

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION

### 10 CFR Chapter XVIII

#### Northeast Low-Level Radioactive Waste Compact Proposed Rule for Declaration of Party State Eligibility

**AGENCY:** Northeast Interstate Low-Level Radioactive Waste Commission

**ACTION:** Notice of proposed rulemaking and invitation for comments

**SUMMARY:** The Northeast Interstate Low-level Radioactive Waste Commission (the "Commission") provides this notice of proposed rulemaking to establish the conditions under which a state not a party to the Northeast Interstate Low-Level Radioactive Waste Management Compact (the "Compact") may be declared eligible to become a party state. The Commission must declare a state eligible before it may become a party state to the Compact. The conditions established by the Commission through this rule are intended to protect the integrity of the Compact and the interests of both the existing party states and the state petitioning for a declaration of eligibility.

**DATES:** Written comments to the proposed rule may be submitted until April 13, 2000. Public hearings will be held on April 17 and 18, 2000.

**ADDRESSES:** Written comments should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, Connecticut 06033. Public hearings will be held at 1:00 p.m. on April 17, 2000, at 44 S. Clinton Avenue, Station Plaza III, Trenton, New Jersey, and at 1:00 p.m. on April 18, 2000, at 10 Middle Street, 1st Floor, Bridgeport, Connecticut. Requests to testify at the public hearing should be submitted to Mr. McCarthy.

**FOR FURTHER INFORMATION CONTACT:** Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste

Commission, 703 Hebron Avenue, Glastonbury, CT 06033, (860) 633-2060.

#### SUPPLEMENTARY INFORMATION:

##### Background

The Compact was established by "The Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99-240, Title II (the "Act"). The Act gave Congress' consent to agreements between and among states that were designed to facilitate the regional disposal of low-level radioactive waste ("waste"), thereby promoting the health and safety of the region. Connecticut and New Jersey are current members of the Compact. The Act also established the Commission and gave it authority, *inter alia*, to promulgate rules, conduct hearings, receive and act on applications to become eligible states, develop regional plans to ensure safe and effective management of waste within the region, designate a host state for siting of a regional disposal facility, enter agreements for the importation of waste into the region and export of waste from the region, impose sanctions, and establish criteria for disposal fees. The Commission consists of one voting member from Connecticut and one voting member from New Jersey.

Since the establishment of the Compact, there has been no regional disposal facility to receive waste generated within the Compact states. Nevertheless, at various times, regional generators have been able to dispose of their waste at other facilities (e.g., at facilities located in Clive, Utah, and Barnwell, South Carolina). Those facilities have not always been available for disposal of all of the waste generated within the region, however, and the Commission has sought to make available more reliable access to waste disposal facilities. Current regional generators anticipate that they will need assured access to waste disposal facilities for the next 50 years until all of the currently licensed nuclear power stations are fully decommissioned and all spent nuclear fuel has been removed from the sites. With these needs in mind, the Commission seeks to ensure the long-term availability of approximately 800,000 cubic feet of disposal space to accommodate all classes of low-level waste. The Commission also seeks to stabilize fees for waste disposal.

The Commission has determined that it may be in the interests of the Compact states to declare another state eligible for membership in the Compact if (a) that state is willing to become the voluntary host state and (b) membership in the Compact would achieve important objectives for both the current member states and any petitioning state. Article VII.e. of the Compact permits the Commission to "establish such conditions as it deems necessary and appropriate to be met by a state requesting eligibility as a party state to this compact." The Commission has further determined that the identification and implementation of reasonable conditions to be applied when evaluating a petition for new party state eligibility are essential to the long-term health and safety of the region.

This rule is intended to establish the conditions for party state eligibility contemplated by Article VII.e. of the Compact and the criteria for fee and surcharge systems contemplated by Article IV.i.(15) of the Compact. The rule specifies the procedures that the Commission will follow for receiving petitions for party state eligibility. It then describes the essential conditions for declaring a state eligible for membership in the Compact. Those conditions include agreements (a) to be the sole host state until all currently licensed nuclear power stations in the region have been decommissioned, (b) to warrant the availability of 800,000 cubic feet of disposal capacity for Connecticut and New Jersey generators, (c) to assure stable, predictable disposal fees that are no greater than generators in Connecticut and New Jersey paid at the end of 1999, (d) to give flexibility for generators to dispose of waste elsewhere at their discretion, (e) to indemnify the existing party states for any potential environmental liability caused by their membership in the Compact and by operation of the regional disposal facility, and (f) to ensure an equitable schedule for return of a portion of any incentive payment made by the existing party states if the regional disposal facility ceases to be available for any reason.

The Commission believes that this rule will further promote health and safety within the region. It will provide a mechanism to consider a long-term resolution for disposal of low-level

radioactive waste generated within the region. It will establish the essential conditions that must be satisfied before declaring a state eligible for membership in the Compact. The rules are consistent with and will further the purposes of the Compact and the Low-Level Radioactive Waste Policy Act, as amended (Pub. L. 96-573; Pub. L. 99-240, Title I).

