The Texas Low-Level Radioactive Waste Disposal Compact Commission ("Commission") proposes the adoption of a new rule, Rule 675.2 to be captioned "Exportation and Importation of Waste," to be contained in Chapter 675, Part 21, Title 31, Texas Administrative Code, governing export and import of low-level radioactive waste and fees associated with those activities.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

Entry into the Texas Low-Level Radioactive Waste Disposal Compact was ratified by an Act of the Texas Legislature and signed into law by Governor Ann Richards in 1993. The initial party states were Texas, Maine and Vermont. Texas is the “host state” in that it is the state that will host the disposal facility to accept low-level radioactive waste for management and disposal in accordance with the terms of the compact.

With the passage of Public Law 105-236, “Texas Low-Level Radioactive Waste Disposal Compact Consent Act,” (“Compact”) and signing into law by President Clinton in 1998, the United States federal government allowed the Commission to come into existence.

Subsequent to U.S. ratification, Maine withdrew from the Compact.
As an instrumentality of the party states, the purpose of the Compact is to provide a framework for a cooperative effort to limit the number of facilities needed to effectively, efficiently, and economically manage low-level radioactive waste and to encourage the reduction of the generation thereof. A further purpose is to cooperate among the party states in the protection of the health, safety, and welfare of their citizens, and to distribute the costs, benefits, and obligations among the party states; all in accordance with the terms of the compact.

In November 2008, Texas Governor Rick Perry named the six Texas members of the Commission. The State of Vermont also named two Commissioners with the last Commissioner being named in March 2009. Subsequently, one Commissioner from Vermont was replaced in November 2009. An alternate Commissioner for Vermont was also appointed. The Commission held an inaugural organizational meeting on February 13, 2009.

Under the terms of § 3.03 of the Compact, the Commission is a legal entity, separate and distinct from the party states. In enforcing that position, the Compact stipulates, “the liabilities of the commission shall not be deemed liabilities of the party states.” Functionally, the Commission has been established as an instrumentality of the party states, and is authorized by the U.S. Congress in P.L. 105-236 to manage and restrict interstate commerce in low level radioactive waste management and disposal within the party states, as an exception to the “Dormant” Commerce Clause doctrine of the US. Constitution.

The Commission is required to conduct its business, hold meetings, and maintain public records pursuant to laws of the host state. The Commission may adopt bylaws and rules
necessary to carry out the terms of the Compact. Under the provisions of the Compact, any rules promulgated by the commission must be adopted in accordance with the Administrative Procedure Act (GC §2001).

The text of the Compact is set out in the Texas Health and Safety Code, §403.006. Article VI, §§ 6.01 and 6.02 prohibit export and import of low level radioactive waste, respectively, with exceptions granted in both cases if the requirements of §§ 3.05(7) (governing the exportation of waste) and 3.05(6) (governing the importation of waste), are respectively met. Article IV, § 4.02 also allows exportation if the requirements of § 3.05(7) are met.

Under the terms of § 3.05(7) of the Compact, the Commission may, upon petition, allow an individual generator, a group of generators, or the host state of the compact to export low-level radioactive waste to a low-level radioactive waste disposal facility located outside the party states. The permission to export low-level radioactive waste shall be effective for that period of time and for the specified amount of low-level radioactive waste, and subject to any other term or condition, as is determined by the Commission.

Under the terms of §3.05(6) of the Compact, the Commission may enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, provided that the agreement receives a majority vote of the commission. The Commission may adopt such conditions and restrictions in the agreement as it deems advisable.”
Nothing in the Compact or the Texas Radiation Control Act expressly prohibits the Compact Commission from collecting fees as part either export permits or import agreements.

The Texas Commission on Environmental Quality (“TCEQ”) has the primary authority for setting low level radioactive waste disposal rates under the Texas Radiation Control Act and the Compact (§ 4.04(4)). This authority exists separate and apart from the Compact Commission’s authority to negotiate fees through export and import agreements.

