DEPARTMENT OF ENERGY

Office of Civilian Radioactive Waste Management; Safe Transportation and Emergency Response Training; Technical Assistance and Funding

AGENCY: Office of Civilian Radioactive Waste Management, Department of Energy.

ACTION: Notice of Revised Proposed Policy and Procedures.

SUMMARY: The Department of Energy (the Department or DOE) publishes for public comment a revised proposed policy statement setting forth its plans for implementing technical and financial assistance to States for training public safety officials of appropriate units of local governments and Indian tribes through whose jurisdiction the Department plans to transport spent nuclear fuel or high-level radioactive waste (Section 180(c) program). The training would cover both safe routine transportation procedures and emergency response procedures.

DATES: Written comments should be sent to the Office of Civilian Radioactive Waste Management (OCRWM) of the Department and must be received on or before September 15, 1997 to ensure consideration by OCRWM.

ADDRESSES: Written comments should be directed to: Corinne Macaluso, U.S. Department of Energy, c/o Lois Smith, TRW Environmental Safety Systems, Inc., 600 Maryland Avenue, SW., Suite 695, Washington, DC 20024, Attn: Section 180(c) Comments.

Persons submitting comments should include their names and addresses. Receipt of comments in response to this Notice will be acknowledged if a stamped, self-addressed postal card or envelope is enclosed.

FOR FURTHER INFORMATION CONTACT: For further information on the transportation of spent nuclear fuel and high-level radioactive waste under the Nuclear Waste Policy Act, please contact: Ms. Corinne Macaluso, Waste Acceptance and Transportation Division, Office of Civilian Radioactive Waste Management, (RW–44), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202–586–2837.

Information packets are available for interested persons who want background information about the Office of Civilian Radioactive Waste Management transportation planning and the Section 180(c) program prior to providing comments. To receive an information packet, please call 1–800–225-NWPA (or call 202–488–6720 in Washington, DC.) or write to the OCRWM National Information Center, 600 Maryland Avenue, SW., Suite 695, Washington, DC 20024.

Copies of comments received will be available for examination and may be photocopied at the Department's Public Reading Room at 1000 Independence Avenue, SW., Room 1E–190.

SUPPLEMENTARY INFORMATION:

I. Purpose and Need for Agency Action

Under the Nuclear Waste Policy Act of 1982, as amended (42 U.S.C. 10101 *et seq.*) (NWPA or ''the Act''), the Department of Energy is responsible for the disposal of high-level radioactive waste and civilian spent nuclear fuel in a deep geologic repository. Additionally, the Department is responsible for transportation of spent nuclear fuel and high-level radioactive waste to a Federal storage or disposal site. The Director of the Office of Civilian Radioactive Waste Management is responsible to the Secretary of Energy to carry out these responsibilities. The Department is required to implement Section 180(c) of the Act. Section 180(c) of the Act requires the Department to provide technical assistance and funds to States for training public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste to NWPA authorized Federal storage and disposal facilities. Section 180(c) further provides that training cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. Section 180(c) identifies the Nuclear Waste Fund under the Act as the source of funds for work carried out under this subsection (42 U.S.C. 10175).

II. Section 180(c) History

OCRWM issued a Notice of Inquiry in the **Federal Register** on January 3, 1995 (60 FR 99), which briefly described various options to delineate policies and procedures for implementing Section 180(c) of the Nuclear Waste Policy Act. Members of the public were invited to submit comments on the Notice of Inquiry. In the March 14, 1995, **Federal Register** (60 FR 13715) OCRWM extended the deadline for comments to May 18, 1995 (60 FR 36793). In response to requests for additional information, OCRWM issued another, more detailed Notice of Inquiry in the **Federal Register** on July 18, 1995 (60 FR 36793). Members of the public were again invited to submit comments on the Notice of Inquiry. Next, on May 16, 1996, OCRWM published a Notice of Proposed Policy and Procedures (61 FR 24772) describing the OCRWM's proposed approach to implementing Section 180(c) of the Nuclear Waste Policy Act and responding to public comments received from the two prior Notices. The public was again invited to submit comments on the Proposed Policy and Procedures. In response to these comments, and based on further research conducted by OCRWM, OCRWM has decided to make changes significant enough to warrant publishing this Revised Proposed Policy and Procedures. Included in this Notice is a summary of the comments received on the Proposed Policy and Procedures and OCRWM's response to those comments. OCRWM welcomes comments in response to this **Federal Register** Notice on the Revised Proposed Policy and Procedures for implementation of Section 180(c).

OCRWM plans to publish, in early 1998, a Notice of Final Policy and Procedures which OCRWM intends to follow in implementing Section 180(c) of the NWPA. Section 180(c) provides for assistance when the Department ships spent nuclear fuel and high-level radioactive waste to a geologic repository or a storage facility pursuant to the NWPA.

In addition to the draft publications discussed above, OCRWM's work to date on the Section 180(c) policy and implementation procedures has been discussed extensively in Transportation Coordination Group meetings, the Transportation External Coordination (TEC) Working Group meetings, and the cooperative agreement group meetings. The TEC Working Group comprises organizations representing state, tribal, local, professional, technical, and industry associations and will continue to meet periodically to identify and discuss issues related to the transport of radioactive materials. In addition, OCRWM has nine cooperative agreements with national and regional organizations representing various constituencies to provide information and solicit input regarding the planned transportation activities of the Office of Civilian Radioactive Waste Management program, including Section 180(c) issues. The cooperative agreement groups are the Southern States Energy Board, the Western Interstate Energy Board, the Council of State Governments Midwestern Office and Eastern Regional Conference, the Commercial Vehicle Safety Alliance, the Conference of Radiation Control Program Directors, the National Conference of State Legislatures, the National Congress of American Indians,

and the National Association of Regulatory Utility Commissioners.

OCRWM also has released two documents that discuss Section 180(c) policy and implementation. These two documents are the Strategy for OCRWM to Provide Training Assistance to State, Tribal, and Local Governments (November 1992, DOE/RW–0374P) (the Strategy document), and the Preliminary Draft Options for Providing Technical Assistance and Funding Under Section 180(c) of the Nuclear Waste Policy Act, as Amended (November 1992) (the Options paper). These documents are available by requesting the information packet from the OCRWM National Information Center.

III. Revised Proposed Policy and Procedures

Introduction

OCRWM has made significant changes to the May 16, 1996, Section 180(c) Notice of Proposed Policy and Procedures. These changes are based on information gained by studying industry standards and practices and stakeholder comments. These changes and the supporting reasoning are described below.

The revised proposed policy and procedures are divided into seven subject areas: the policy statement, objectives, proposed funding mechanism, basis for cost estimate/funding allocation, definitions of key terms, eligibility and timing of the grants, and allowable activities. Policy Statement describes OCRWM's policy towards providing Section 180(c) assistance. Objectives describes OCRWM's objectives in providing Section 180(c) assistance. Funding Mechanism describes the method by which funds would be disbursed to states and Federally recognized tribes. Basis for Cost Estimate/Funding Allocation describes the basis for the base and variable amount of funding. Definition of Key Terms defines of safe routine transportation and technical assistance for the purposes of the Section 180(c) program. Eligibility and Timing of the Grants Program describes when states and tribes are eligible and the timing of the grants process. Allowable Activities for Funding describes the types of activities for which the funding could be used. When OCRWM issues the final policy and procedures, it may differ based on comments received, and any new legislation.

The Appendix of this Notice provides the definitions of terms used in this proposed Section 180(c) policy and procedures and footnoted in the text.

Policy Statement

It is OCRWM's policy that each responsible jurisdiction [1] will have the training necessary for safe routine transportation of spent nuclear fuel or high-level waste and to respond to NWPA transportation incidents or accidents. OCRWM will provide funding and technical assistance, subject to annual appropriations, to assist states and tribes to obtain access to the increment of training necessary to prepare for NWPA shipments. This increment of training will include procedures for emergency response and safe routine transportation. The Department will take into consideration the states' and tribes' determination of their needs when preparing its budget for the Civilian Radioactive Waste Management Program. If Congress does not fully appropriate the funds requested, the funding to eligible jurisdictions will be decreased accordingly.

With respect to safe routine transportation of spent nuclear fuel and high-level waste, it is OCRWM's view that strict compliance with Department of Transportation (DOT) and Nuclear Regulatory Commission (NRC) regulations and applicable state, tribal, and local laws and regulations combined with state and tribal safety and enforcement inspections of NWPA highway shipments and continuous satellite tracking of all shipments will provide for safe routine transportation. DOT regulations include requirements for routing; hazardous materials placarding, marking, and documentation; and rail inspections. NRC has established regulations for protection of the public health and safety of radioactive material shipments. These regulations include requirements for package certification, loading, materials control and accountability, safeguards and security, notification of shipments, quality assurance and tracking. OCRWM has notified NRC that it intends to provide tribal notification of shipments and state and tribal access to satellite tracking information. The NRC regulations for radioactive material package certification requires maintenance of criticality control and radioactive material containment under credible accident scenarios.