The Commission solicits comments on the proposed rule from any interested party. After the close of the comments period, the Commission will hold hearings to consider the comments and any other appropriate evidence. Upon adoption of final rules, the Commission will use those rules to evaluate any petition for eligibility to become a party state.

#### Statutory Authority

Authority for this rulemaking is provided to the Commission by The Omnibus Low-level Radioactive Waste Compact Consent Act of 1985, Public Law 99-240, section 227, Art. IV(i)(7), Art. VII(e), 99 Stat. 1842, 1914, 1921-22.

#### Public Participation in Rulemaking Proceedings

The Commission seeks and encourages oral and written testimony and comments from all interested persons regarding this proposed rule. The Commission recognizes the benefit of the valuable insights and active participation of all segments of the affected community including consumers, utility and other generators, and governments in the development and administration of this rule.

Requests to provide oral testimony at the public hearing should be submitted to Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, CT 06033, and must be received by April 13, 2000, for the requestor to be placed on the speaker's list. The Commission may limit the time allotted to individual speakers as it deems necessary and appropriate. Persons who have not submitted requests in advance will be accommodated, time permitting, at the discretion of the Commission.

#### Request for Comments

Any person may participate in the rulemaking proceeding independent of the hearing process by submitting written comments to the Commission. Comments may be submitted at any time before April 13, 2000. Written comments received after this date (including at the hearings) will be considered if it is practical to do so.

**Please note:** Comments will be made part of the record of the rulemaking proceeding only if they identify the author's name, address, and occupation, and if they include a statement describing the factual basis for the comments.

#### List of Subjects in 10 CFR Part 1800

Administrative practice and procedure, Hazardous waste, Radioactive material.

#### Kevin McCarthy,

*Chairman, Northeast Low-Level Radioactive Waste Commission.*

For the reasons set out in the preamble, the Commission proposes to establish chapter XVIII, consisting of part 1800, in title 10 of the Code of Federal Regulations to read as follows:

#### CHAPTER XVIII—NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMMISSION

#### PART 1800—DECLARATION OF PARTY STATE ELIGIBILITY FOR NORTHEAST LOW-LEVEL RADIOACTIVE WASTE COMPACT

Sec.

1800.10 Purpose and scope.

1800.11 Definitions.

1800.12 Procedures for declaring a state eligible for membership in the Compact.

1800.13 Conditions for becoming an eligible party state.

1800.14 Modification to and enforcement of the rule in this part.

**Authority:** Sec. 227, Art. IV(i)(7), Art. VII(e), Pub. L. 99-240, 99 Stat. 1842, 1914, 1921-1922.

#### § 1800.10 Purpose and scope.

Pursuant to Articles IV.i.(1), (7), (15), and VII.e. of the Northeast Low-Level Radioactive Waste Compact (enacted by the "Omnibus Low-Level Radioactive Waste Compact Consent Act of 1985," Public Law 99-240, 99 Stat. 1842, Title I) (the "Compact"), the Northeast Low-Level Waste Policy Commission (the "Commission") establishes through this part the conditions that it deems necessary and appropriate to be met by a state requesting eligibility to become a party state to this Compact. The Commission shall apply these conditions to evaluate the petition of any state seeking to be eligible to become a party state pursuant to Article VII of the Compact.

#### § 1800.11 Definitions.

The definitions contained in Article II of the Compact and Article I.B. of the Commission's By Laws shall apply throughout this part. For the purposes of this part, additional terms are defined as follows:

(a) *By Laws* refers to the Commission's By Laws as adopted and amended by

the Commission pursuant to Article IV.c. and Article IV.i.(7) of the Compact, most recently amended on December 10, 1998, and dated July 1999;

(b) *Person* means an individual, corporation, business enterprise or other legal entity, either public or private, and expressly includes states;

(c) *Nuclear power station* means any facility holding a license from the U.S. Nuclear Regulatory Commission under 10 CFR part 50.

(d) *Existing party states* means Connecticut and New Jersey collectively.

#### § 1800.12 Procedures for declaring a state eligible for membership in the Compact.

(a) Any state seeking to become an eligible state under the Compact shall submit to the Chairman of the Commission six copies of a petition to become an eligible state. The petition shall discuss each of the conditions specified in § 1800.13 and shall:

(1) Affirm that the petitioning state fully satisfies each condition; or

(2) Explain why the petitioning state does not or cannot fully satisfy any particular condition.

(b) Upon receipt of a petition from any state seeking to become an eligible state under the Compact, the Commission shall publish a notice in accordance with Article I.F.1. of the By Laws and shall initiate an adjudicatory proceeding to act on the petition. Any person may submit written comments on a petition, and all such comments must be received by the Commission within 30 days of notice that a petition has been submitted.

(c) The Commission shall evaluate the petition against the conditions for declaration of an eligible state specified in § 1800.13. As part of the proceeding to evaluate a petition to become an eligible state, the Commission may, in its discretion, conduct a hearing pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By-Laws. For good cause shown, the Commission may issue an order shortening the notice period for hearings provided in Article I.F.1. of the By Laws to a period of not less than ten days.

