

The Council of State Governments
Midwestern Radioactive Materials Transportation Committee

Comments on DOE's Notice of Revised Proposed Policy and Request for Comments
Safe Routine Transportation and Emergency Response Training; Technical Assistance and Funding
(*Federal Register*, Vol. 73, No. 212, pp. 64933-64939)

General Comments

The Midwest reiterates its concern that three key recommendations from the states working on the Section 180(c) Topic Group have not been incorporated into the policy. These recommendations are as follows:

- DOE should commit to funding the same kind of transportation safety programs that are in place for WIPP shipments.
- DOE should issue a policy on Section 180(c) implementation and then promulgate a rule to implement both the policy and grant application.
- The policy and procedures should address contingency re-routing so that the states and tribes will have some assurance that shipments will proceed safely even if circumstances require the use of different routes.

Furthermore, the Midwestern states are still concerned about the draft policy not addressing what will happen to 180(c) funding in the event of a lapse in shipments through a state or tribe. Consistent with the Topic Group's recommendation, eligibility for funding should not cease or diminish during shipment lapses of less than four years.

Specific Comments

Page	Section	Comment
64933	Background	This section omits a fairly lengthy paragraph from the July 23, 2007, notice that described OCRWM's "longstanding commitment to work with stakeholders," and the steps OCRWM followed to develop the draft policy with stakeholder input. The Midwestern states recommend reinserting this paragraph to help interested parties understand the full background that led up to the policy being published.
64934	Policy Statement	The wording at the end of the last full paragraph in the third column is awkward and appears to be missing something. We recommend revising the wording to read as follows: "...they will have the flexibility to direct their funding requests toward those allowable activities that will best meet their unique needs within the limits of the NWPA...."

64935	Basis for Cost Estimate/Grant Funding Allocation to States and Tribes	<p>We recommend revising the wording at the very bottom of the first column to read as follows: "Each eligible state will be eligible to receive the same base amount as every other eligible State; each eligible tribe will be eligible to receive the same base amount as every other eligible Tribe." As the Midwestern states understand the proposed policy, the actual award – for either the planning and assessment grant or the training grant – will be contingent upon the applicant submitting a defensible scope of work for receipt of the funds.</p> <p>Also, when the proposed levels for the planning and training (\$200,000) and the base grants (\$100,000) were established, it was done so largely in discussions with the states regarding their experiences and their likely needs. Did OCRWM engage in similar discussions with the tribes? One might guess that OCRWM proposed for the tribes a different method of allocating variable grant funding because the impact-based method proposed for states would allocate very little to the tribes. If that is the case, then the much lower level of impact on the tribes may warrant consideration of lower levels for planning and training grants and for the base grants.</p>
64936	Allowable Activities	<p>In the list of "potential activities for the Assessment and Planning Grant," the last bullet should be changed from "Staff costs related to planning and needs assessments" to read as follows: "Staff and administrative costs related to preparedness and planning, including the hiring of full and/or part time staff, hiring of contract support, and the payment of overtime."</p>
	Footnote #1	<p>OCRWM modified wording elsewhere in the policy to avoid saying that the program would "ensure that State, Tribal, and local officials are prepared for OCRWM shipments." For consistency, we recommend changing the wording in this footnote to say, "TEPP provides responders with model plans and procedures...."</p>
	Footnote #3	<p>This footnote should probably be revised to say "the Federal Railroad Administration has agreed to provide..." or something to that effect (unless the FRA has formally made this commitment – e.g., in writing).</p>
64937	Footnote #4	<p>The proposed policy states earlier that equipment purchased with 180(c) funding can be used for inspections or emergency response. This footnote, however, would make it appear that if states or tribes <i>do</i> opt to use 180(c)-purchased equipment for actual emergency response or inspections, then they cannot use 180(c) funds to calibrate or maintain that equipment. The states request clarification.</p>

64938	New Question 1	<p>The new question reads as follows:</p> <p><i>(a) Should a certain percentage of the funding received from Congress for the entire Section 180(c) program be set aside for Tribal applicants? This would ensure a set percentage of the total funds would be available for Tribal applicants.</i></p> <p><i>(b) In the alternative, should State and Tribal applicants' funding come from a single allocation of funds? This would make the percentage of funds that Tribes receive from the total Section 180(c) funding variable from year to year.</i></p> <p>The Midwestern states consider the first option to be preferable to Option 1(b). The latter option would require some method for directly evaluating and comparing funding requests from the states and tribes, which would be difficult. Given that OCRWM is proposing to use two different methods for allocating the variable portion of the funding, it would seem appropriate to have two different pools of funding from which to draw.</p> <p>The states have no suggestion for the actual percentage OCRWM should set aside for the tribes under Option 1(a). It may be worthwhile to look to the example of the DOT's Hazardous Materials Emergency Preparedness grant program, which sets aside 3% of the total funding for tribal applicants. Whether 3% of the 180(c) funding will be sufficient for the tribes will depend on the total amount of funding, the number of applicants, and their needs.</p>
	New Question 2(a)	<p>This question reads as follows:</p> <p><i>"Should the formula described in the revised proposed policy for allocating the variable portion of States' training grants be clarified to prohibit the counting of mileage along a route through Tribal jurisdictions in the calculation of route miles unless the state retains emergency response authority along that stretch of route?"</i></p> <p>In circumstances where a tribal government will be responsible for all planning and response activities within a tribal jurisdiction, then it seems appropriate to subtract those route miles from a state's allocation formula. (There may even be instances where those miles are negligible to the overall total of a state's route miles, in which case it can be ignored.)</p> <p>There may be instances where the state and tribe will work together cooperatively to assure that all safety and security measures are being met. Such cases would have to be evaluated similarly to instances where the route lies along a border between jurisdictions or where mutual aid agreements were in place.</p>
	Renumbered Question 5	<p>OCRWM revised the policy to eliminate the reference to "reservations" in an earlier section. This question still refers to "tribal reservations" and should probably be revised for consistency.</p>