When promulgating its rate-setting rules for establishing disposal rates, TCEQ expressly recognized the difference between its own rate-setting authority and the Compact Commission’s importation authority [34 Tex. Reg. 1688, 1697 (Mar. 6, 2009)]. In preamble discussion accompanying its rate-setting rules, TCEQ noted that “under the terms of the compact, new states can be added as party states to the compact or the Compact Commission can approve a contract for the importation of waste into the host state for disposal.” The TCEQ stated that its rate-setting rules were intended to establish the same maximum disposal rates for both imported low level radioactive waste and for in-Compact low level radioactive waste.

At the same time, TCEQ recognized the potential need for an importation fee, and TCEQ made clear that its rate-setting rules were not intended to interfere with the assessment of an importation fee by the Compact Commission:

“These rules establish procedures the TCEQ will use to determine a disposal rate which may only be a component of a Compact Commission disposal rate under
the provisions of the Compact. The disposal rate subject to these rules does not
include any surcharges, importation fees, or any other fees that may be assessed to
waste from other entities that is contracted for disposal under the provisions of the
Compact.” [34 Tex. Reg. 1688, 1697 (Mar. 6, 2009)]

Nothing in the Compact or the Texas Radiation Control Act expressly prohibits the
Compact Commission from collecting export or import fees as part of a an agreement-
setting or permitting process. To the contrary, the Compact specifies that for importation,
“the Commission may adopt such conditions and restrictions in the agreement as it deems
advisable,” [§3.05(6)], and for exportation, “The permission to export low-level
radioactive waste shall be subject to any other term or condition, as is determined by the
commission” [§3.05(7)].

The Commission’s levying of fees as part of import and export policies is consistent with
the Compact itself as well as TCEQ’s past interpretation of the relationship between the
Compact Commission’s importation authority and TCEQ’s rate-setting authority. The
TCEQ has not espoused a position on exportation given that (1) any fees it may set only
apply to waste disposed of within the host state, and (2) control over the exportation of
waste from the Compact region falls solely to the Commission.

Given that the party states have entered into the Compact with the expressed intent of
managing and restricting interstate commerce in the area of low-level radioactive waste
on a regional basis, discouraging export through the imposition of fees and only allowing
limited importation only at a premium is entirely in keeping with the entire premise of the
Compact. Further, the practice of imposing fees on both import and export of low level
waste into and out of U.S. compacts formed under the authority of the Low Level Waste Policy Act of 1980 (P.L. 96-573) is a long-established practice throughout the country.

The Commission may evaluate export and import petitions with respect to issues such as, but not limited to:

- the volume and type of waste to be exported or imported,
- the proposed time period for which export or import is proposed to occur,
- the economic impacts to the host county, the host state, the compact facility operator and the petitioner,
- the ability of the proposed waste facility (Compact facility for import and non-Compact facility for export) to accept the proposed waste under its waste acceptance criteria (which addresses the environment, safety and health aspects of the proposed activity), and
- the policy implications of exporting or importing waste.

The Commission anticipates that it will incur expenses in the evaluation and processing of any export or import petition. To ensure that initial costs of evaluation are recovered, whether or not the petition may be approved, the Commission requires a non-refundable petition fee of $500 that must be submitted before any action will be taken on the petition. This fee recovers the initial (estimated) administrative, legal, and operational costs and is paid regardless of whether or not a petition is granted. If the evaluation of an individual petition exceeds the estimated cost represented by the petition fee, the
Commission reserves the right to recoup those fees through the terms of any subsequent permit, contractual agreement, or denial of petition.

Prior to the initiation of facility operations, only proposed import agreements for management and export petitions will be received and processed; and given that only export (and not disposal at the Compact Facility) may occur prior to facility operations, only the non-refundable export petition fee will be in effect until such time that the Compact Facility begins receiving waste. After the Compact Facility becomes operational, both the petition fees and per unit export permit and import agreement fees will be in effect.

A petitioner may contest any subsequent permit fee by requesting a public hearing before the Commission within 30 days of the assessment of the fee.