(d) After review of the petition and after any hearing, if held, the Commission shall issue an order accepting or rejecting the petition or accepting the petition with conditions. If the Commission accepts the petition without conditions, the petitioning state shall be declared an eligible state and shall become a new party state upon passage of the Compact by its state legislature, repeal of all statutes or statutory provisions that pose

unreasonable impediments to the capability of the state to satisfy the conditions for eligibility (as determined by the Commission) and payment of (or arrangement to pay) the fee specified in Article IV.j.(1). If the Commission accepts the petition with conditions, the petitioning state may become an eligible state by satisfying all of the conditions in the Commission's order and providing an amended petition incorporating its compliance with all of the conditions in this subpart and in the Commission's order. The Commission will consider the amended petition as part of the original adjudicatory proceeding and will issue a new order accepting or rejecting the amended petition.

(e) A state that submits a petition for declaration as an eligible state that is rejected by the Commission may submit a new petition at any time. The Commission will consider the new petition without reference to the prior petition but may use evidence obtained in any prior proceeding to evaluate the new petition.

(f) The Commission's consideration of a petition for declaration of an eligible state shall be governed by the Compact, the Commission's By Laws, and this part.

**§ 1800.13 Conditions for becoming an eligible party state.**

The Commission shall evaluate a petition to become an eligible party state on the basis of the following conditions and criteria:

(a) To be eligible for Compact membership, a state must agree that it will be the voluntary host state upon admission to the Compact and will continue to be the voluntary host state for a least that period of time until all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(b) To be eligible for Compact membership, a state must agree that, so long as the petitioning state remains within the Compact, it will be the sole host state.

(c) To be eligible for Compact membership, a state must warrant the availability of a regional disposal facility that will accommodate 800,000 cubic feet of waste from generators located within the borders of the existing party states.

(d) To be eligible for Compact membership, a state must agree to establish a uniform fee schedule for waste disposal at the regional disposal facility that shall apply to all generators

within the region. That uniform fee schedule, including all surcharges (except new surcharges imposed pursuant to Article V.f.3. of the Compact), shall not exceed the average fees that generators within the existing party states paid for disposal at the Barnwell, South Carolina, facility at the end of calendar year 1999, adjusted annually based on an acceptable inflation index.

(e) To be eligible for Compact membership, a state must agree with the existing states that regional generators shall be permitted to process or dispose of waste at sites outside the Compact boundaries based solely on the judgment and discretion of each regional generator.

(f) To be eligible for Compact membership, a state must agree with the existing states that the Commission may authorize importation of waste from non-regional generators for the purpose of disposal only if the host state approves and such importation does not jeopardize the warranted availability of 800,000 cubic feet of disposal capacity for waste produced by generators within the existing party states. A new party state must agree that regional generators shall not pay higher fees than non-regional generators and that all books and records related to the establishment or collection of fees shall be available for Commission review.

(g) To be eligible for Compact membership, in addition to the express limitations on non-host state and Commission liability provided in the Compact, a state must agree to indemnify the Commission or the existing party states for any damages incurred solely because of the new state's membership in the Compact and for any damages associated with any injury to persons or property during the institutional control period as a result of the radioactive waste and waste management operations of any regional facility. The petitioning state must agree that this indemnification obligation will survive the termination of the petitioning state's membership in the Compact.

(h) To be eligible for Compact membership, a state must agree that any incentive payments made by the existing party states as an inducement for a state to join the Compact will be returned to the existing party states, with interest, on a pro rata basis if, for any reason, the regional disposal facility ceases to be available to generators in the existing party states for a period of more than six months (other than periods that have been expressly approved and authorized by the Commission) or is unavailable for

disposal of 800,000 cubic feet of waste from generators within the borders of the existing states. In the event of such unavailability, the new party state must agree to return the incentive payments based on the following schedule:

(1) 75% of the incentive payment if the regional facility becomes unavailable prior to December 31, 2001;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to December 31, 2003;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2003, and prior to December 31, 2005;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to December 31, 2008;

(5) 10% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2009, and prior to the time when all currently licensed nuclear power stations within the region have been fully decommissioned and their licenses (including any licenses for storage of spent nuclear fuel under 10 CFR part 72) have been terminated.

(i) To be eligible for Compact membership, a state must agree with the existing states that once a new party state has been admitted to membership in the Compact pursuant to these rules, declaration of any other state as an eligible party state will require the unanimous consent of all members of the Commission.

**§ 1800.14 Modification to and enforcement of the rule in this part.**

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rule in this part may only be modified, amended, or rescinded after a public hearing held pursuant to Article IV.i.(6) of the Compact and Article V.F.1. of the Commission's By Laws and by a unanimous vote of all members of the Commission.

(b) Any party state may enforce the rules in this part by bringing an action against or on behalf of the Commission in the United States District Court for the District of Columbia pursuant to Article IV.n. of the Compact.

(c) If, for any reason, any portion of the rules in this part shall be declared invalid or unenforceable, the remainder of the rules in this part shall remain in full force and effect.

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