

Dated: May 9, 2000.

**Barry L. Carpenter,**

*Deputy Administrator, Livestock and Seed Program.*

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## **NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION**

### **10 CFR Chapter XVIII**

#### **Northeast Interstate Low-Level Radioactive Waste Compact Final Rule for Declaration of Party State Eligibility**

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

**ACTION:** Final rule.

**SUMMARY:** The Northeast Interstate Low-level Radioactive Waste Commission (the "Commission") is adopting these rules 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 procedures and 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 any state petitioning for a declaration of eligibility.

**DATES:** This rule becomes effective May 15, 2000.

**FOR FURTHER INFORMATION CONTACT:** Kevin McCarthy, Chairman, Northeast Interstate Low-Level Radioactive Waste Commission, 703 Hebron Avenue, Glastonbury, Connecticut 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 is 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.

These rules 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 rules specify the

procedures that the Commission will follow for receiving petitions for party state eligibility. They then describe 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.

#### **Summary of Public Comments on the Proposed Rule**

The Commission received written comments on the proposed rule (65 FR 13700, March 14, 2000) from the New Jersey Low-Level Radioactive Waste Disposal Facility Siting Board, Northeast Nuclear Energy Company, GPU Nuclear, the State of Connecticut Office of Policy Management, Public Service Electric & Gas Company, and Connecticut Yankee Atomic Power Company. These organizations (except Connecticut Yankee), as well as the New Jersey Chamber of Commerce and the New Jersey Business and Industry Association, offered oral comments at public hearings held in Trenton, NJ on April 17, 2000, and in Bridgeport, CT on April 18, 2000. All of the commenters supported the proposed rule and urged its adoption. Copies of the public comments are available for review at the Commission's office, 703 Hebron Avenue, Glastonbury, Connecticut 06033.

#### **Public Comments on the Rule To Establish Criteria for Declaration of Eligible State**

None of the public commenters objected to the Commission's proposed procedures and criteria for declaring a state eligible to become a party to the Compact. Some of the comments raise issues that should be addressed during the evaluation of a specific petition for declaration as a party state. Other comments raise issues that are

appropriately addressed separately from this rulemaking. The Commission is grateful for all of the thoughtful comments that have been offered. The following discussion describes the Commission's evaluation of the comments received.

*General Comments:* Several commenters commended the rulemaking process and the criteria that the Commission established for declaring an eligible state. Various commenters stated that the rule appropriately: (1) Ensures that any new eligible state will be the voluntary host state until all current nuclear power plants within the region are fully decommissioned, (2) guarantees 800,000 cubic feet of disposal capacity for New Jersey and Connecticut generators, (3) permits imports and exports of waste into and out of the region, (4) caps disposal fees at predictable, reasonable levels, (5) requires the return of incentive payments if the regional disposal facility becomes unavailable for any reason, and (6) indemnifies Connecticut and New Jersey for any damages liability. The Commission appreciates the commenters' affirmation of these essential components of the rule.

*Specific Comment No. 1:* Several commenters raised questions about the methodology that would be employed under § 1800.13(d) to determine 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. One commenter suggested that the Commission should establish explicit criteria under Compact Article V.f. to be used in determining these baseline fees. The commenter proposed the following criteria: (a) Fees should be fair and equitable among various classes of generators and should bear some reasonable relationship to the cost of disposal; (b) fees should be simple and easy to calculate; (c) fees should be competitive and should reflect market-based conditions; and (d) fees should generate adequate revenues to assure an economically viable disposal facility.

The Commission agrees with the commenters on the importance of determining the maximum disposal fee and generally agrees with the principles suggested as guidelines for determining those fees under the rule. The Commission does not believe it is necessary at this time, however, to establish any further explicit criteria for setting the maximum disposal fee to which a petitioning state must agree. The rule establishes the fees paid in the later part of calendar year 1999 as the basis for the prospective uniform

maximum fee schedule. That rate presumptively represents a market-based rate because it is the rate that generators were willing to pay in 1999 for disposal of waste at the Barnwell facility. Any more specific criteria for determining the fees may unnecessarily limit a new party state's ability to devise an acceptable maximum waste disposal fee schedule.

The Commission will apply this rule to evaluate any petition by a state seeking to be declared eligible for Compact membership. It will be up to the petitioning state to demonstrate that the maximum disposal rate schedule will be determined fairly and equitably based on the rates that Connecticut and New Jersey generators paid in 1999. The Commission will consider the petitioning state's actual determination of disposal rates before acting on the petition to ensure that the process used was acceptable, and, before accepting the petition, the Commission may impose conditions specifying disposal rates. In light of these procedures, the Commission sees no need to modify the rule.