For safe routine transportation of spent nuclear fuel and high-level waste, it is proposed that OCRWM's policy include the provision to each eligible state and tribe the funding and technical assistance to prepare for safety and enforcement inspections of NWPA highway shipments and for access to satellite tracking information.

With respect to responding to a spent nuclear fuel or high-level radioactive waste transportation accident or incident, it is OCRWM's view that with implementation of the provisions for safe routine transportation as stated in the previous paragraph the risk of an accident resulting in a radioactive materials release is extremely low. Further, if an accident were to occur, the risk of any significant material release or harmful increase in radiation levels is also extremely low. If an accident should occur, with or without a radioactive materials release, state and tribal governments have a responsibility to respond and to protect the public health and safety and the environment in their jurisdiction. The Federal government and, in particular, the Department have radiological emergency response assets available. Federal government assistance is regionally based and can be mobilized in a few hours, although it may take up to forty-eight hours to be fully functional. The first responder [2] is typically a local police or fire official. This official must be capable of identifying the shipment as a radiological materials shipment and notifying the proper radiological emergency response authorities. It is desirable for some of the state and tribal responders to have received higher levels of hazardous materials training.

Therefore, for responding to a spent nuclear fuel or high-level radioactive waste transportation accident or incident, it is proposed that OCRWM's policy include the provision of funds and technical assistance to states and tribes necessary to address the incremental training requirements resulting from the NWPA shipments, in particular, to obtain and maintain awareness-level training for all local response jurisdictions in the increment specific to radioactive materials shipments. In addition, to the extent funds are available, the assistance could be used to obtain an enhanced level of emergency response capability. This enhanced level could include operations level training, technician level training, and operations level and technician level refresher training in an increment specific to radioactive materials shipments.

Objectives

It is OCRWM's objective to provide a base grant to every eligible state and tribe to aid in planning and coordination activities for training in a timely manner. These activities could include funding the salary of personnel in safe routine transportation and emergency response agencies,

determining a jurisdiction's training needs, and coordinating with local jurisdictions or neighboring states and tribes. A variable amount of funding and technical assistance would be available depending on the amount of assistance each applicant needs to obtain the incremental training requirements resulting from the NWPA shipments, in particular, specific to radioactive materials shipments for the inspection training, and awareness level training.[3] The assistance could be used to obtain awareness level refresher training, awareness level train-the-trainer training,[5] or a module to insert into existing awareness level training programs. And, depending on available funds, additional amounts of funding and technical assistance would be available to obtain the increment of training to prepare for radioactive materials shipments for the operations level,[4] and/or technician level[6] and refresher training.

OCRWM will base its evaluation of the grant applications on several factors. First, the three-year plan section of the application package demonstrates how this assistance corresponds to the applicant's existing safe routine and emergency response structure. The application must explain how these functions are currently structured and how the Section 180(c) assistance will provide an additional increment of preparedness onto this existing structure. Second, the grant applications must indicate how the requested assistance is consistent with the Occupational Safety and Health Administration (OSHA) training standards or the National Fire Protection Association (NFPA) training standards and reasonable standards for inspector training, such as that offered by the Commercial Vehicle Safety Alliance (CVSA). In addition, OCRWM will adopt, to the extent practicable, any future Department-wide standardization of assistance to states and tribes for the Department's radioactive materials shipments. This could include standardization of funding mechanisms, training standards, equipment purchases, and the definition of technical assistance.

It is the objective of OCRWM to provide to each eligible state and tribe financial and technical assistance to train or otherwise prepare for safety and enforcement inspections of NWPA truck shipments such as those described in the CVSA Enhanced North American Standards. Rail inspections are not included because the Federal Railroad Administration (FRA) conducts inspections of rail cars and tracks used to ship radioactive materials.

OCRWM proposes to fund or make available a first responder's awareness level videotape, consistent with OSHA requirements 10 CFR 1910.120(q), or a module, specific to radioactive materials shipments, to insert into an existing awareness level training program, for states and tribes to distribute to local public safety officials along the shipment routes.

OCRWM also plans to provide financial and technical assistance to allow train-the-trainer classes for those states and tribes that wish to provide the radioactive materials information in their existing awareness level training programs. OCRWM plans to provide funds for the cost of the trainers' travel within the jurisdiction.

As discussed in the Policy Statement section, OCRWM believes that the combination of the Federal radiological emergency response capability and a program that accomplishes the above 180(c) related objectives will provide the nation an adequate basis to respond to any potential transportation emergency that may result from NWPA shipments. Nonetheless, to the extent that funds appropriated for Section 180(c) are available, OCRWM will also support an enhanced level of emergency response capability. The enhanced level of emergency response capability could include access to training or training materials specific to responding to a radioactive materials transportation accident at the operations level, technician level, and refresher training. This training should be in accordance with OSHA or NFPA training standards.

Funding Mechanism

The Department intends to implement Section 180(c) through an OCRWM grants program. Funding would be provided every year beginning approximately three years prior to the first shipment through state or tribal reservation boundaries. The grants would be specific to OCRWM's Section 180(c) program and would not be combined with any other Department-sponsored transportation preparedness or training programs, although coordination by jurisdictions would be encouraged. The grant program may be combined with a Department-wide grant program in the future if one is developed and is practicable, and consistent with existing law.

The grants program would be administered in accordance with the DOE Financial Assistance rules (10 CFR part 600), which implement applicable Office of Management and Budget (OMB) circulars. In order to preserve flexibility, the Department does not presently plan to codify the policy and procedures in this notice as substantive regulations.

Basis for Cost Estimate/Funding Allocation

The total program cost and the allocation of funds among eligible states and tribes would be based on a predetermined base amount, and a variable amount determined through the application process. The base grant would cover costs associated with planning for NWPA shipments, and is based on a salary estimate for planning such shipments. In 1994, a Conference of Radiation Control Program Directors' (CRCPD) survey found the average salary of a state health physicist was $35,000. The Department has doubled that figure and adjusted for inflation during 1995 and 1996 to reach the $74,152 base grant. This figure was doubled to allow states and tribes to pay the salary of one person each to carry out safe routine transportation and emergency response planning.

The variable grant amount would be based on two parts of the application package process. The first part would ask the applicant to determine the amount of financial assistance needed to obtain the appropriate increment of awareness level training and to prepare for safe routine transportation inspections of NWPA shipments. The second part would ask the applicant to determine the amount of financial assistance needed to obtain the appropriate increment of operations and/or technician level training for emergency response to prepare for NWPA shipments. A state or tribe would not be authorized to use Section 180(c) funds for purposes not related to NWPA shipments such as development of a broad-based *non*-NWPA emergency response program. In cases where basic emergency response capabilities are lacking, OCRWM recognizes the need to assist jurisdictions through technical assistance and increased financial assistance.

Definition of Key Terms

The definition of safe routine transportation for the purposes of determining eligibility or allowable activities under the Section 180(c) program would be as follows:

- Safe routine transportation means the shipment of spent nuclear fuel and high-level radioactive waste to a repository or a Monitored Retrievable Storage facility pursuant to the NWPA through state, tribal, and local jurisdictions in a manner compliant with applicable Federal, state, tribal, and local laws and regulations. Safe routine highway transportation is

characterized by adequate vehicle, driver, and package inspection and enforcement of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. Safe routine rail and barge transport is characterized by compliance with rail and barge transportation regulations including Federal Railroad Administration, Coast Guard regulations, and the Hazardous Materials Regulations.

The definition of technical assistance for the purposes of the Section 180(c) program would be as follows:

• Technical assistance means assistance, other than financial assistance, that the Secretary of Energy can provide that is unique to the Department to aid training that will cover procedures for the safe, routine transportation and emergency response situations during the transport of spent nuclear fuel and high-level radioactive waste to a repository or MRS pursuant to the NWPA, including, but not be limited to, the provision of training materials, the provision of public information materials, and access to individuals involved in the shipments.

Technical assistance, as defined, would include access to the Department's regional and headquarters representatives involved in the planning and operation of NWPA transportation or emergency preparedness, provision of information packets that include information about the OCRWM program and shipments, and provision of information to insert into curricula. Recognizing the Federal Government's government-to-government relationship with and Trust responsibility toward tribal nations, and in response to comments about the lack of hazardous materials response capability on some tribal lands, the Department will consider making additional technical assistance available to tribes upon request.

Eligibility and Timing of the Grants Program

OCRWM intends to provide grants and technical assistance to those states and tribes through whose jurisdiction the Secretary of Energy plans to transport spent nuclear fuel and high-level radioactive waste pursuant to the NWPA. States and tribes having cross-deputization or mutual aid agreements with a jurisdiction that does have shipments, even though no shipments may occur within the borders of the responding state or tribe, may receive funding from the jurisdiction that will receive shipments. Additionally, in cases where a route constitutes the border between two states, a state and a tribe, or two Indian tribes, jurisdictions on both sides of the route would be eligible for Section 180(c) assistance.

OCRWM intends that the application process for grants begin approximately four years prior to transportation (about one year for the application process, about three years to implement the program) through the applicant's jurisdiction. OCRWM intends to notify the governor or tribal leader of the jurisdiction with a letter, information packet, and application package.