A new rule, §675.2 Exportation and Importation of Waste is proposed to set out the procedures and criteria by which such petitions for export and imports may be considered and granted or denied by the Commission and by which permits for export and import agreements may be granted. The rule sets and assesses fees associated with evaluating and processing the export and import petitions and the granting of export and import permits.

SECTION-BY-SECTION DISCUSSION

§ 675.2(a) Exportation of Waste by a Compact Generator to a Non-Party State for Disposal
Proposed §675.21(a) prohibits exportation of low-level radioactive waste from the Compact unless a person proposing to export has filed a written export petition with the Commission and the Commission has approved the export petition and issued an export permit in accordance with these rules.

Proposed §675.21(b) requires that a generator or group of generators proposing to export low-level radioactive waste to a low level radioactive waste disposal facility outside the party states to petition the Commission for an export permit.

Proposed §675.21(c) states that the form of the petition shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed §675.21(d) assesses and sets non-refundable fees that must accompany the petition form before any action will be taken by the Commission, sets forth procedures for setting conditions and restrictions upon granting the export permit to include cost recovery of actual expenses of the Commission in evaluating and processing the petition, and provides an appeals process for the amount of the fee that may be assessed.

Proposed §675.21(e) requires a petitioner to file an export petition by certified mail with the Commission prior to the date of export of waste. Likewise, the Compact facility operator shall deliver to the petitioner any comments submitted to the Commission at the time of filing. Any comments on the petition shall be filed with the Commission within 20 days after the petition has been received by the Commission. The Commission shall distribute the export petition and comments received on the petition to the Commissioners, the petitioner and the Compact facility operator.
Proposed §675.21(f) requires the Commission to meet promptly, but no sooner than 90 days nor later than 120 days after the petition was filed to consider the export petition. The factors to be utilized in consideration of the petition are also provided.

Proposed §675.21(g) lists the actions the Commission may take on an export petition and provides for the imposition of any terms or conditions on the export permit.

Proposed §675.21(h) states that the Commission may impose any terms or conditions on the export permit reasonably related to furthering the policy and purpose of the Compact and the Commission's Rules.

Proposed §675.21(i) requires an export permit to be issued for a term certain, and further provides for amendment, revocation, or renewal of the permit. This section also requires the permit holder to file with the Commission an export report describing the disposal of waste occurring during the preceding calendar year. Finally, this section also addresses export permit fees.

Proposed §675.21(j) establishes that nothing in the rule shall limit the authority of the Commission, nor shall the rule prohibit the storage or management of low-level radioactive waste by a generator.

Proposed §675.21(k) states the export petition shall be on a form promulgated by the Commission and made available to the public.

Proposed §675.21(l) states that the definitions in this rule shall have the same meaning ascribed to them in the Compact.
§ 675.22 Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

Proposed 675.22(a) requires party state generators to notify the Commission when waste is shipped to a non-Party State facility for the purpose of management or processing and ultimate return to Party States for management by the generator or disposal at the Compact Facility.

Proposed 675.22(b) requires party state generators to notify the Commission when waste is returned to the generator for management or upon receipt at the Compact Facility for disposal and the time requirement for making such notifications, and prohibits generators from exporting waste for management and return to the party states in such a manner as to cause an increase in total radioactivity in that waste.

675.23 Importation of Waste for Management or Disposal by a Non-Compact Generator

Proposed §675.23(a) disallows the consideration of import petitions for disposal prior to the Commission declaring the Compact Facility to be operational and ready to receive waste and requires the Compact Facility to provide the Commission with a recommended waste disposal volume to be used by importing parties that the Compact Facility certifies will not Party State generator disposal capacity.

Proposed §675.23(b) prohibits any person from entering into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, unless the Commission has issued a permit allowing the importation of that waste pursuant to this Rule.
Proposed §675.23(c) prohibits importation of low-level radioactive waste from the Compact unless a person proposing to import has filed a written, proposed import agreement with the Commission and the Commission has approved the import petition and issued an import permit in accordance with these rules.

Proposed §675.23(d) states that the form of the agreement shall be on a form promulgated by the Commission and made available to the generators and the public.

