addressing issues related to the design and implementation of the Section 180(c) grant program.

The WIEB HLW Committee believes that the Federal Register Notice (FRN) should have placed greater emphasis on the importance and policy recommendations of the Section 180(c) Topic Group of the TEC/WG and the coordinated, collaborative consultative process that it undertook over several years to help DOE craft viable 180(c) program considerations.

Therefore, the Western States, as committed stakeholders in the regional process, are submitting the "Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments" as a demonstration of a national consensus among affected states that was successfully negotiated within the 180(c) Topic Group. [4] Further, the Principles of Agreement were incorporated into the Briefing Package for Section 180(c) Implementation that was sent to DOE management in preparation for this Draft Policy. <http://www.tecworkinggroup.org/180c.html> [6]

While we appreciate that DOE has incorporated many of the consensus driven principles in the Draft Policy, the WIEB HLW Committee recommends that DOE reconsider other principles of agreement for adoption in the overall Transportation System:

Principles Regarding Continuity/Predictability: [6]

2. *Funding to states must be predictable to ensure program continuity.*

Funding should not cease or diminish during shipment lapses of less than four years as it is difficult to ramp up activities and provide training on short notice. [16]

5. *Scheduling of shipments must be done in a way that balances the priority of shipments established in OCRWM's Annual Capacity Report with impacts on state and local responders. A shipping campaign based on the Annual Capacity Report would result in occasional shipments traveling through many jurisdictions. Consideration needs to be given to the efficient use of federal, state, local, and tribal resources for planning and emergency response in shipment scheduling. States will need predictability with regard to shipment scheduling.*

Principle Regarding State Regional Group Funding: [7]

6. *DOE must continue to support the State Regional Groups to ensure consistency and compatibility of shipment planning activities.*

State Regional Groups are an extremely effective means for states to work together with DOE to plan, prepare, and maintain an effective transportation program.

Principle Regarding Operational Activities: [15]

9. *DOE and states must develop a list of allowable activities that are eligible for funding under Section 180(c), as well as a list of **transportation-related activities for which DOE will also provide funding from the Nuclear Waste Fund or other sources.***
10. *DOE must provide the states with financial and technical assistance for both training **and operations activities as long as shipments continue along a shipping corridor.***

State Regional Group Collaboration

The WIEB HLW Committee endorses many of the Specific Comments in the CSG Midwestern Radioactive Materials Transportation Committee's Comments on OCRWM's Draft Policy and Procedures for Implementing Section 180(c), October 9, 2007, pages 2-4 of 7 [16], with one key exception: the WIEB HLW Committee does not support the proposed allocation formula. Instead, the Western Governors support a needs-based approach "because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their *needs* through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably." [17]

WIEB HLW Committee General Comments

1. Funding allocation methods should be based in regulation and upon need.

The Western Governors' Association Policy Resolution 05-15 states that regulations should be adopted "to implement a mutually acceptable program of technical assistance and training funds. Such regulations should:

- i. Provide for the development and funding of state and tribal plans that identify the minimum elements necessary to ensure safe routine transportation and procedures for dealing with emergency response situations, the current capabilities along each corridor, the activities needed to achieve minimum elements, and performance measures to evaluate programs implemented under the plan.
- ii. Provide annual implementation grants to states and tribes to ensure adequate funding levels and program capabilities among impacted states and tribes.
- iii. Provide flexibility in the expenditure of funds by states and tribes pursuant to the provisions of the state or tribal plan.
- iv. Prior versions of this resolution included a formula for the annual implementation grants, with 75 percent of grant funds allocated according to the number of projected shipment miles in the jurisdiction and 25 percent allocated to ensure minimum funding levels and program capabilities among impacted states and tribes. Because of the current uncertainties in the transportation system (e.g., routing, mode, intermodal transfers, schedules, security measures), it is premature for DOE to finalize 180(c) and other funding allocations for annual implementation grants. Once states and tribes have assessed their *needs* through planning grants provided by DOE, DOE should then consult with states and tribes to determine how to best allocate funds to states and tribes effectively, efficiently and equitably." [17]

The Western States position is that DOE should issue a policy and then promulgate a rule for the implementation of the policy and grant application. This position was supported by the Section 180(c) Topic Group, which evaluated the "policy versus rulemaking" issue and provided specific recommendations in "APPENDIX G". [12] The Topic Group recommended that DOE issue a policy and then promulgate a rule for the implementation of the policy and grant application.