The governor or tribal leader would be requested to select one agency or representative within the jurisdiction to apply for and administer the Section 180(c) grant. The administering agency or representative would indicate in the application how it intends to use the funds. If funding needs to be provided to other agencies (for example, from the emergency services agency to the highway patrol to pay for inspector training), the transfer of funds would be the responsibility of the recipient state or tribe. DOE would require information regarding the ultimate recipient of the funds to be provided in the application.

Eligible states and tribes would submit a grant application to the Department. The application would include a three-year plan detailing how the funds would be spent each year. Funding would be disbursed annually based on the applicant's three-year plan. Each eligible state and tribe would receive a base amount of funding for each year of eligibility. A variable amount of funding, based on the applicant's determination of its needs to attain an adequate level of training and the enhanced level of capability, would be available after the first year of eligibility.

Local governments would not be eligible to apply for Section 180(c) grants directly. However, states, and tribes if they have subjurisdictions, would be required to coordinate their planning with local jurisdictions, indicating in the application that the needs of local public safety officials have been considered and how the financial assistance will be distributed to local and any other jurisdictions and their appropriate public safety officials. The awareness level training would be made available to all local public safety officials. OCRWM expects the inspection and enforcement training to be provided to state-level and tribal employees since they generally have inspection and enforcement authority. The operations and technician level training, to the extent they are funded, would be provided to appropriate public safety officials at the grantee's discretion.

OCRWM anticipates knowing three to four years prior to shipment through which states or tribal lands the shipments will likely travel, even if specific routes have not been selected. Using this information, OCRWM would notify these states and tribes about their potential eligibility for the Section 180(c) program. Two years prior to the shipments going through a state or tribe, the OCRWM would announce proposed routes within that state or tribal jurisdiction.

Within the first year of eligibility to receive funding (Transportation Year [defined as the year shipments will commence] minus 3 or TY–3), the base grant will be available. Within the second year of eligibility (Transportation Year minus 2 or TY–2), a base grant and a variable amount of financial assistance for those jurisdictions that qualify would be available.

Within the third year of eligibility (Transportation Year minus 1 or TY–1), a base grant and a variable amount of financial assistance for those jurisdictions that qualify would be available.

In the year transportation commences, Transportation Year grants (base plus variable) will be made available. A state or tribe would continue to be eligible for and receive Transportation Year grants and technical assistance as long as NWPA shipments go through its jurisdiction each year. If there is a lapse of NWPA shipments for three or more years, the state or tribe would receive no funds for those years and would regain eligibility three years prior to another NWPA shipment through its jurisdiction. Three years prior to the resumption of shipments through its borders, a state or tribe may again apply for TY–3 grants. If the lapse is of two years or less between shipments, the Transportation Year grants would continue as if shipments had been traversing that jurisdiction during the lapse.

After a suitable period of Section 180(c) implementation, an evaluation may be conducted by OCRWM to determine if some adjustment to the base amount needs to be made because the need for planning and coordination activities associated with NWPA shipments will be reduced. For example, perhaps only one person in a state agency will be handling both safe routine transportation and emergency response functions or half a person will be needed for each of these functions and the available funds might be more effectively applied to training.

The Section 180(c) program would include the following contingency plan for schedule and route changes: in general, eligible states and tribes may receive an additional amount of financial assistance if asked to complete activities in shorter amounts of time, i.e., a state may receive TY–1 and TY–2 funding in the same year. If the route for a shipment is definitized too close to the start of the shipment to allow for Section 180(c) implementation or for any reason the responsible jurisdictions along a definitized route lack adequate training, OCRWM may use escorts with more training and equipment than those currently used for the purpose of security until a reasonable time period for training has expired.

Allowable Activities for Funding

This section describes the type of activities that would be allowed under this proposal. This is not meant to be a comprehensive list, but merely a guide to the types of activities an applicant jurisdiction might consider to be eligible for 180(c) funding.

For the most part, it would be the grantee's decision in consultation with the local governments and first responders along the routes to select who gets trained and the organization that administers the training. Grantees would describe in their three-year plan how they plan to assess their incremental training needs, where the training would be obtained, any exercises they propose to conduct, whether the training curriculum needs any input from OCRWM about NWPA shipments, what equipment and supplies they propose to purchase, and what technical assistance from DOE they anticipate requesting. The grantee would specify how this assistance augments their current infrastructure for safe routine transportation procedures and emergency response.

Specifically, a grantee would be able to budget, for TY–2 and TY–1, 25 percent of each year's total Section 180(c) funds to purchase appropriate (i.e., training-related) equipment and supplies. Such equipment may also be used for responding to emergencies. After TY–1, the applicant would be able to budget up to 10 percent of each year's Section 180(c) funds to purchase appropriate equipment and supplies. The equipment and supplies to be purchased must be identified in the application and the need for the equipment justified. The purchase of equipment related to the satellite tracking system for NWPA shipments could be included in these percentage caps. The title to equipment would be vested in the grantee in accordance with the property provisions at 10 CFR 600.232.

The base grant may be used to pay for staff, travel, and other costs associated with conducting an assessment of incremental training needs, and the planning and coordination activities associated with interacting with local jurisdictions and neighboring jurisdictions. The variable amount of funding may be used to pay for travel and tuition costs for those receiving training, including exercises and drills, and training on the satellite tracking system used for NWPA shipments.

It would be the state's or tribe's choice, in consultation with the local governments and first responders along the route and within their annual budget, to determine who receives refresher training and with what frequency. It also would be the state's or tribe's choice in consultation with the local governments and first responders along the route and within their annual budget, to determine which new personnel receive training and the location of that training.

IV. Discussion of Comments Received on the Notice of Proposed Policy and Procedures

The Department received 43 comments in response to the May 16, 1996, Notice of Proposed Policy and Procedures. Comments were received from the Emergency Nurses Association; Western Governors' Association; Council of State Governments-Midwestern Office; National Conference of State Legislatures; Churchill County, Nevada Administration Office; Lincoln City, Nevada Board of County Commissioners; League of Women Voters Education Fund; County of Inyo, California Planning Department; Office of the Governor, Pueblo of Acoma; Lander, Nevada County Board of Commissioners; Nye County, Nevada; Western Interstate Energy Board; Nevada Nuclear Waste Task Force; Commercial Vehicle Safety Alliance; Nevada Agency for Nuclear Projects; Nuclear Waste Project Office; Portland General Electric Trojan Nuclear Plant; Oregon Nuclear Safety Division; Shoshone-Bannock Tribes; Nuclear Waste Citizens Coalition; Southern States Energy Board; International Association of Fire Fighters; Council of State Governments/Eastern Regional Conference; Michigan Department of the Attorney General; Nuclear Waste Strategy Coalition; National Association of Regulatory Utility Commissioners; State of Idaho's Idaho National Engineering and Environmental Laboratory Oversight Program; National Congress of American Indians; New Mexico Energy, Minerals and Natural Resources Department; Nuclear Information and Resource Service; Governor of Nebraska; Eureka County, Nevada; U.S. Department of Agriculture; Nuclear Energy Institute; Prairie Island Indian Community; MCT Industries Inc.; New York State Emergency Management Office; Yakama Indian Nation; and the International Association of Fire Chiefs, and a summary of comments made at the July 1996 TEC meeting in Pittsburgh, Pennsylvania. Some commenters provided more than one set of comments.

The following section discusses general categories and summarizes major points of the comments and the Department's response.

Major Issues

A. Section 180(c) Policy

General Themes

The Department received opposing comments on the philosophy of providing only the incremental amount of assistance needed for jurisdictions to respond appropriately to an NWPA transportation accident or incident. Comments ranged from stating the proposal was unacceptable because individual applicant's needs were not sufficiently considered, to praising the proposal for taking into the account the shipments' low risk. Several western states wrote to support the Western Interstate Energy Board's and the Western Governors' Association's comment that the proposal is unacceptable because it does not incorporate the position of western governors on radioactive materials transportation, does not consider individual applicant's planning and preparedness needs, and therefore, does not protect the public's health and safety. Critics argued that the policy would not fully cover the cost of preparing for NWPA shipments, thereby creating an unfunded mandate for the states. Others argued the policy is not flexible or generous enough to adequately prepare rural and tribal jurisdictions where public safety measures may be lacking. Another commenter argued the incremental approach discounts the radiological risk of an NWPA transportation accident.

Other commenters argued that incremental assistance was sufficiently protective of health and safety given the low risk of the shipments and the efforts made to involve stakeholders in the policy development. The National Association of Regulatory Utility Commissioners and others encouraged the incremental approach as long as the

program builds on existing knowledge about transporting spent nuclear fuel and high-level radioactive waste. Another commenter approved of the incremental approach provided the needs of the least prepared communities were considered. Similarly, the National Congress of American Indians and the Pueblo of Acoma commented that while the incremental approach was reasonable, it should incorporate some element of a needs assessment as a means to determine a supportable Section 180(c) budget and to satisfy the Department's Trust responsibility toward tribal nations.