Proposed §675.23(e) assesses and sets non-refundable fees that must accompany the proposed agreement form before any action will be taken by the Commission, sets forth procedures for setting conditions and restrictions upon granting the import agreement to include cost recovery of actual expenses of the Commission in evaluating and processing the proposed agreement, and provides an appeals process for the amount of the fee that may be assessed.

Proposed §675.23(f) requires a petitioner to file a proposed agreement by certified mail with the Commission prior to the date of import of waste. Likewise, the Compact facility operator shall deliver to the petitioner any comments submitted to the Commission at the time of filing. Any comments on the petition shall be filed with the Commission within 20 days after the petition has been received by the Commission. The Commission shall distribute the proposed import agreement and comments received on the proposed agreement to the Commissioners, the petitioner and the Compact facility operator.

Proposed §675.23(g) requires the Commission to meet promptly, but no sooner than 90 days nor later than 120 days after the petition was filed to consider the proposed import
agreement. The factors to be utilized in consideration of the proposed agreement are also provided.

Proposed §675.23(h) lists the actions the Commission may take on an import petition and provides for the imposition of any terms or conditions on the import permit.

Proposed §675.23(i) states that the Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

Proposed §675.23(j) requires an import agreement to be issued for a term certain, and further provides for amendment, revocation, or renewal of the agreement. This section also requires the agreement holder to file with the Commission an import report describing the disposal of waste occurring during the preceding calendar year. Finally, this section addresses import fees.

Proposed §675.23(k) requires the Compact Facility operator to file quarterly reports with the Commission and describes the form and content of each report.

Proposed §675.23(l) establishes that nothing in the rule shall limit the authority of the Commission, nor shall the rule prohibit the storage or management of low-level radioactive waste by a generator.

Proposed §675.23(m) states the import agreement shall be on a form promulgated by the Commission and made available to the public.

Proposed §675.23(n) states that the definitions in this rule shall have the same meaning ascribed to them in the Compact.
FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

The Commission has determined that there will be the following fiscal implications to state and local governments as a result of the establishment, administration or enforcement of the proposed rules.

EXPORT

LOCAL PUBLIC IMPACT TO HOST COUNTY AND PUBLIC AT LARGE

Wastes exported from Texas and not disposed in the compact facility will have a negative fiscal effect on local government of the host county and the public at large. Texas Health and Safety Code Sec. 401.244. HOST COUNTY PUBLIC PROJECTS requires the compact waste disposal facility license holder to transfer each quarter to the commissioners court of the host county five percent of the gross receipts from compact waste received at the compact waste disposal facility. The commissioner’s court of the host county may spend the money for public projects in the host county or disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects. Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large. Gross receipts are defined in Texas Health and Safety Code, Sec. 401.003.

DEFINITIONS. (12-a). The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not yet been established in rule. Additional indirect fiscal impacts may result with decrease in public projects and linkages to other industry sectors.
IMPACT TO STATE OF TEXAS GENERAL REVENUE

Wastes exported from Texas and not disposed in the compact facility will have a negative effect on the State of Texas General Revenue Fund. *Texas Health and Safety Code, Sec. 401.2445. STATE FEE* requires the compact waste disposal facility license holder to transfer to the state general revenue fund each quarter five percent of the gross receipts from compact waste received at the compact waste disposal facility. Gross receipts are defined in Texas Health and Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not yet been established in rule.

IMPACT TO COMPACT WASTE GENERATORS

Wastes exported from Texas and not disposed in the compact facility may have a negative effect on compact generators of waste based on the amount of the disposal fees ultimately charged for disposal in the compact facility when it opens. *Texas Health and Safety Code Sec. 401.245. COMPACT WASTE DISPOSAL FEES* requires a compact waste disposal facility license holder who receives low-level radioactive waste for disposal pursuant to the Texas Low-Level Radioactive Waste Disposal Compact to collect a waste disposal fee to be paid by each person who delivers low-level radioactive waste to the compact waste disposal facility for disposal. The Texas Commission on Environmental Quality shall adopt and periodically revise compact waste disposal fees according to a schedule that is based in part on the projected annual volume of low-level radioactive waste received. A decrease in the volume disposed in the compact facility could increase the cost of disposal, potentially to the point where disposal at the compact facility becomes unaffordable.
facility is no longer economically viable. Disposal fees have not yet been established in rule and the impact on the fee amounts cannot be estimated at this time.