The WIEB HLW Committee agrees with the Midwest and Northeast that rulemaking for Section 180 (c) policy and procedures is imperative as a means for preserving the financial and technical assistance system DOE is establishing.

2. DOE should develop realistic budget requests for Congress.

The WIEB HLW Committee is concerned about how DOE will develop their budget requests for submission to Congress to fund this program. The numerous references to: "appropriated funds" and "availability of appropriated funds" implies that funding for the states may not be a priority. We recommend that DOE develop realistic budget projections based on aggregate state needs assessment. We recommend that DOE provide details as to how they are going to request monies from Congress.

3. Funding allocation formula should be proven.

Since there are variables in the proposed funding formula, please explain to the states how DOE will deal with those variables when DOE has stated that it will be receiving fixed dollars from Congress. Please provide your planning assumptions including number of shipments, queue of shipments, routes, and any other variables. Please run the formula with assumptions including variables then provide results and methodology.

4. DOE needs to provide funding for operational activities.

The Nuclear Waste Policy Act (NWPA) obligates that the costs of carrying out activities relating to the disposal of waste and spent fuel will be "borne by the generators and owners of the waste and spent fuel", not the states. The NWPA, Section 180(c) addresses the particular topics of technical assistance and funds to States for training. Section 180(c) does not constrain the DOE from providing funding for the costs of the other activities in support of shipments. Therefore, the DOE has legal responsibility to ensure that funds are made available to States and Tribes to meet the operational needs in support of the transportation and repository plans. It is DOE's responsibility to identify the source of funds and secure such funds for these necessary activities. [19]

The Section 180(c) Topic Group recommended in "APPENDIX J - Funding Operational Activities" that DOE commit to funding the same kind of safety program that they support for WIPP shipments, that is, a program that includes operational activities such as state inspections, escorts, staff time for satellite tracking, contingency route designation, and public information activities. The states strongly believe these activities contribute materially to safe routine transportation, and also enhances public acceptance of shipment safety.

Past and present DOE shipping programs have established the precedent of providing financial assistance to states and tribes for these non-training shipment-related activities. Examples include the WIPP, Foreign Research Reactor, West Valley, and depleted uranium hexafluoride shipping programs.

DOE should affirm its commitment to the states to fund a comprehensive transportation program regardless of funding sources. It is also recommended that OCRWM work in conjunction with Environmental Management in order to take full advantage of DOE's existing transportation infrastructure. [15]

5. Funding to states should be predictable and reliable to assure program continuity.

Comments on prior Federal Register Notices dealt with the "hot" topic of lapses in shipments and a corresponding proposed denial of grant monies to the states. For example, the WIEB HLW Committee provided the following example and sample questions:

If there were a lapse of NWPA shipments for three or more years, that state or tribe would receive no funds for those years and would regain eligibility three years prior to another NWPA shipment through its jurisdiction.

- How exactly will OCRWM know in advance that there will be a three-year lapse in shipments through a state or a tribal jurisdiction?
- Would DOE continue to fund a state until three years have passed without a shipment before denying grant monies?
- If funding was based upon projections, would it even be possible for the DOE Grants Manager to guarantee that an expected lapse of three or more years would actually occur?

Please describe to the states how lapses in shipments will be handled.

6. State Regional Groups are an extremely effective means for states to work together with DOE to plan, prepare, and maintain an effective transportation program.

The State Regional Groups (SRGs) have been proven to provide invaluable assistance to affected states and to DOE in identifying issues, helping DOE and its contractors to deal productively with states, local governments, and Indian tribes, and coordinating activities among key participants. For the Section 180(c) program, it is important that the SRG's role be maintained.

While 180(c) funding is to be provided through direct grants to states and tribes, DOE needs to find a way to assure that the SRGs continue to have the resources necessary for intra- and inter-regional coordination, collaboration, communication, and consultation in the commercial spent nuclear fuel program. Further, the important role of the SRGs in the Section 180(c) program should be acknowledged in DOE's final policy.