Several commenters from a variety of organizations raised issues of public acceptance in the NWPA transportation program. Commenters stated that a successful transportation program requires public acceptance of the risk. To achieve that acceptance they urged the Department to communicate shipment risks (including updating the risk analysis conducted in NUREG/CR–2225), security and accident prevention measures, and emergency response capabilities. The Council of State Governments-Midwestern Office asked the Department to consider what else can be done, within the scope of the Section 180(c) program, to increase stakeholder confidence and make the transportation program more workable. The Prairie Island Indian Community pointed out that the lack of tribal participation in emergency response activities associated with the nearby Northern States Power Prairie Island Nuclear Power Plant has increased public fear of the site and that participation in developing safety precautions is an effective counter to these fears. The National Congress of American Indians pointed out that perceived risk may be higher on tribal lands because Indian peoples' attachment to the land is strong and moving away from a perceived risk is not an option. The Shoshone-Bannock tribes pointed out that public acceptance of risk is influenced by the degree to which tribal members believe true preparedness has been achieved. Several commenters pointed out that trained local responders are a very effective means to calm public fears.

The Council of State Governments-Midwestern Office and several other commenters urged the Department to limit or prohibit shipments until jurisdictions have received funding in time to fully train and equip their public safety personnel. Specifically, the Western Interstate Energy Board said routes must be named and funding provided at least three years prior to shipment through a jurisdiction. These commenters urged the Department to begin Section 180(c) assistance as soon as possible in case Congress passes legislation that mandates the siting of an interim storage facility and shipping begins within the four-year time frame scheduled for Section 180(c) implementation. Several related comments stated the position that the Department has an obligation to begin accepting waste in 1998, and argued that Section 180(c) should be implemented quickly so as to meet the acceptance date.

Several states and state organizations again encouraged the Department to begin as soon as possible the process of route selection, in cooperation with the states. They argued that jurisdictions need sufficient time to assess risk levels and training needs in case shipment occurs within the next few years.

In other comments, the Department was encouraged to increase coordination among its related transportation training programs, thereby reducing costs and building a more efficient assistance program. Nye County, Nevada said additional provisions should be available for the host community, including clarification of emergency response roles and responsibilities across federal lands. Some suggested that assistance should apply to all waste destined for geologic disposal, not just spent nuclear fuel and high-level radioactive waste. One commenter questioned the wisdom of centralized storage and opposed the program on the grounds that the Ruby Valley Treaty invalidates Federal ownership of the land. Another commenter urged the Department to post a bond to insure future funding for Section 180(c). And another commenter asked the Department to clarify whether a Department contractor would be subject to the registration requirements of 49 USC 5108(a) through (h).

Response

It is OCRWM's position that the purpose of a Section 180(c) program is to provide jurisdictions with financial and technical assistance in an increment above their current level of preparedness rather than to supply complete emergency response or safe routine transportation capabilities along NWPA transportation routes. Other federal agencies such as the Federal Emergency Management Agency (FEMA) and the Department of Transportation (DOT), as part of their respective missions, assist states and tribes in the creation of more comprehensive emergency response and safe routine transportation capabilities. Therefore, this proposal is designed to provide incremental assistance, above what currently exists, to help jurisdictions prepare for NWPA shipments. This program, in combination with the Department's existing emergency response capabilities, will help jurisdictions prepare for these shipments. At the same time, OCRWM recognizes that the amount will vary by jurisdiction, depending on their current preparedness level. Therefore, the revised proposed policy and procedures for the grant application process requires that the applicant determine the assistance needed to obtain the training objectives. This more flexible determination of the assistance level will take into account the varied preparedness levels of applicants. At the same time, it is OCRWM's position that the safety measures such as the robustness of the casks and the Department's existing emergency response capabilities make these shipments extraordinarily safe, presenting minimal risk to public health and safety.

OCRWM recognizes the crucial role of communications and public acceptance in developing a workable transportation program. OCRWM intends to provide public information to jurisdictions along the routes and to make Departmental representatives, whether federal employees or contract employees, available to communities as budgets permit. The training objectives in this proposal were developed with the crucial role of local responders in communicating risk and preparedness in mind.

Regarding the concern that shipments may occur with less than three years' preparation, this proposed policy includes a contingency plan should OCRWM have to ship spent fuel through a jurisdiction with less than three years notice. In addition, OCRWM will work with jurisdictions on a case-by-case basis to meet the intent of Section 180(c) prior to any shipments through a jurisdiction that occur on a contingency basis. With the contingency plan in place, OCRWM sees no public health or safety reason to limit or prohibit shipments through a jurisdiction until all training is completed.

This proposal allows sufficient flexibility for states and tribes to conduct route and risk assessments if they choose. Applicants may request technical assistance to aid in their efforts.

In response to the comments regarding better coordination among the Department's transportation programs, OCRWM continues to work with the Transportation External Coordination

(TEC) Working Group and other internal channels to increase coordination among the Department's various programs. Regarding Nye County, Nevada's request, OCRWM believes that discussions about roles and responsibilities and any unique needs of Nye County can be addressed through Nevada's grant and technical assistance application process. Regarding including all waste destined for geological disposal under the Section 180(c) program, the language of Section 180(c) is clear that assistance is intended for the transport of spent nuclear fuel and high-level radioactive waste. However, the Department continues its effort to provide training assistance for its other radioactive materials shipping campaigns even when Section 180(c) is not the appropriate avenue for assistance. Regarding opposition to the program and the statement that the Treaty of Ruby Valley invalidates Federal ownership of the land, those comments are noted but are beyond the scope of Section 180(c) policy development. With regard to posting a bond to ensure future Section 180(c) funding, the Department intends to provide funds for the Section 180(c) program through the appropriations process as required of all Federal agencies. Lastly, OCRWM's transportation contractors will be subject to all applicable federal, state, and local regulations.

Safe Routine Transportation

Several comments were received stating that the definition of safe routine transportation was too narrow and should follow more closely the definition developed by TEC. An expanded definition was encouraged to allow assistance for salaries, equipment and supplies, planning activities, activities related to state escorts, record-keeping, compliance audits, development and application of bad weather procedures, identification and use of safe parking procedures, prenotification and monitoring of shipments, alternate route analysis and designation, infrastructure improvements, and public information and involvement efforts. The Commercial Vehicle Safety Alliance (CVSA) recommended designation of a CVSA subcontractor as the central inspection data collection agency in order to keep the Out-of-Service criteria up-to-date. Their comments also encouraged the Department to adopt the Waste Isolation Pilot Plant's (WIPP) stringent driver qualification and inspection standards, including requiring that transportation occur under the North American enhanced inspection standards. Regarding rail issues, the Southern States Energy Board said the lack of rail inspection standards creates a negative public perception about the Department's efforts to ensure rail transport safety.

Response

The definition of safe routine transportation in this notice combines part of the TEC definition and the Strategy document definition. The complete TEC definition was not used because it is very broad and does not specifically indicate what training for safe routine transportation procedures would be covered by Section 180(c) assistance. Many activities suggested in the comments are already required of the shipper or carrier such as developing operating protocols and using escorts. This negates the need to include the activities in the definition of safe routine transportation for the purposes of providing Section 180(c) assistance. Some requested activities, such as alternate route analysis and record-keeping audits, are outside the realm of training for safe transport of NWPA shipments, and therefore not included in the definition. The revised proposed policy and procedures allow for other activities to occur using the base grants.

Regarding CVSA's comment about funding a subcontractor, such activities may be funded through a cooperative agreement, but would be outside the scope of Section 180(c) which requires that funding and technical assistance be used for training. Compliance with the North American enhanced inspection standards would not be required although the Department anticipates states will abide by these standards once adopted by the full CVSA membership.

Regarding the comments that the Department's lack of rail inspection standards creates a negative public perception, both the rail companies and the Department of Transportation's Federal Railroad Administration have stringent standards for the transportation of spent nuclear fuel and high-level nuclear waste. Focusing more communications efforts on rail safety measures may help address concerns about rail transport.

Technical Assistance and Equipment

Technical assistance and equipment were frequently mentioned together in the comments. Both state and tribal commenters stated that equipment and infrastructure improvements should be available as part of technical assistance. With regard to tribes, the Department was requested to clarify why equipment would not be included under the definition of technical assistance since supplying equipment would be part of the government's Trust responsibility to tribes. In some cases, commenters encouraged the Department to expand the definition of technical assistance to include the purchase, calibration, and maintenance of equipment. A couple of commenters asked the Department to clarify what was meant by the phrase ''unique to the Department'' used in the definition and whether access to Department representatives meant access to contractor personnel as well as Departmental employees.