LIMITATIONS ON AMOUNT OF WASTE TO BE DISPOSED

Wastes exported from Texas and not disposed in the compact facility may impact the total amount of waste projected to be disposed in the facility by Texas and by party states, due to the limitation of disposal to 20% of the annual average of low-level radioactive waste projected to be produced in this state from the years 1995 through 2045. Texas Health and Safety Code Sec. 401.248, LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL, limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045; allows this state to charge a fee for the disposal of low-level radioactive waste at the compact waste disposal facility; and requires the other state or states to pay for community assistance projects selected by the host county in an amount not less than $1 million or 10 percent of the amount contributed by the other state or states. A decrease in the amount of waste to be disposed in the facility can have a negative impact on the gross receipts and contributions to the host county as described above.

IMPORT

LOCAL PUBLIC IMPACT TO HOST COUNTY AND PUBLIC AT LARGE

Wastes imported into Texas and disposed in the compact facility will have a positive fiscal effect on local government of the host county and the public at large.
and Safety Code Sec. 401.244. HOST COUNTY PUBLIC PROJECTS requires the compact waste disposal facility license holder to transfer each quarter to the commissioners court of the host county five percent of the gross receipts from compact waste received at the compact waste disposal facility. The commissioners court of the host county may spend the money for public projects in the host county or disburse the money to other local entities or to public nonprofit corporations to be spent for local public projects. Money received from the compact waste disposal facility license holder under this section may be spent only for public projects in the host county that are for the use and benefit of the public at large. Gross receipts are defined in Texas Health and Safety Code, Sec. 401.003. DEFINITIONS. (12-a). The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not yet been established in rule. Additional indirect fiscal impacts may result with increase in public projects and linkages to other industry sectors.

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**LIMITATIONS ON AMOUNT OF WASTE TO BE DISPOSED**

Wastes imported from Texas and disposed in the compact facility may impact the total amount of waste projected to be disposed in the facility by Texas and by party states, due to the limitation of disposal to 20% of the annual average of low-level radioactive waste projected to be produced in this state from the years 1995 through 2045. 

*Texas Health and Safety Code Sec. 401.248. LIMITATIONS ON LOW-LEVEL RADIOACTIVE WASTE DISPOSAL* limits the total volume of all low-level radioactive waste to be disposed of in this state from the other state or states to 20 percent of the annual average of low-level radioactive waste that the governor projects will be produced in this state from the years 1995 through 2045; allows this state to charge a fee for the disposal of low-level...
radioactive waste at the compact waste disposal facility; and requires the other state or
states to pay for community assistance projects selected by the host county in an amount
not less than $1 million or 10 percent of the amount contributed by the other state or
states. An increase in the amount of waste to be disposed in the facility can have a
positive impact on the gross receipts and contributions to the host county as describe in
above.

**PUBLIC BENEFITS; SMALL AND MICRO BUSINESS COSTS**

The Commission has determined that for each of the first five years the proposed rules
are in effect, the public benefit anticipated from the adoption of the proposed rules will be
compliance with state and federal law, clear and concise guidance for affected entities,
and protection of the public health and environment by ensuring proper disposal of low
level radioactive waste at properly licensed facilities. There will be no effect on small or
micro-businesses. There are no anticipated costs to individuals for compliance with these
rules.

**TAKINGS IMPACT ASSESSMENT**

The Commission has determined that this proposal does not restrict or limit an owner’s
right to his or her property that would otherwise exist in the absence of government
action and, therefore, does not constitute a taking under § 2007.43, Texas Government
Code.

**REGULATORY ANALYSIS**

The Commission has determined that this proposal is not a “major environmental rule” as
defined by § 2001.0225, Texas Government Code. “Major environmental rule” is defined
to mean a rule the specific intent of which is to protect the environment or reduce risk to
human health from environmental exposure and that may adversely affect, in a material
way, the economy, a sector of the economy, productivity, competition, jobs, the
environment or the public health and safety of the state or a sector of the state.