7. Key definitions need to be included in the grant guidance.

The Section 180(c) Topic Group spent an inordinate amount of time trying to develop two key definitions that meet the needs of the diverse stakeholders of the Group. Background information and multiple justifications from other federal agencies may be found in "APPENDIX D – Definitions". [10]

In the best interests of grant management, both for the grantor and the grantee, the WIEB HLW Committee recommends that DOE should use the following standardized definitions:

1) Public Safety Official

"Public Safety Officials are state, tribal, and local personnel who are involved with emergency public safety, inspection and enforcement, emergency response, emergency medicine (including hospital emergency services), and related personnel, agencies, and authorities."

2) Safe Routine Transportation

"Safe routine transportation means the shipment of spent nuclear fuel and high-level radioactive waste pursuant to the NWPA through state, tribal, and local jurisdictions in a manner compliant with applicable Federal, state, tribal, and local laws, regulations, policies, and agreements. Examples of these include:

- Safe routine highway transportation is characterized by adequate vehicle, driver, and package inspection and enforcement of the U.S. Department of Transportation's Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations, as well as the Commercial Vehicle Safety Alliance's inspection procedures and out-of-service criteria as consistent with state requirements.
- Safe routine rail and barge transport is characterized by compliance with the Hazardous Materials Regulations, as well as rail and barge transportation policies and regulations, including those of the Federal Railroad Administration and Coast Guard.
- Safe routine transportation is also characterized by compliance with the Nuclear Regulatory Commission's package certification and pre-notification regulations and the Department of Energy's applicable transportation requirements."

We would appreciate an explanation as to why DOE felt it was necessary to drop the definitions for public safety official and for safe routine transportation in the Notice.

8. Contingency re-routing should be part of the transportation plan.

The Section 180(c) Topic Group recommended in “APPENDIX F – Contingency Re-routing” that “contingency re-routing be considered as part of a comprehensive transportation plan, rather than limiting the discussion to Section 180(c) concerns.” This particular topic, along with the “Definitions” shown in Item 4 above, represented extensive negotiations. Again, in the interests of grant management, DOE should use the following standardized definition:

“A contingency, for the purposes of the 180(c) program, is an occurrence such as an emergency route closure that turns into a long-term route closure that affects planned or on-going shipments. It is not because of a lack of planning or proper preparations.”

The Group recommended that, if contingency re-routing becomes necessary, that:

“In the event of unforeseen circumstances, DOE will make funds available, if necessary, and work with state, local and tribal governments as necessary to reach a mutually acceptable solution.”

[11]

9. Organizational structure of the repository transportation program should be evaluated to give the current transportation program greater planning authority.

The National Academy of Science made an observation and corresponding recommendation that is worthy of noting here. In their publication: *Going the Distance? The Safe Transport of Spent Nuclear Fuel and High-Level Radioactive Waste in the United States*, NAS reports that the Secretary of Energy and the U.S. Congress should examine options for changing the “embedded” organizational structure of the program for transporting spent fuel and high-level waste to a federal repository. NAS made recommendations that would enable “greater planning authority; greater budgetary flexibility to make the multiyear commitments necessary to plan for, procure, and construct the necessary transportation infrastructure; and greater flexibility to support an expanding future mission to transport spent fuel and high-level waste for interim storage or reprocessing.” Thus, many of the recurring states’ concerns could be ameliorated. [18]

Answer Matrix

The High-Level Radioactive Waste Committee of the Western Interstate Energy Board, as one of the state regional groups, is pleased that DOE recognized and utilized many important aspects of the suggested program designed by the Section 180(c) Topic Group.

However, the WIEB HLW Committee is disappointed that the DOE decided to request comments on many issues that had already been addressed by the Topic Group. Therefore, the WIEB HLW Committee is resubmitting the entire briefing package that was sent to DOE management for their use as the foundation documents in the development of this Federal Register Notice. The Executive Summary and Introduction are shown as exhibits [5] [6] in the attached list of references. The WIEB HLW Committee summarizes its responses in the matrix below.