Many commenters disagreed with the 10 percent cap of total funding to purchase equipment. Instead, they suggested allowing applicants to assess their own equipment needs and include it in the application package. Other commenters stated the 10 percent cap might work for most applicants but suggested allowing the cap to be waived in some instances, or create a sliding scale that allowed more funding for equipment in the early years of training when more equipment would be needed. Portland General Electric and the International Association of Fire Chiefs suggested 10 percent was an insufficient cap and should be increased to 25 percent. The Nuclear Energy Institute stated the 10 percent cap was appropriate because it ensured the majority of the funding will be used for training purposes. Another commenter said the 10 percent cap was sufficient as long as the Department assisted jurisdictions in interpreting federal requirements related to federally-purchased equipment. Several commenters made the point that restricting equipment purchases to ''training-related'' equipment would create an unfunded mandate because jurisdictions could purchase equipment to train but not have it available to them during an actual emergency response or inspection situation. One comment recommended that inspection equipment specifically be an allowable expense. A couple of local governments argued that equipment should be provided directly to local responders. One commenter requested clarification on whether the cap pertained to the total annual Section 180(c) budget allocation to a state or tribe, or to the assistance passed on to each local jurisdiction. They also asked for clarification on what should be done with equipment provided along routes not ultimately used.

Response

The definition of technical assistance proposed in this Notice combines parts of the Strategy definition and TEC

definition. Some activities, such as infrastructure improvements are far outside the scope of assistance for training and therefore not covered by the Section 180(c) program. OCRWM will allow states and tribes to use a percentage of each years's grant budget for the purchase of equipment. OCRWM cannot include equipment in the definition of technical assistance. This is consistent with the Departmental and Government-wide policy which clearly delineates what is financial assistance and what is technical assistance. In 10 CFR 600.202 Definitions, the term ''grant'' means an award of financial assistance, including cooperative agreements, in the form of money, or property in lieu of money, by the Federal Government to an eligible grantee. The term does not include technical assistance which provides services instead of money * * *''. The phrase in the definition ''unique to the Department'' was not meant to limit the Department's technical assistance, but to recognize that some jurisdictions may not be familiar with the NWPA shipments' regulatory structure, safety measures, or other issues specific to these shipments. The access to Department representatives was intended to mean access to both federal employees and contractor personnel.

Regarding equipment issues, equipment purchases, calibration, and maintenance are not specifically allowed under the definition of technical assistance although such activities may be allowable under a recipient's grant. OCRWM anticipates that the provision of technical assistance may include, if the applicant requests it, advice on appropriate equipment and the appropriate training for use of the equipment. In response to the arguments against the 10 percent cap on equipment purchases, OCRWM has changed the policy to allow up to 25 percent of each applicant's annual Section 180(c) funding in TY–2 and TY–1 to purchase equipment. Ten percent of each recipient's annual Section 180(c) funding may be used to purchase equipment in the transportation years after TY–1. Allowable types of equipment would include communications equipment, basic emergency response equipment, and radiological detection equipment. A percentage cap remains in place, albeit a higher cap, to ensure that the majority of Section 180(c) funding is used for training first responders for NWPA shipments while giving grant recipients the flexibility to target their funding from year to year. The ''training-related'' phrase was retained in the policy. However, as previously stated, such equipment may also be used during actual emergency responses, not just for training. Equipment is not being provided directly to local governments because the Section 180(c) language and legislative history clearly indicate that assistance should be provided to states. In addition, it is within the states' authority, not the federal government's, to determine the public safety structure within their state. In response to the questions posed, the cap pertains to the total annual Section 180(c) budget allocation to a state or tribe. For equipment that is supplied along routes not ultimately used for NWPA shipments, the Department would advise the state or tribe on requirements related to equipment acquired under the grant, and the appropriate disposition of the equipment. Inspection equipment is not specifically mentioned in the policy because it will be the grant recipient's choice as to whether to purchase emergency response or inspection equipment.

Training Standards

Comments on training standards were fairly consistent. Commenters requested the Department to define more clearly the roles and responsibilities of local and state emergency responders and the training goals for each level of emergency response. Several commenters encouraged the Department to set training goals for local responders by defining what ''adequate'' training means and by defining the specific tasks required to respond to an NWPA transportation incident or accident. They requested the Department to fund training to a level consistent with the defined roles and responsibilities, allowing the grant recipients to decide how best to meet those goals. The Southern States Energy Board said that awareness level training for local responders was not sufficient. The International Association of Fire Chiefs, on the other hand, said local responders are already overburdened with training and that two to four hours, possibly in a video format, would be sufficient. They also recommended not using the Occupational Safety and Health Administration's 1910.120(q) regulations as they were too great a burden. Another commenter requested that the Department's training standards include Attachment H, ''Recommended Sequence of Radiological Training,'' of FEMA TD–100, ''Management Plan for Radiological Training Series.'' Another commenter said the standards in the proposed policy were inadequate and encouraged the Department to look at NUREG/CR–2225 (1981) ''An Unconstrained Overview of the Critical Elements in a Model State System for Emergency Response to Radiological Transportation Incidents.''

Several commenters wanted the Department to work more cooperatively to define the interface between the federal and state or tribal levels of public safety officials. A few commenters recommended using the transportation programs for the Waste Isolation Pilot Plant in New Mexico and the Department's Cesium shipments as models for this cooperation. The Western Interstate Energy Board again requested the Department to write a transportation plan that provides a basis for interaction among the various governmental levels regarding routing, training, operations, and other transportation matters. They also reiterated their desire for the Department to establish Regional Training Advisory Teams and a National Training Advisory Committee. To support program flexibility, one state requested that the Department allow states to prioritize training assistance along the routes.

The Commercial Vehicle Safety Alliance requested that the Department increase efficiency and consistency regarding inspection and enforcement training by funding CVSA to conduct the training, and requiring grant recipients to attend CVSA's North American Enhanced Inspection Standard training and refresher training. They based their argument on the fact that they are the only organization in North America that offers standardized inspection training across North America for radiological materials transportation, and that requiring participation in the CVSA enhanced inspection program, where participating states agree not to reinspect shipments already inspected by another participating state, would limit the number of inspections and increase the transportation program's efficiency.

In other comments, the League of Women Voters Education Fund recommended developing training modules and information packets in conjunction with TEC and emergency response personnel. A county supported modular training formats and distance learning as well as preserving the training resources at the Department's Nevada Test Site. The Nuclear Waste Citizen's Coalition stated that the Department should mandate attention to antiterrorism training and the development of potential terrorist scenarios and provide the carrier with a list of emergency response contact numbers at each jurisdiction along the route. The Emergency Nurses

Association stated that hospitals need access to information about available training and that they should qualify for the same training as other public safety personnel.

Response

This revised policy addresses many of the commenters' concerns. OCRWM has stated in this revised policy what it views as adequate training for safe routine transportation and emergency response capabilities along NWPA routes. The states and tribes have the right and responsibility to determine how best to apply this training and to determine how best to protect the health, safety, and welfare of their citizens. The powers and responsibilities of local governments depend on the state constitution under which they operate. In order to receive Section 180(c) funds, OCRWM will require that the states (and tribes if they have subjurisdictions within their government) consult with the first responders and local governments regarding awareness level training in order to determine the level of assistance needed to meet OCRWM's training goals. OCRWM has stated its objective that, at a minimum, all local response jurisdictions have awareness level training in order to recognize an NWPA shipment, know its contents, its associated risk, and what authorities to notify in case of an accident or incident. Coordinating Section 180(c) assistance with FEMA training programs or other training programs that a grant recipient may already be using is encouraged, however, OCRWM sees no need to limit all grant recipients to Attachment H of FEMA's Management Plan for Radiological Training Series. In addition, the NUREG/CR–2225 document is a useful document for planning in a model scenario. However, the text states that the study is an unconstrained view of the critical elements in a state program for radiological emergency response, presuming no bounds of manpower, funding, development time, or other real-world constraints. In addition, the model does not specify the type of radioactive material, therefore, it does not take into account the packaging used for NWPA shipments and the low risk of these shipments.

OCRWM decided to rely on the OSHA 1910.120(q) regulations as those most relevant to providing emergency response training for spent fuel shipments since these are the regulations applicable to employers whose employees respond to hazardous materials emergencies and spent nuclear fuel is a class of hazardous materials. These requirements can be addressed through the use of the NFPA training standards or other implementing guidelines.

The Department recognizes the need for clear lines of responsibility and communication during a transportation emergency and anticipates working with grant recipients on these matters through the provision of technical assistance and, as budget allows, by conducting drills and exercises. Grant recipients may use their funds to coordinate their emergency response planning with other grant recipients if they wish; however, OCRWM believes establishing regional and national training advisory teams would drain financial assistance away from grant recipients. The Department has not yet prepared an OCRWM transportation plan because these types of plans require knowledge of a level of detail that has not yet been determined. For example, included in the plan would be points-of-contacts along the routes, origins and destinations of shipments, and shipment schedules. This does not preclude OCRWM from developing a transportation plan in the future, when these open issues are resolved.

The policy does not specifically require states and tribes to take CVSA training; however, since CVSA is the only organization in North America that offers standardized motor-carrier inspection training and 49 states participate in CVSA, OCRWM anticipates that jurisdictions will abide by the CVSA reciprocal inspection standards program.