*Specific Comment No. 2:* Several commenters asked the Commission to identify which index will be used to determine the inflation factor or the process that will be used to select the appropriate index. The rule in § 1800.13(d) deliberately did not specify a specific inflation index, but stated that it must be acceptable to the Commission. With input from generators and the existing states, the Commission has considered use of a variety of indices, including the Producer Price Index, the Employment Cost Index, the Consumer Price Index, and the Gross Domestic Product deflator. The Commission believes that an appropriate index within the Producer Price indices will probably be acceptable, but the Commission will evaluate the proposed index in any petition to determine whether it is finally acceptable. No change in the rule is necessary.

*Specific Comment No. 3:* Two commenters suggested that the rule in § 1800.13(h) was not clear because it did not specify what would happen if the regional disposal facility ceases to be available on December 31 in the years 2001, 2003, 2005, or 2008. The commenters suggested that § 1800.13(h) be changed so that the end of each period is "prior to January 1" in the appropriate year. The Commission accepts this change and has incorporated it in the final rule.

*Specific Comment No. 4:* One commenter asked whether, under the rule in § 1800.13(e), the Commission

will continue to obtain all necessary approvals for regional generators to dispose of waste outside the region, whether regional generators will be permitted to ship waste outside the region for purposes of treatment, volume reduction, repackaging, storage, processing or any other reason, and whether repackaged waste or its residue can be shipped directly to the regional disposal facility as regional waste. The Commission affirms that, as it interprets § 1800.13(e), the Commission will continue to obtain appropriate approvals for regional generators to dispose of waste outside the region, regional generators will be permitted to ship waste outside the region for purposes of treatment, volume reduction, repackaging, storage, processing or any other reason, and repackaged waste or its residue will be permitted to be shipped directly to the regional disposal facility as regional waste. No change to the rule is required.

*Specific Comment No. 5:* One commenter asked the Commission to specify how the 800,000 cubic feet of disposal capacity that will be allotted to generators in the existing party states would be divided between Connecticut and New Jersey. As the commenter noted, it currently appears that 800,000 cubic feet of disposal capacity will be sufficient to accommodate both states' projected waste volumes. At this time, the Commission expects that the total disposal capacity available for Connecticut and New Jersey will be divided evenly, with 400,000 cubic feet allotted to each state's generators. Nevertheless, circumstances may change over the next 50 years. Thus, the Commission (or the Commissioners representing Connecticut and New Jersey) may modify this presumptive allocation to meet the needs of the generators in the two states. Any modification to the even division of available disposal capacity between the two states should consider the needs of generators and any comments that the generators in those states may have on the appropriate allocation.

*Conclusions:* After considering all of the comments, the Commission concludes that this final rule, as modified, will further promote health and safety within the region. It will provide a mechanism for the Commission 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).

### Statutory Authority

The Commission has authority to issue this rule under 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.

### List of Subjects in 10 CFR Part 1800

Administrative practice and procedure, Hazardous waste, Radioactive materials.

### Kevin McCarthy,

Chairman, Northeast Interstate Low-Level Radioactive Waste Commission.

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

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

#### PART 1800—DECLARATION OF PARTY STATE ELIGIBILITY FOR NORTHEAST INTERSTATE 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 rules 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 Interstate 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 Interstate Low-Level Radioactive Waste 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 January 1, 2002;

(2) 50% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2002, and prior to January 1, 2004;

(3) 30% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2004, and prior to January 1, 2006;

(4) 20% of the incentive payment if the regional facility becomes unavailable on or after January 1, 2006, and prior to January 1, 2009;

(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 the rules in this part, 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 rules in this part.**

(a) Because of the importance of the conditions for declaration of an eligible state under the Compact, the rules 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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**SMALL BUSINESS ADMINISTRATION**

**13 CFR Part 121**

**Small Business Size Regulations; Size Standards and the North American Industry Classification System**

**AGENCY:** Small Business Administration.

**ACTION:** Final rule.

**SUMMARY:** The Small Business Administration (SBA) is amending its size regulations by establishing a new table of small business size standards for industries as the North American Industry Classification System (NAICS) defines them. These new size standards are effective beginning with Fiscal Year 2001, which starts on October 1, 2000. Small business size standards currently exist for most industries under the Standard Industrial Classification (SIC) system. SBA has determined that NAICS is a better description of industries in the U.S. economy than the SIC system for purposes of establishing size standards.

**DATES:** This rule is effective October 1, 2000.

**FOR FURTHER INFORMATION CONTACT:** Carl Jordan, Office of Size Standards, at (202) 205-6618.

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Under section 3(a)(2) of the Small Business Act, SBA establishes small business definitions, or size standards, by industry category and varies size standards as necessary to reflect industry differences to determine small business eligibility for Federal programs. The current table of size standards uses SIC industry descriptions as the basis for the size standards. Because NAICS replaced the SIC system for use by Federal agencies in collecting economic data, we reviewed NAICS to determine whether we should also use the NAICS industry descriptions to establish small business size standards. Based on that review, we proposed in the October 22, 1999, **Federal Register** (64 FR 57187-57286) to adopt a new table of small business size standards for industries as they are described in NAICS, effective October 1, 2000.