Question number	Topic Group Recommendations in Issue Papers	WIEB Comments on Questions
1(a) Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct an initial needs assessment?	This was addressed in "APPENDIX H – Funding Allocation Method" where the Topic Group recommended a one-time planning grant of \$200,000 per corridor state. [13]	<p>In most States, yes, but in some States, no. States have varying planning and funding needs depending on their size, number of generator sites, length of routes, and the complexity of modal choices and routing. Any state specific issues and recommendations regarding the amount of the planning grant will be submitted individually by state.</p> <p>We are pleased to note in the announcement that should a state find that their planning activities have not been concluded, they may continue those activities under the Training Grant which indicates that allowable activities may include the continuation of the activities initiated under the Assessment and Planning Grant.</p>
1(b) Should the amount be the same for each eligible State and Tribe?	This was addressed in the "EXECUTIVE SUMMARY – Section 180(c) Policy and Procedures" where it is noted that the <i>Topic Group discussions focused primarily on the concerns of state and local governments, two tribes participated in the Topic Group. Tribal issues... through OCRWM formal consultations with the tribes beginning in 2005.</i> [5]	<p>No, the Western states believe that it should be based upon need, not on an arbitrary or fixed amount. Every state should have the opportunity to apply for the same amount of planning grant funding. DOE must establish eligibility standards for the program monies. The application process will determine if a state is eligible for the entire monetary designation.</p> <p>It is speculative to provide an opinion about DOE's agreements with sovereign nations in comparison with states.</p>

<p>1(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?</p>	<p>This was discussed in the issue paper "APPENDIX B - Timing and Eligibility" where it is noted that <i>If shipments through a jurisdiction stop for 4 or more years, then jurisdictions lose eligibility until shipments are scheduled to occur within 3 years. In this case, jurisdictions could apply for another planning grant since so much time had elapsed since they last planned for NWPA shipments. The planning grants would be available 3 years prior to scheduled shipments and the training grants would be available 2 years prior to scheduled shipments and every year thereafter that there were shipments scheduled, unless of course there was more than a four year interruption again.</i> [8]</p>	<p>In some cases, "yes". A state with multiple generator sites could have shipments beginning at different times from different sites, requiring the periodic opening of new corridors. Needs assessments would be required on each of these new corridors before shipments could begin or following lapses in shipments.</p> <p>Loss of eligibility because of a lack of shipments over a period of time or a change of route would require States to begin the entire planning and assessment process anew.</p>
<p>2(a) Would \$100,000 be an appropriate amount for the annual training grant?</p>	<p>The complexities of developing a training system were discussed thoroughly in "APPENDIX C - Allowable Activities/Training" including OSHA levels of training, target audiences, high turnover rates, career vs. volunteer status, need for flexibility to meet individual state needs. [9]</p>	<p>No, a set amount of \$100,000 is insufficient for both the base and variable amounts combined, as the question implies.</p> <p>The state's identified needs would determine the appropriate amount.</p>
<p>2(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?</p>	<p>The complexities of developing a training system were discussed thoroughly in "APPENDIX C - Allowable Activities/Training" including OSHA levels of training, target audiences, high turn over rates, career vs. volunteer status, need for flexibility to meet individual state needs. [9]</p>	<p>No. The presumption is incorrect, given the extensive list of considerations (including turnover rates) identified in the "Allowable Activities/Training" Issue Paper.</p> <p>Substantiated grant application information should clearly indicate the ongoing need for the base amount of \$100K along with documented need for any additional variable amount that was requested.</p>
<p>2(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?</p>	<p>A broad array of planning and training activities were proposed in the "APPENDIX C - Allowable Activities/Training" Issue Paper providing recipients flexibility to direct funds towards their individual needs. Carryover issues</p>	<p>The question implies that the variable portion of the training grant will be used to adjust the difference between what the states are requesting for base amounts versus what the DOE actually allocates to the process. Therefore, slim years would translate to lesser variable amounts.</p>

	were addressed. [9]	In order to facilitate the budget process, the DOE should assure at least an equal amount of base funding for each state, plus variable funding to meet individual state needs, for every state through whose jurisdiction shipments are being contemplated.
2(d) Should the entire training grant be variable based on the funding allocation formula described herein?		No. A base amount is necessary to enable states to establish and maintain a basic program to address safe, routine transportation.
3(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?	We recommend that DOE use the following definition, which is drawn directly from the "APPENDIX B - Timing and Eligibility": <i>Where a route constitutes a border between two states, a state and tribal government, or two tribal governments, every jurisdiction with emergency response responsibility and inspection authority over the route will be eligible for Section 180(c) assistance.</i> [8]	The wording in the FRN indicates that: "DOE will provide grants... to every jurisdiction with emergency response responsibility and inspection authority over the route." Therefore, if the state can justify the need for commensurate funding with the neighboring state, then it would be appropriate for DOE to award that level of funding. We are aware of a particular situation, in which Colorado has response authority on Interstate 80 in southwestern Nebraska.
3(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?	We recommend that DOE use the following definition, which is drawn directly from the "APPENDIX B - Timing and Eligibility": <i>If a state or tribe will not have shipments but has cross-deputization or mutual aid agreements with a jurisdiction that will have shipments, the former may work with DOE to receive funding.</i> [8]	Yes. Preparedness is necessary to fulfill the responsibilities of a mutual aid agreement. Therefore, if the state can justify the need for funding commensurate with that of a neighboring state, it would be appropriate for DOE to award that level of funding.
3(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?		This is a two part question: The answer to the first part is that the state should request funding to cover their proposed activities. If the state can justify the need, DOE should award the funding to the same level just as with any other jurisdiction that is preparing for shipments.