In response to the other comments, the Department's Transportation Emergency Preparedness Program has an ongoing effort to coordinate and make available training curricula to the stakeholders. The focus of this program is the consolidation and enhancement of ongoing training into a flexible, modular format for incorporation into federal, state, tribal, and local training programs. A key element of this program is coordination via public forums, surveys, and pilot testing by public groups such as TEC, and professional and volunteer emergency response officials. A current effort is the final pilot test of the Radiation Materials Emergency Response: Awareness Level module due for final release this fall. Regarding terrorist concerns, the NRC requires that the security plan for the shipments consider terrorist scenarios. It should be noted that the formidable containers and nonvolatile nature of the contents, which enhance survival, even in severe accidents, would likewise minimize the affect of terrorist attack. While not required by federal statute, the drivers of other DOE shipments have had access to an emergency response contact list for the jurisdictions they pass through. The Department finds no reason to discontinue this practice. This proposal does not include the training of hospital personnel as an objective, but grant recipients may use their funds for this purpose if they believe they have met the policy's other training objectives. OCRWM will provide, for public information and as part of awareness training, information about Oak Ridge National Laboratory's Radiological Emergency Assistance Center and Training Site and its 24-hour on-call assistance.

Timing and Eligibility

For the most part, commenters supported the eligibility requirements proposed in the last notice. Several Nevada counties recommended that local governments, since in most cases their public safety officials will respond first to an accident or incident, be directly eligible for assistance. Nye County requested the Department take into account the unique position of the host community and define their eligibility and funding assistance differently than jurisdictions along the routes. Other commenters suggested that jurisdictions be eligible when they have emergency response authority over a route, regardless of whether the shipment travels through their jurisdiction, i.e., when a mutual aid agreement exists between two jurisdictions although the responding jurisdiction may not have any NWPA shipments through its borders. Another commenter suggested that all potentially affected jurisdictions should be eligible regardless of whether they have an emergency response role over the route. Several tribes and the National Congress of American Indians urged the Department to consider the rights some tribes have over culturally significant lands. The comments stated that tribes should be eligible when they have an interest in protecting and preserving these areas even though they may not have emergency response authority over those lands. The Commercial Vehicle Safety Alliance stated that the state agency responsible for on-highway enforcement of motor carrier regulations should be specified as the agency designated to receive funds for safe routine transportation procedures, ensuring that training assistance reaches the personnel responsible for motor carrier regulation.

Comments received on the timing of the assistance ranged from one statement that a four-year process is too long to another statement that the WIPP

experience shows four years is the minimum time required given the number of applicants and the slow process of application review. The governor of Oregon stated that the application process should be streamlined to less than a year and the Council of State Governments-Midwestern Office stated that the assistance should be provided one to two years prior to shipment. A couple of commenters suggested the program would be more flexible if assistance were allowed to begin more than fours years prior to shipment for jurisdictions that need extra preparation. The National Congress of American Indians argued that tribes, when they lack infrastructure and emergency response preparedness, need assistance to begin now. The emergency preparedness workshops the National Congress of American Indians conducted in the last three years has indicated that a critical lack of trained people and infrastructure exist on most Indian lands. In addition, the Council of State Governments—Midwestern Office stated that to prepare sufficiently and to target resources, the Department must announce the queue, the routes, the modes, and the process of interaction with the private transportation contractors. Several western states argued that routes should be announced and assistance should begin three to five years prior to shipment to allow for alternate routing and to assess training and related needs.

Others expressed concern about the possibility of a Congressionally mandated interim storage site resulting in transportation across their jurisdictions in less than the four-year time frame. The governor of Nebraska, the National Congress of American Indians, and the Nevada Nuclear Waste Task Force said that current preparations for these shipments are not sufficient for public safety and expressed concern that delaying Section 180(c) implementation now risked having less than four years to prepare should Congress site an interim storage facility. The Southern States Energy Board stated the four-year time frame is irrelevant since the Department is scheduled to begin shipping spent nuclear fuel within two years.

Commenters offered several suggestions on the contingency plan which called for more highly trained and equipped escorts in some cases and to provide funding and assistance in a shorter time frame in other cases. While no comments were strongly critical of the contingency plan, one state organization requested that the Department detail the potential contingencies the Department envisions, and reiterated their position that contingency escorts would be acceptable for only limited numbers of shipments and any large-scale movement of spent nuclear fuel would require sufficient assistance and time to prepare. Similarly, another state organization warned that contingency plans do not compensate for sufficient planning and preparations. The Nuclear Information and Resource Service stated that escorts must be highly trained to handle accident conditions. The Nuclear Energy Institute encouraged the flexibility of contingency plans in order that transportation not be interrupted by bad weather, road maintenance, noncompliance by grant recipients, or other potential delays. The Southern States Energy Board pointed out that the contingency plan only deals with emergency response procedures and not safe routine transportation procedures. They questioned whether the level of assistance to train inspectors would allow states to move inspectors quickly within a state should a route be changed suddenly.

One commenter said escorts must be trained in the incident command system and be prepared to provide radiological information to a local incident commander. Another commenter said the Nuclear Regulatory Commission's (NRC) regulations on escorts were not sufficient in rural areas because the escort would be nothing more than a replacement driver.

Response

The Department based its proposed requirements for eligibility on the statutory language of the NWPA and OCRWM's prior discussions with stakeholders about beginning assistance three to five years prior to commencement of shipping through a jurisdiction. Eligibility was expanded to permit states and tribes to transfer funds to those jurisdictions with mutual aid or cross-deputization agreements for emergency response and to include both jurisdictions in those cases where a route constitutes the border between two jurisdictions. These changes allow all parties with authority over an accident or incident to receive training assistance for NWPA shipments. Local governments are not eligible for direct assistance because the language in the statute provides that state governments allocate the assistance to local jurisdictions. For a tribe, in those instances where a tribe has rights to culturally significant lands, OCRWM anticipates working with the tribal government through the provision of technical assistance. Regarding CVSA's request that the state agency responsible for on-highway enforcement of motor carrier regulations be eligible for direct funding, OCRWM believes it is the role of the state governor to determine what agency is responsible for the Section 180(c) program.

OCRWM would have to use contingency plans for Section 180(c) if the Department were directed to ship prior to full implementation of Section 180(c), which means with a preparation period of less than approximately four years. OCRWM did not make any changes to the timing of the grants process because the current proposed four-year time frame provides sufficient flexibility. Should shipment have to occur within less than the time frame planned, the contingency plan will assist jurisdictions in preparing for the shipments at no risk to shipment safety. Under the Department's current Civilian Radioactive Waste Management Program Plan, the earliest transportation could begin is 2004. If Congress mandates an interim storage site, the contingency plan can accommodate early shipment. Similarly, if routes are announced two years prior to shipment, grant recipients should have ample time to consider alternate routes and interact with the private transportation contractors. Information is available about the queue through documents such as DOE/RW–0457 ''Acceptance Priority Ranking and Annual Capacity Report.'' Regarding the preparedness concerns of tribal governments, this proposal does expand the application of technical assistance to be responsive to these concerns where warranted. OCRWM has tried to correct the lack of safe routine transportation contingency plans by allowing grant recipients to determine the number of inspectors to train. When escorts are part of the contingency plan, OCRWM has stated the escorts would be more highly trained and equipped than those routinely used for the purposes of safeguards and security.

Regarding the comments on escorts, OCRWM anticipates that escorts used on a contingency basis would have significant training in the radiological emergency response procedures and be fully versed in issues of federal, state, tribal, and local jurisdictional authority under accident or incident conditions. There is no safety reason to increase the number of escorts beyond the Nuclear Regulatory Commission's regulatory requirements.

Funding Allocation Formula

The funding allocation formula, presented in the appendix to the May 16, 1996, Proposed Policy and Procedures, was roundly criticized.

Almost all the commenters said the measures used to determine funding levels, for example, the numbers of people trained and the route miles as a basis for the variable funding, were an arbitrary determination by the Department and did not correspond to real training needs in the jurisdictions. Many commenters objected to the Department's determining the funding level and not discussing with eligible jurisdictions the planning issues that impact training needs such as the routes, the number of shipments, and the shipment schedules. A frequent recommendation was that the number of people trained and the number of trainers should be negotiated. Similar recommendations included basing funding on the training and equipment needs of local responders, and using the Western Governors' Association straw man regulations. Commenters frequently mentioned that if the Department failed to use a needs-based system for the funding allocation, the policy would be viewed as an unfunded mandate.

Recommendations on how the funding allocation should occur were varied but generally included some level of needs assessment as determined by the eligible state or tribe. Comments on the role of population in determining funding levels ranged from the International Association of Fire Fighters and the Council of State Governments/Eastern Regional Conference stating that higher population levels require the training of more public safety personnel to Nye County, Nevada stating that population should be used as an inverse funding variable since rural areas tend to be less prepared and need more assistance. Several tribal commenters encouraged the Department not to use population at all as a factor because low population on tribal lands tends to limit the assistance available to tribes.

