



OFFICE OF THE GOVERNOR
AGENCY FOR NUCLEAR PROJECTS

1761 E. College Parkway, Suite 118

Carson City, Nevada 89706

Telephone: (775) 687-3744 • Fax: (775) 687-5277

E-mail: nwpo@nuc.state.nv.us

January 12, 2009

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

RE: State of Nevada Comments on OCRWM's Federal Register Notice – "Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding (Federal Register/Vol. 73, No. 212/ Friday, October 21, 2008/Notices)

Dear Mr. Moussa:

Attached please find the State of Nevada's comments on the above-referenced Notice. Please note that all past State of Nevada comments on prior DOE approaches and proposals for implementing Section 180(c) are hereby incorporated by reference to the extent that they apply to the current proposed policy.

If you have questions regarding the State's comments, please do not hesitate to contact me at 775-687-3744.

Sincerely,

A handwritten signature in black ink, appearing to read "J.C. Strolin".

Joseph C. Strolin
Administrator, Planning Division

Attachment

cc Marta Adams, Attorney General's Office
Susan Scholley, Legislative Counsel Bureau
Nevada Local Governments and Tribes

**STATE OF NEVADA COMMENTS
ON THE
OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT'S
NOTICE ON "SAFE ROUTINE TRANSPORTATION AND EMERGENCY
RESPONSE TRAINING; TECHNICAL ASSISTANCE AND FUNDING"
(Federal Register/Vol. 73, No. 212/ Friday, October 21, 2008/Notices)**

January 12, 2009

GENERAL COMMENTS

The State of Nevada has provided numerous, substantive comments on various U.S. Department of Energy (DOE) proposals for implementing Section 180(c) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), including but not limited to:

[State of Nevada Comments on the U.S. Department of Energy's May 16, 1996 Notice of Proposed Policy and Procedures for Safe Transportation and Emergency Response Training](http://www.state.nv.us/nucwaste/yucca/sec180c1.htm) (<http://www.state.nv.us/nucwaste/yucca/sec180c1.htm>)

[State of Nevada Comments on Section 180c Revised Policy and Procedures - April 30, 1998](http://www.state.nv.us/nucwaste/trans/sec180c3.htm) (<http://www.state.nv.us/nucwaste/trans/sec180c3.htm>)

[State of Nevada Comments on DOE's Notice of Revised Proposed Policy on the OCRWM Plan for the Implementation of Section 180\(c\) of the Nuclear Waste Policy Act](http://www.state.nv.us/nucwaste/news2008/pdf/nv080118ocrwm.pdf) (<http://www.state.nv.us/nucwaste/news2008/pdf/nv080118ocrwm.pdf>)

All prior Nevada comments are hereby incorporated by reference into these comments to the extent that they apply to the current proposed policy.

The following comments are made in direct response to DOE's October 31, 2008 Federal Register Notice:

DOE's Approach to Section 180 (c) Continues to Ignore the Need to Provide a Mechanism For Determining the Amount of Funding and Technical Assistance Needed for an Adequate National Program

As the State of Nevada has pointed out in prior comments, the current DOE Section 180(c) Federal Register Notice completely ignores the need for determining the total amount of funding and technical assistance that would be required nationally to support an effective and adequate program to train and equip state and local emergency response and public safety officials to deal with shipments of spent nuclear fuel (SNF) and high-level radioactive waste (HLW) to a repository. The proposed policy sets arbitrary base amounts for annual planning and training grants, but contains absolutely no basis for determining if such amounts are adequate or even reasonable.

It is incumbent upon DOE to inform Congress as to the actual amount of funds needed to implement an adequate Sec.180(c) program. That can only be done through a comprehensive national needs assessment as the basis for adequate annual budget requests that will ensure sufficient funds are available to prepare states and tribes adequately for NWPAs shipments and for implementing a long-term Sec. 180(c) program. Sec. 180(c) should be a specific line item in DOE's annual budget, based on a realistic and defensible assessment of the cost of an adequate national program for each year. DOE cannot abandon its responsibility in this regard by claiming that Congress has only appropriated a specific amount of funds when DOE has never advised Congress about what an adequate program will require.