**LOCAL EMPLOYMENT IMPACT STATEMENT**

The Commission has reviewed this proposed rulemaking and determined that local
employment could be adversely impacted if a sufficient rate of waste volume disposal is
not maintained at the Compact Facility and rates have to be increased to the point where
the Compact Facility is no longer economically viable. Disposal volume rates are
directly related to the waste disposal policies enacted by the Commission and carried out
by these rules.

**PUBLIC COMMENT**

Written comments may be submitted to Ms. Margaret Henderson, Interim Executive
Director, by mail at 3616 Far West Boulevard, Suite 117, #294, Austin, Texas 78731 or
by electronic mail to margaret.henderson@tlrwdcc.org. The comment period closes 30
days from the day this proposed rule is published in the Texas Register.

**31 TAC §675.2**

**STATUTORY AUTHORITY**

The Rule is being proposed under authority of §3.05(4) of the Texas Low- Level
Radioactive Waste Compact (P.L. 105-236), as set out in §403.006, Texas Health and
Safety Code.
§675.2 Exportation and Importation of Waste

§ 675.21 Exportation of Waste to a Non-Party State for Disposal

§675.21(a) Permit Required - No person shall export any low-level radioactive waste generated within a party state for disposal in a non-party state unless the Commission has issued an export permit allowing the exportation of that waste pursuant to this rule.

§675.21(b) Petition Required - A generator or group of generators proposing to export low-level radioactive waste to a low level radioactive waste disposal facility outside the party states shall submit to the Commission a petition for an export permit.

§675.21(c) Form of Petition - The petition shall be in writing and on a form promulgated by the Commission and posted on the Commission’s web page, or otherwise made readily accessible to generators and to the public.

§675.21(d) Petition Fees –

§675.21(d)(1) Export Petition Application Fee - A non-refundable, application fee of $500 shall accompany the petition. Payments shall be made by check or money order, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until fees are paid in full.

§675.21(d)(2). Export Petition Evaluation Fee. An export petition evaluation fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee.

§675.21(d)(2)(A). The fee will be based on the actual cost of evaluating the petition and may include, but not be limited to, these factors:

(i) staff expenses
(ii) supplies

(iii) direct and indirect expenses

(iv) purchased services of consultants such as engineers, attorneys or consultants, and

(v) other expenses reasonably related to the evaluation.

§675.21(d)(2)(B). This fee will be due and payable within 30 days of issuance of fee bill.

§675.21(d)(2)(C). A petitioner may appeal the assessment of the fee by requesting a public hearing before the Commission within 30 days of the assessment. Such hearing shall be held as soon as practicable after the request, but no longer than 45 days after the request is received by the Commission. The Commission’s order shall be issued within 30 days after the hearing. If required by Commission order, payments are due within 30 days of the final order.

§675.21(e) Notice and Timing of Petition - A petitioner shall file an export petition with the Commission and receive approval by the Commission prior to export. By certified mail, the petitioner shall deliver to the Compact Facility operator a copy of the export petition (and any supplements or amendments thereto) at the time of filing with the Commission. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 20 days after the date the petition was received by the Commission. By certified mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission. The Commission may distribute the export petition and Compact Facility operator’s comments to other interested parties for information and comment. The
Commission shall distribute the export petition and any comments received from the Compact Facility operator, or others, to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.

§675.21(f) Review of Petition - After receiving the export petition and any comments that have been made thereon, the Commission at a meeting held no sooner than 90 days or later than 120 days after the date the export petition was filed with the Commission, shall consider the export petition utilizing the following factors:

§675.21(f)(1). The volume of waste proposed for exportation, the type of waste proposed for exportation, and the time period of the proposed exportation;

§675.21(f)(2) The policy and purpose of the Compact;

§675.21(f)(3). The availability of the Compact Facility for the disposal of the waste involved;

§675.21(f)(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of granting the export permit;

§675.21(f)(5). The economic impact on the petitioner;

§675.21(f)(6). Whether the proposed disposal facility has authorization to import the waste into the region in which the disposal is to take place;

§675.21(f)(7). The existence of unresolved violations pending against the petitioner, the records of the regulatory agency that imposed the notice of violations, and any comments by the regulatory agency;

§675.21(f)(8). Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and
§675.21(f)(9). Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

§675.21(g) Decision by the Commission - The Commission may take one of the following actions on the export petition, in whole or in part: approve the export petition; deny the export petition; or approve the export petition subject to terms and conditions as determined by the Commission and as ultimately documented in the export permit.