Others recommended using shipment miles, not route miles as part of the allocation basis. Another commenter recommended including accident rates along routes as the allocation basis. The Commercial Vehicle Safety Alliance recommended that funding for inspector training be based on a combination of population, number of inspectors, number of inspections, and the number of points of entry for each eligible jurisdiction, similar to the present policy in calculating the U.S. DOT's hazardous materials registration program, 49 CFR 107–601.

The Council of State Governments-Midwestern Office and the Eastern Regional Conference both requested that the Department inform the governors of the annual funding projections for their state and work to keep funding levels constant to assist states with their planning and budgeting cycles.

Response

OCRWM has fundamentally changed the funding allocation formula in this revised proposed policy. The formulaic approach has been dropped and a more needs-based approach developed. The new approach, while limited by OCRWM's training objectives, will allow more flexibility for grant recipients to determine how much assistance they need to be prepared for NWPA shipments. Instead of using population or other variables to determine funding levels, the level of preparedness will factor into the funding allocation. The needs-based approach would apply both to safe routine transportation training and emergency response training, negating the need for a specific funding formula for either type of procedures. The comments about projected funding and consistent funding levels are noted.

Allowable Use of Funds

Comments on the allowable use of funds tended to overlap with comments on training standards and overall program policy. Commenters, including the National Association of Regulatory Utility Commissioners, the International Association of Fire Fighters, a couple of counties, and most states encouraged the Department to fund some form of route and risk assessments. Route and risk assessments, it was argued, are the first steps in preparing for NWPA shipments, assisting jurisdictions to identify specific hazards, write an effective emergency response plan, more efficiently deploy Section 180(c) resources, and take specific accident prevention measures. The Department was encouraged to conduct early route selection in cooperation with states and tribes as an initial step in defining the appropriate increment of assistance, and to reduce confusion and antagonism in jurisdictions along the routes. The point was made that a cooperative approach to route and risk analysis and related planning activities would take more than two years or the Department would risk inadequate planning involving stakeholders. Defining the interface among the federal government, private contractors, and involved jurisdictions was suggested as part of an overall cooperative approach. One commenter suggested that the Department should make technical assistance available to assist jurisdictions in conducting risk assessments even if financial assistance is not available. One commenter asked why states' ability to determine the appropriate use of funds was inconsistent with tribal governments' ability.

A variety of commenters encouraged the Department to allow funds to pay for administrative costs such as salaries and record-keeping. Lincoln County, Nevada suggested the Department pay for 75 percent of a person's salary in each local jurisdiction, while a few states commented that states should receive funding for one person each to carry out safe routine transportation and emergency response planning activities. One commenter asked whether states would have to cover the cost of Federal employees participating in public meetings. Commenters also requested clarification on the use of funds to train state personnel as well as local personnel given that Section 180(c) states assistance is for ''public safety officials of appropriate units of local government. * * *'' On the subject of pass-through requirements, a few commenters requested the proposal require a pass-through of funds to the local level. One suggested 75 percent of funds be passed-through while another said even if funds are not passed through, the majority of training assistance should reach the local level.

By far the most frequent comment was an expression of disagreement with the Department's decision not to allow drills and exercises as part of training. Almost every commenter made the point that exercises and drills are an essential part of the learning process. One commenter suggested funding a percentage of a jurisdiction's cost for drills and exercises saying it would be more effective and less costly for the Department to fund state and local level drills and exercises than to conduct large-scale joint federal, state, and tribal exercises. An alternative suggestion was to fund a fixed number of multi-jurisdictional exercises each year.

A mix of views was expressed on the Department's statement encouraging grant recipients to coordinate their training for NWPA shipments with other training programs such as FEMA's radiological training. One commenter said it would be illegal to use other federal programs to pay for NWPA training. The State of New Mexico and the Nuclear Energy Institute both encouraged coordination with other training programs to provide states flexibility in obtaining training and maximizing the effectiveness of Section 180(c) funds. On a slightly different note, commenters cautioned the Department not to rely on other federal programs to provide more elementary emergency response and safe routine

transportation capabilities because cutbacks in federal spending have jeopardized programs such as FEMA's equipment calibration laboratories.

Response

The revised proposed policy and procedures increase the types of activities that Section 180(c) funds may cover. While the base grant was derived from a salary estimate, it could be used to offset the cost of salaries, to conduct planning activities such as route and risk assessments, to coordinate with neighboring grant recipients and local jurisdictions, or interact with the private transportation contractors or federal employees. The base amount of funding doubled the original salary estimate to allow states and tribes to pay the salary of one person each to carry out safe routine and emergency response procedures planning, if that is what the state or tribe chooses to do. The proposed policy and procedures did not differentiate between a state's authority to determine the best use of funds within their jurisdiction from a tribal government's authority to determine the best use of funds within their jurisdiction. This policy intends to give equal treatment to state and tribal governments with regard to eligibility, use of funds, and other policy matters. The policy will have to make allowances for different governmental structures of state and tribes, since for example, tribes seldom have subjurisdictions with which to coordinate and plan.

The prescriptive pass-through of funds to the local level is not required because it is unclear that such a pass-through would result in the most efficient use of training resources. Training for safe routine transportation procedures, as defined for the Section 180(c) program, would occur at the state level since state-level employees have motor-carrier inspection and enforcement powers. OCRWM anticipates that local public safety officials will receive increased training benefits under this proposed policy because of the increased requirement to ensure planning and coordination at the local level and to ensure that local responders will be the recipients of the awareness level training. The recipient state (or tribe if they have subjurisdictions) will determine whether local salaries are offset.

Federal representatives' attendance at public meetings will be funded by OCRWM, not out of grant recipients' funds. OCRWM plans to allow grant applicants to factor in the cost of drills and exercises as part of their grant applications.

Regarding the coordination of Section 180(c) assistance with other training programs, the Department retains its position of encouraging grant recipients to detail in their three-year plans how this assistance will enhance their current efforts to prepare for radiological materials shipments. For example, if a grant recipient already relies on FEMA training classes to prepare their first responders, then they would be encouraged to use Section 180(c) assistance to send additional responders to those classes. Or if a state or tribe conducts its own awareness level training, they could use the assistance to offset the costs of sending first responders to that training, or updating their curricula to include information about NWPA shipments.

Concerns of Local, Rural, and Tribal Governments

Many of the comments on the concerns of local, rural and tribal governments have already been summarized in the previous sections. The following summarizes the comments specific to these jurisdictional levels.

Several counties expressed their view that the proposed policy diminishes the role of local governments in preparing for NWPA shipments. They expressed dissatisfaction that local governments did not have a more guaranteed role in the planning and needs assessment stages of the application process, that notification of eligibility would go to the state and tribal governments only, that training and guidance were not directly available to local governments, and that insufficient attention was given to establishing basic infrastructure where needed. The point was made that the Department should have an oversight and enforcement mechanism to ensure wise use of funds and readiness at the local level. Other commenters said clear training standards for the local level are needed to minimize the role of state politics in distributing funds and to guarantee readiness. Commenters also stated that local governments should have direct access to Departmental personnel to communicate concerns and obtain direct assistance if the local government has a dispute with the state. The Department was encouraged to consider the needs of rural volunteer emergency responders who lack the funding and the time to attend extensive training classes by providing distance learning and other flexible, low cost training alternatives. Another commenter said local governments must be invited to consider mechanisms to limit exposure to the public and get assistance to reduce radiation exposure from shipping casks. Nye County, Nevada stated that local governments and rail carriers should be involved in developing policy for best practices and new technology for rail shipments and that the states should immediately pass on to local governments the information provided by the Department.

Tribal concerns centered on the issue of how to implement Section 180(c) in a manner consistent with the government-to-government relationship and Trust responsibility of the Federal government toward tribal governments. Commenters stated that the Trust responsibility requires the Federal government and agencies to take proper care to protect the rights and interests of each tribal government. Actions suggested to properly meet the Trust responsibility included increasing assistance to the National Congress of American Indians to reach out to tribal governments about this program, consulting directly with tribal governments to resolve issues related to NWPA transportation, and acting as an advocate of tribal interests with other federal agencies as stated in the Department's American Indian Policy. The commenters felt the proposed policy failed to analyze the requirements of the Trust responsibility.

Response

OCRWM recognizes that there is a lack of infrastructure and trained personnel on many tribal lands and in many rural counties across the nation. Typically, these areas may rely more heavily on technical assistance than other grant recipients. In recognition of these concerns, OCRWM has increased the requirement on states to consult and involve local jurisdictions in the planning and training activities. Under the new training objectives, in those states where local governments have significant emergency response authority, most of the assistance should flow to the local emergency response agencies. Regarding oversight and enforcement of training readiness, the OSHA standards are very clear that verifying training is the employer's responsibility. It is not the role of the federal government to set requirements on local governments, circumventing the state/local government relationship. OCRWM has and will continue to consider the financial and time constraints of volunteer and rural responders in the development and distribution of training materials. With regard to local governments involvement in the reduction of radiation exposure, the radiation exposures from the shipping casks will be within the levels for routine safe

shipments as defined by the competent regulatory authorities. The local governments may, consistent with the DOT routing guidelines, work with state routing agencies to define preferred routes that limit population exposure. In addition, current safeguards and security regulations prevent the release of information about the time of shipments through a particular route. Regarding local governments' involvement in the development of rail practices, this is an issue that may need to be addressed with the Department, but is beyond the scope of the Section 180(c) policy development process.