DOE's Proposed Policy Lacks Any Method for Determining Grants Amounts

Nevada remains concerned that the amount of funds proposed to be available to states and tribes under the Notice continues to be arbitrary, and there is no way to assure that the amount of funds to be provided will be adequate to cover the full costs of carrying out training and other activities necessary for safe transportation and emergency management.

The assessment and planning grant of \$200,000 proposed in this and past Notices is inadequate for the State of Nevada as the proposed repository host state. Nevada is at the end of the nuclear waste shipping "funnel" and will have to deal with 100% of NWPAs shipments to a repository. There is no basis for assuming that a planning grant of \$200,000 will cover the State of Nevada's costs associated with this effort. Likewise, large, diverse states such as California will likely require considerably more than a flat \$200,000 grant to adequately assess needs and plan an adequate response program. In effect, DOE will be shifting significant costs to the states if the proposed flat rate, planning grant amount is adopted.

Nevada also disagrees with the proposal for determining annual training grant amounts for individual states and tribes. As with the base grants, there is no basis (other than some arbitrary figure arrived at by DOE staff) for arriving at the proposed \$100,000 base amount for the grant. For some states, such an amount may be adequate. For others, it would be woefully inadequate, even if supplemented by some proposed variable amount.

Nevada also strongly disagrees with the proposed formula approach for determining the "variable" amount for the annual training grants since it fails to adequately reflect actual needs for training and preparations for shipments. Nevada reiterates its past comments that DOE should base annual grants on actual needs as documented by individual states and tribes.

Section 180(c) Implementing Policies and Procedures Should Be Codified in Regulation

Nevada reiterates its prior comment that Section 180(c) implementing policies and procedures must be codified in regulation to insure stability and continuity in any program of technical and financial assistance developed pursuant to Section 180(c) or any subsequent statutory training requirement. Nevada strongly recommends that DOE institute a formal rulemaking process under the Administrative Procedures Act, as recommended by the Western Governors' Association and the Western Interstate Energy Board.

Role of Local Governments

As in prior comments, the State of Nevada again restates its contention that local governments, especially county governments in Western states, have significant responsibilities for first response to transportation accidents and would be heavily impacted by rail and highway shipments, if a repository is constructed at the proposed Yucca Mountain site. The State of Nevada urges DOE to reexamine the current prohibition on direct grants to local governments and to identify policy options for submittal to Congress that would allow direct grants to local governments.

Route Identification

Nevada and other states have long held that the only way states can be assured of adequate preparation for NWPAs shipments is for DOE to take full responsibility for identifying and enforcing shipping modes and routes from each reactor or waste generator site to each storage or disposal site. Recent DOE approaches for identifying a "suite" of routes and for permitting rail carriers to select routes do not allow for adequate planning and preparation on the part of states, tribes, and local governments. DOE must make a clear commitment to undertake a formal route identification process and to actually select routes from each reactor/generator site to the repository site at least 3 and preferably 5 years prior to the beginning of shipments.

COMMENTS IN RESPONSE TO QUESTIONS POSED IN THE NOTICE

Question 1 – Should a certain percentage of the funding received from Congress ... be set aside for Tribal applicants? Should State and Tribal funding come from a single allocation of funds?

Comment:

Funding required for both states and tribes should be determined based on need. As discussed above with respect to states, the amount of funding required by collective tribes should be based on the cumulative total of needs assessed for all affected tribes. That funding should constitute a separate pot of money allocated specifically for preparing tribes for NWPA shipments.

Question 2 – Should the formula for allocating the variable portion of States’ training grants be clarified to prohibit the counting of mileage along a route through Tribal jurisdictions unless the state retains emergency response authority along that stretch of route?

Comment:

Nevada believes that the amount of funding required for training and preparing for spent fuel and high-level waste shipments should be determined on the basis of need for each individual state and tribe (see comments above).

Question 3 – Would \$200,000 be an appropriate amount for the assessment and planning grant to conduct a needs assessment?