		The second half of the question is not clear: If an applicant were not "otherwise eligible", why would the applicant be applying?
3 (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 may report this in their application. DOE also has an obligation to solicit this information prior to issuing grant eligibility notices.
4(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?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>-5 years prior to scheduled shipment: Letter to governors announcing anticipated routes, and therefore, eligibility. After the initial letter to the governor, succeeding letters of eligibility will be sent to the state or tribal agency or staff that administers Section 180(c) or to whomever the governor designates.</i> <i>- 4 years prior to scheduled shipment: Planning grants issued. Funds may be carried over past initial 12-month grant period. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.
4(b) Do training grants need to commence three years prior to a scheduled shipment through a State or Tribe's jurisdiction?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>-3 years prior to scheduled shipment: Training grants issued each year prior to first scheduled shipment. This timing is optional. States and tribes are not required to start training and planning this soon. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.
4(c) Do training grants need to be provided every year that shipments are scheduled?	In "APPENDIX B - Timing and Eligibility", the Topic Group recommended the following timing: <i>- Training grants continue each year of eligibility. [8]</i>	Yes, the WIEB HLW Committee agrees with the original recommendations of the Section 180(c) Topic Group.

<p>5(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?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper.</p> <p>The Section 180(c) Topic Group made a recommendation to: <i>DOE not to deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.</i> [14]</p>	<p>The WIEB HLW Committee supports the Topic Group recommendation to DOE to NOT deduct the cost of state fees from a state's Section 180(c) award unless separately negotiated with the state.</p>
<p>5(b) How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c) grants?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper: Option 3: Require states to show no overlap between activities funded by Section 180(c) and fees. - <i>This option incorporates the SRG's recommendation that DOE consult with the states on a case-by-case basis.</i> - <i>This option also addresses DOE General Counsel's concern overpaying twice for the same services.</i> [14]</p>	<p>Substantiated grant application information should clearly indicate how fees are assessed and appropriated for use. The application should detail if fees are used for planning and training activities in support of commercial spent nuclear fuel shipments. Documentation would have to include explaining how the monies for 180(c) would be handled differently than state fees.</p>
<p>5(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?</p>	<p>Complete background information on the topic of state fees may be found in the "APPENDIX I – State Fees" Issue Paper: Option 3: Require states to show no overlap between activities funded by Section 180(c) and fees. - <i>This option incorporates the SRG's recommendation that DOE consult with the states on a case-by-case basis.</i> - <i>This option also addresses DOE General Counsel's concern overpaying twice for the same services.</i> [14]</p>	<p>Yes. Substantiated grant application information should clearly indicate how state fees are assessed and appropriated for use. The application should detail if fees are used for planning and training activities in support of commercial spent nuclear fuel shipments. Documentation would have to include explaining how the requested monies for 180(c) would be handled differently than state fees.</p> <p>DOE has a legitimate interest in ensuring that federal funds aren't used to pay twice for the same activity. The WIEB agrees with the Northeast and 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.</p>