§675.21(h) Terms and Conditions - The Commission may impose any terms or conditions on the export permit reasonably related to furthering the policy and purpose of the Compact and the Commission's Rules.

§675.21(i) Permit Duration, Amendment, Revocation, Renewal, Reporting, Assignment and Fees-

§675.21(i)(1) An export permit shall be issued for the term specified in the permit and shall remain in effect for that term unless amended, revoked, or canceled by the Commission, or renewed or extended as authorized by the Commission for an additional period of time.

§675.21(i)(2) The Commission may, through renewal or amendment of an export permit for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the permit. The Commission may provide a reasonable time to allow the existing permit holder to make any changes necessary to comply with the additional requirements or limitations imposed by the Commission.
§675.21(i)(3) Not later than October 31 of each calendar year, a person who holds an export permit shall file with the Commission a report describing the amount and type of waste exported in the period from September 1 to August 31. The form of the report shall be prescribed by the Commission and shall be available on the Commission’s web site, or may be obtained at a location that will be posted on the Commission's website.

§675.21(i)(4) An Export Permit is not assignable or transferable to any other person.

§675.21(i)(5) Export Permit Fees – After the Compact Facility has been declared operational by the Commission, the following schedule of fees will apply to all exported waste:

§675.21(i)(5)(A) Schedule of Fees

<table>
<thead>
<tr>
<th>VOLUME EXPORTED</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-999 cubic feet</td>
<td>[reserved]</td>
</tr>
<tr>
<td>1,000 – 9,999 cubic feet</td>
<td>[reserved]</td>
</tr>
<tr>
<td>10,000 – 99,999 cubic feet</td>
<td>[reserved]</td>
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<tr>
<td>&gt;100,000 cubic feet</td>
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<tr>
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<td>MAXIMUM FEE NOT TO EXCEED [reserved]</td>
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§675.21(i)(5)(B) In addition to the export fees based on volume, an additional surcharge of [reserved] per milliCurie shall be assessed on:
\section*{STAKEHOLDER DRAFT 10 DEC 2009}

\section*{§675.21(i)(5)(B)(i).} Any low-level radioactive waste that exceeds 0.1 times the value in Table 1 or that exceeds any value in Column 1, Table 2 in 10 CFR 61.55; or

\section*{§675.21(i)(5)(B)(ii).} Any low-level radioactive waste shipment that is defined as a highway route controlled quantity as set out in 49 CFR 173.403.

\section*{§675.21(i)(5)(C)} Any amendment to an export permit approved by the Commission that does not result in an increase in the volume of waste or contained radioactivity, and that does not increase the surcharge amounts in § 5(B) above, shall be accompanied by a fee of [reserved]. Amendments that result in an increase in volume or contained radioactivity, or that result in an increase in the surcharge amounts in § 5(B) above, shall, if approved by the Commission, be charged the same fee as a new export application for the increase.

\section*{§675.21(i)(5)(D)} The export permit fee shall be paid prior to the issuance of an export permit by the Commission and shall be made by check or money order payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

\section*{§675.21(j) Agreements to Export -} Nothing in this Rule shall limit the authority of the Commission to enter into agreements with the United States, other regional compact commissions, or individual states for the exportation or management of low-level radioactive waste. Nothing in this Rule shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 C.F.R. § 20.302 (now 10 CFR §20.2002).
§675.21(k) Form of Export Permit - The Export Permit shall be on a form promulgated by the Commission and posted on the Commission's website. The form may be amended by the Commission from time to time.