OCRWM has agreed to work directly with tribal governments unless requested otherwise by the applicant. OCRWM will continue to work through the mechanism of its cooperative agreement with the National Congress of American Indians to reach out to tribes across the nation and encourage their participation in the program.

B. Section 180(c) Procedures

Funding Mechanism

The comments on the funding mechanism were almost unanimously supportive of the grants program directed to states and tribes. There were a couple of states that encouraged the Department to combine Section 180(c) funding with existing federal programs that offer training for emergency response and safe routine transportation training and one of them requested the funding be provided as an up-front distribution instead of reimbursement for costs. A couple of states that supported the grants mechanism requested the Department provide for coordination of the assistance with other state, tribal, and federally-supported training programs for emergency response and safe routine transportation procedures, even if the funding mechanisms were not combined. The State of Idaho supported combining Section 180(c) funding with other training assistance programs within the Department in order to make the Department's training assistance less campaign-specific. Several tribal government commenters favorably noted the equal treatment between states and tribes. The International Association of Fire Fighters stated that the grant mechanism would place too heavy a burden on the states for planning, administration, and needs assessment and could require the creation of state-level offices analogous to the Department's Office of Civilian Radioactive Waste Management.

Response

OCRWM made no changes to the funding mechanism in this revised proposed policy and procedures, in part because states and tribal commenters did not find the grant mechanism to be overly burdensome, particularly if staff and administrative costs are offset. This new proposal does note that in the event there is a Department-wide funding mechanism for training assistance, the Section 180(c) program would be combined with it to the extent practicable. OCRWM finds combining the Section 180(c) funding mechanism with a federal program outside the Department would increase administrative costs and reduce program flexibility. As discussed in the allowable use of funds section, grant recipients will be encouraged to coordinate their training under the Section 180(c) program with their existing training efforts to the extent practicable.

C. Applicability of Section 180(c) to Private Shipments

Many states and state organizations urged that Section 180(c) assistance should apply to all spent nuclear fuel or defense high-level radioactive waste shipments ultimately destined for an NWPA facility, whether or not those shipments are transported to and stored on an interim basis at a private facility. Commenters cited that transportation to a private facility would only be necessary if the Department fails to site an interim or permanent storage facility according to statutory obligations.

Response

The Department is currently authorized to implement the Section 180(c) program of financial and technical assistance only for shipments to a repository or MRS constructed under the NWPA. However, the many comments on this issue have been noted.

D. Policy Development Process

A few commenters again questioned the Department's plans to issue a Notice of Policy and Procedures rather than promulgate regulations. They voiced concern that implementation of Section 180(c) through regulations is necessary to ensure stability through changes of leadership within the Department and that an interpretation of policy and procedures is more easily changed. An expedited rulemaking was suggested to accommodate time constraints.

Response

OCRWM is developing the Revised Policy and Procedures after receipt and consideration of extensive public comments. At some future date, OCRWM may decide to promulgate regulations. At this time, however, it is OCRWM's intent to remain flexible in order to work through unforeseen circumstances without committing to binding regulations.

V. Conclusion and Request for Submission

This notice has presented the OCRWM's revised proposal for a policy and procedures for the Section 180(c) program. It also has presented OCRWM's summarization of and response to comments received on the prior Notice of Proposed Policy and Procedures. Relevant comments on this proposal will be given careful consideration and responses will be included in the Notice of Final Policy and Procedures, which OCRWM intends to publish in 1998. The purpose of this notice has been to share with stakeholders the progress to date on developing Section 180(c) policy and procedures and to request additional comments from interested parties. The final policy and procedures may reflect changes as a result of comments, new Statutory direction, and any policy changes caused by the new Statutory direction.

OCRWM solicits comments from the public on this revised proposal to issue Section 180(c) policy and procedures.

Issued in Washington, D.C., on July 11, 1997.

Ronald A. Milner,

Acting Deputy Director, Office of Civilian Radioactive Waste Management.

Appendix—Definition of Terms As Used in the Revised Proposed Policy and Procedures

1. Responsible Jurisdiction means a governmental entity at any level of government, whether state, tribal, or any of their subjurisdictions, that has the authority to conduct part or all of an emergency response to a radiological materials transportation accident or incident.

2. First Responders are generally those emergency response personnel who (1) assess the risk level of the emergency, (2) take defensive action to secure an accident scene, and (3) notify additional authorities if needed.

3. Awareness level training means training for individuals who are likely to witness or discover a hazardous substance release and who have been trained to initiate an emergency response sequence by notifying the authorities of the release. First responders awareness level training shall provide sufficient training to ensure that first responders objectively demonstrate competency in the following areas:

(A) Understand what hazardous substances are, and the risks associated with them in an incident.

(B) Understand the potential outcomes associated with an emergency created when hazardous substances are present.

(C) Recognize the presence of hazardous substances in an emergency.

(D) Identify the hazardous substance, if possible.

(E) Understand the role of the first responder awareness individual in the employer's emergency response plan including site security and control and the U.S. Department of Transportation's Emergency Response Guidebook.

(F) Realize the need for additional resources, and to make appropriate notifications to the communications center.

(29 CFR 1910.120(q)(6)(I)(A)).

4. First responder operations level hazardous materials training means training that provides for individuals who respond to releases or potential releases of hazardous substances as part of the initial response to the site for the purpose of protecting nearby persons, property, or the environment from the effects of the release to be able to respond in a defensive fashion without actually trying to stop the release. Their function is to contain the release from a safe distance, keep it from spreading, and prevent exposures. First responders at the operations level shall have received at least eight hours of training and have had sufficient experience to objectively demonstrate competency in the following areas in addition to those listed for the awareness level, and the employer shall so certify:

(A) Know the basic hazard and risk assessment techniques.

(B) Know how to select and use proper personal protective equipment provided to the first responder operational level.

(C) Understand basic hazardous materials terms.

(D) Know how to perform basic control, containment and/or confinement operations within the capabilities of the resources and personal protective equipment available with their unit.

(E) Know how to implement basic decontamination procedures.

(F) Understand the relevant standard operating procedures and termination procedures.

(29 CFR 1910.120(q)(6)(ii)(A)).

5. Train-the-Trainer training means training for individuals so that they can teach other emergency responders to respond to a particular level of competency.

6. Hazardous materials technician level training is training for individuals who respond to releases or potential releases for the purpose of stopping the release. They assume a more aggressive role than a first responder at the operations level in that they will approach the point of release in order to plug, patch or otherwise stop the release of a hazardous substance. Hazardous materials technicians shall have received at least 24 hours of training equal to the first responder operations level and in addition have competency in the following areas, and the employer shall so certify:

(A) Know how to implement the employer's emergency response plan.

(B) Know the classification, identification and verification of known and unknown materials by using field survey instruments and equipment.

(C) Be able to function within an assigned role in the Incident Command System.

(D) Know how to select and use proper specialized chemical personal protective equipment provided to the hazardous materials technician.

(E) Understand hazard and risk assessment techniques.

(F) Be able to perform advance control, containment, and/or confinement operations within the capabilities of the resources and personal protective equipment available with the unit.

(G) Understand and implement decontamination procedures.

(H) Understand termination procedures.

(I) Understand basic chemical and toxicological terminology and behavior.

(29 CFR 1910.120(q)(6)(iii)(A)).

[FR Doc. 97–18840 Filed 7–16–97; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–615–-000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

July 11, 1997.

Take notice that on July 1, 1997, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP97–615–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a delivery point in Hillsborough County, Florida under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to construct, operate and own an additional delivery point for Chesapeake Utilities Corporation (Chesapeake) at or near mile post 19.1 on its existing St. Petersburg/Sarasota Connector in Hillsborough County, Florida. FGT states that the subject delivery point will include a tap, minor connecting pipe, electronic flow measurement equipment, and any other related appurtenant facilities necessary for FGT to deliver up to 1,000 MMBtu per hour to Chesapeake. Chesapeake will reimburse FGT for the $67,000 estimated construction costs. FGT further states that Chesapeake will construct, own, and operate the meter and regulation station.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–18769 Filed 7–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–613–000]

Koch Gateway Pipeline Company; Notice of Request Under Blanket Authorization

July 11, 1997.

Take notice that on July 1, 1997, Koch Gateway Pipeline Company (Koch Gateway), P.O. Box 1478, Houston, TX 77251–1478, filed in Docket No. CP97–613–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to operate as a jurisdictional facility, a 2-inch tap placed in service under Section 311 of the Natural Gas Policy Act and Section 284.3(c) of the Commission's regulations. Koch Gateway makes such request under Koch Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch Gateway states that the proposed certification of facilities will enable Koch Gateway to provide transportation services under its blanket transportation certificate through a tap serving Trans-Louisiana Gas Company, an intrastate pipeline company, in Lafayette Parish, Louisiana.