<p>6(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?</p>	<p>This topic was taken up in the "APPENDIX C - Allowable Activities/Training" Issue Paper: <i>There also are legal requirements that bound the range of allowable activities. Good grants practices require that funds be used to address only those needs caused by the shipments, often referred to as "the increment of training necessary to prepare for Nuclear Waste Policy Act (NWPA) shipments". And, in accordance with the language in Section 180(c) of the NWPA, training must cover procedures for emergency response and safe routine transportation for state, tribal, and local public safety officials.</i> [9]</p>	<p>Shipments of commercial spent fuel are distinctive from other radioactive material shipments that the states routinely experience: they involve much greater radioactivity and will be transported by different modes and on many different routes. Funding requests should be based on the needs determined in the assessment and planning process.</p> <p>The criteria for evaluating applications for both assessment/ planning grant and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.</p>
<p>6(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?</p>		<p>The WIEB HLW Committee agrees with the Midwest that <i>DOE should encourage states to make use of the resources that are currently available through TEPP. However, states should have the flexibility to decide to what extent and in what manner they will use these resources. For example, states should be encouraged to use the MERRTT modules when appropriate, but they should not be expected to have TEPP trainers conduct the training. It should also be noted that reducing 180(c) awards to states that utilize TEPP could create an incentive for states to stop using TEPP.</i> [16]</p>
<p>6(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?</p>		<p>Shipments of commercial spent fuel are distinctive from shipments of transuranic wastes to WIPP: they involve much greater radioactivity and will be transported by different modes and on many different routes. Funding requests should be based on the needs determined in the assessment and planning process. The criteria for evaluating applications for both assessment and planning grants and the training grants specifically refer to training "for the increment of need specific to NWPA shipments." The applications for funding will, therefore, reflect the impact of other funding and assistance on training activities.</p>

Comment References

- [1] National Archives and Records Administration, Federal Register, *Executive Order 12372—Intergovernmental review of Federal programs*. Source: The provisions of Executive Order 12372 of July 14, 1982, appear at 47 FR 30959, 3 CFR, 1982 Comp., p. 197, unless otherwise noted.
www.fws.gov/policy/library/rgeo12372.pdf
- [2] *Memorandum of Agreement Between the OCRWM, Environmental Restoration and Waste Management, and Defense Programs, concerning the TEC/WG Involvement with DOE Radioactive Materials Transportation Activities*
http://www.tecworkinggroup.org/background/TEC%20MOA_1994.pdf
- [3] US Department of Energy, *Transportation External Coordination Working Group Charter*, <http://www.tecworkinggroup.org/tecchart.pdf>
- [4] *Principles of Agreement Among States on Expectations Regarding Preparations for OCRWM Shipments, February 2005*
<http://www.westgov.org/wieb/radioact/07-05paas.pdf>
- [5] *EXECUTIVE SUMMARY, Section 180(c) Policy and Procedures*
http://www.tecworkinggroup.org/180c/ExecSummary_SRG%20_staff_.pdf
- [6] *INTRODUCTION & PROPOSED POLICY STATEMENT*
http://www.tecworkinggroup.org/180c/Intro_SRG_staff_.pdf
- [7] APPENDIX A - Funding Distribution Method
http://www.tecworkinggroup.org/180c/AppendixA_SRG_staff_.pdf
- [8] APPENDIX B - Timing and Eligibility
http://www.tecworkinggroup.org/180c/AppendixB_SRG_Staff_.pdf
- [9] APPENDIX C - Allowable Activities/Training
http://www.tecworkinggroup.org/180c/AppendixC_SRG_Staff_.pdf
- [10] APPENDIX D - Definitions
http://www.tecworkinggroup.org/180c/AppendixD_SRG_Staff_.pdf
- [11] APPENDIX F - Contingency Re-routing
[http://www.tecworkinggroup.org/180c/AppendixF_SRG\(staff\).pdf](http://www.tecworkinggroup.org/180c/AppendixF_SRG(staff).pdf)
- [12] APPENDIX G -Policy or Rulemaking
[http://www.tecworkinggroup.org/180c/AppendixG_SRG\(staff\).pdf](http://www.tecworkinggroup.org/180c/AppendixG_SRG(staff).pdf)
- [13] APPENDIX H - Funding Allocation Method
http://www.tecworkinggroup.org/180c/AppendixH_SRG_staff_.pdf

[14] APPENDIX I - State Fees

http://www.tecworkinggroup.org/180c/AppendixI_SRG%20_staff_.pdf

[15] APPENDIX J - Funding Operational Activities

[http://www.tecworkinggroup.org/180c/AppendixJ_SRG\(Staff\).pdf](http://www.tecworkinggroup.org/180c/AppendixJ_SRG(Staff).pdf)

[16] CSG Midwestern Radioactive Materials Transportation Committee

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[17] Western Governors' Association Policy Resolution 05-15 *Transportation of Spent Nuclear Fuel and High-Level Radioactive Waste*, June 14, 2005

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[19] Nuclear Waste Policy Act of 1982.

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