Comment:

DOE has absolutely no basis for assuming that \$200,000 (or any other arbitrary amount of money) would be sufficient for an assessment and planning grant. For some large, diverse states like California or the repository host state (Nevada), \$200,000 will likely be woefully inadequate. For other, smaller states, the proposed amount may be sufficient. However, DOE has no mechanism for determining what is actually needed or adequate. DOE should work with individual states and tribe to assess actual planning and assessment needs, and make funds available that reflect those needs.

Question 4 – Would \$100,000 be an appropriate amount for the annual training grant? Should the base amount be adjusted downward to reflect the number of years that annual grants have been received? What should be the allocation between the base amount and the variable amount of the annual training grants? Should the training grant be variable based on the proposed funding allocation methods?

Comment:

See comment on Question 3. Grants should be based on assessed need, not on an arbitrary dollar amount for which DOE has no basis. A one-amount-fits-all approach is not appropriate given the wide diversity in the circumstances and needs of individual states.

Question 5 – Should the amount of funding be adjusted where a route forms the border between two states, a state and tribal reservation, or two tribal entities? Should states or tribes with mutual aid responsibilities outside their boundaries be eligible for grants? If so, how should the funding amounts be calculated?

Comment:

If grant amounts were based on an actual assessment of needs for each state and tribal entity, these questions would be moot, since they would have been addressed as part of the needs assessment process. Under Section 180(c), DOE is required to provide funds to states and tribes to prepare them for shipments. In most cases involving state and tribal relationships, the lines of actual responsibility are often blurred, and determinations of need with respect to shared responsibilities cannot be made in a formulaic fashion. States and tribes have very different needs when it comes to emergency management, and they often start from very different places with respect to readiness and capabilities. The only way to address these differences and adequately fund required response readiness is to individually assess current capabilities and identify gaps and needs.

Question 6 - Do assessment and planning grants need to be provided four years prior to initial shipments? Do training grants need to be provided three years prior to initial shipments? Do training grants need to be provided every year shipments are scheduled?

Comment:

The timing of grants is something that should also be determined based on individual states/tribes needs. However, based on long consideration of this issue by the state of Nevada and the Western Interstate Energy Board, Nevada believes that four years is the minimum amount of time that most states would need to prepare for shipments. Ideally, for states like Nevada with little experience with spent fuel and high-level radioactive waste shipment, the minimum lead time for assessment, planning and training would be five years before the initial shipment. Likewise, large states like California, with more complex and cumbersome emergency management structures and large numbers of individual jurisdictions requiring training, the lead time could be even longer. DOE should determine the timing of grants based on individual state assessments of need.

Question 7 - Should grants be adjusted to account for fees levied on the transportation of spent fuel and high-level waste? How should DOE determine if a fee covers all or part of the cost of activities allowed under Section 180(c)?

Comment:

The campaign envisioned under the NWPA for shipments to a repository would be unprecedented in size and duration. States' fee programs were never designed to address the needs of a shipping campaign that involved thousands of shipments in a sustained fashion for three or more decades. There is likely to be wide variation in what such fee

programs cover and what the funds generated can be used for under state laws. Any determination about whether fees can be deducted from funding allocated under the Section 180(c) program should be made as part of the comprehensive individual state needs assessments that DOE should be required to complete. As a general rule, no state fee amounts should be deducted from Section 180(c) allocations unless DOE can show that there are actual, documented instances of duplication in funding for the same activities *and* that such duplication is not required and appropriate for funding an adequate program for NWPA shipments.

Question 8 – How should Section 180(c) grants be adjusted to reflect other funding or technical assistance from DOE or other federal agencies for safe routine transportation and emergency response activities?

See comment for question # 7 above. Individual state needs assessments would factor in existing levels of readiness and other programs that may complement Section 180(c) funding. However, spent nuclear fuel and high-level waste shipments are considerably different from other radioactive materials shipments, and any NWPA shipping campaign would be vastly different from any other DOE or other federal agency shipment activity. Response and preparedness needs are likely to be much greater and different as well. Consequently, it should be up to individual states to determine how the various federal activities fit together and what the needs are with respect to NWPA shipments.