§675.21(l) Definitions - Terms used in this Rule shall have the meaning ascribed to them in the Compact.

§675.22 Exportation of Waste to a Non-Party State for Management or Processing and Return to the Party States for Management or for Disposal in the Compact Facility.

§675.22(a) Where the sole purpose of the exportation is to manage or process the material for recycling or waste reduction and return it to the party states for disposal in the compact facility, party state generators are not required to obtain an export petition; however,

§675.22(b) The generator shall be required to notify the Commission of the export and shall provide a final status of the waste upon its return. The report shall include the following information:

§675.22(b)(1) The volume, physical form and activity of the waste exported;

§675.22(b)(2) The type of waste management employed at the waste management facility;

§675.22(b)(3) The volume, physical form and activity of the waste returned to the party state generator;

§675.22(b)(4) A certification by the generator that the waste has not been mixed or comingled with low-level radioactive waste that was not generated in the party states; and
§675.22(b)(5) A certification by the generator that the waste has not experience a net increase in radioactivity. Measurements shall be provided by the Generator to document compliance with this requirement.

§675.23 Importation of Waste from a Non-Compact Generator for Management or Disposal

§675.23(a) No petition for an agreement to import low-level radioactive waste for disposal shall be accepted by the Commission:

§675.23(a)(1) At any time prior to the initial date of operation or at any time that the Compact Facility is not operational or not able to receive waste.

§675.23(a)(2) Until the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility, and the Commission, after notice and hearing, has approved that recommendation.

§675.23(b) Permit Required - No person shall enter into an agreement with any person, state, regional body, or group of states for the importation of low-level radioactive waste into the compact for management or disposal, unless the Commission has issued a permit allowing the importation of that waste pursuant to this Rule.

§675.23(c) Agreement Required - No person shall import any low-level radioactive waste for management or disposal that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste pursuant to this rule.
§675.23(d) Form of Agreement - The form of the Agreement shall be promulgated by the Commission and posted on the Commission’s web site, or otherwise made readily accessible to generators and to the public.

§675.23(e) Importation Agreement Fees –

§675.23(e)(1) Import Agreement Application Fee - An non-refundable, application fee of $500 shall accompany the proposed agreement. Payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

§675.23(e)(2) No action shall be taken on any proposed agreement until the requisite fees are paid.

§675.23(e)(3) Import Agreement Evaluation Fee - When the proposed agreement is reviewed and acted upon by the Commission, an additional, nonrefundable fee may be assessed based on the actual time and expenses incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. This fee shall be by check or money order and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

§675.23(e)(4) The fee will be assessed to recover the actual cost of evaluating the proposed agreement and may consider, but not be limited to these factors:

(A) staff expenses

(B) supplies

(C) direct and indirect expenses

(D) purchased services of consultants such as engineers, attorneys or consultants, and
§675.23(e)(5) A petitioner may appeal the importation agreement application fee by requesting a public hearing before the Commission within 30 days of the assessment of the fee. Such hearing shall be held as soon as practicable, but no longer than 45 days after the request. The Commission shall issue an order accepting or rejecting the petitioner’s claims within 30 days after the hearing. If a rejection is so ordered, payments are due within 30 days thereafter.

§675.23(f) Notice and Timing of Agreement - A person shall file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. By certified mail, the petitioner shall deliver to the Compact Facility operator a copy of the import agreement (and any supplements or amendments thereto) at the time of filing with the Commission. Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 20 days after the date the proposed import agreement was received by the Commission. By certified mail, the Compact Facility operator shall deliver to the petitioner a copy of all comments (and any supplements or amendments thereto) submitted to the Commission at the time of filing with the Commission. The Commission may distribute the import agreement and Compact Facility operator’s comments to other interested parties for information and comment. The Commission shall distribute the import agreement and any comments received from the Compact Facility or others to the members of the Commission, and distribute comments from others to the Compact Facility operator and the petitioner.
§675.23(g) Review of Proposed Agreement - After receiving the proposed import agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 90 days or later than 120 days after the date the proposed import agreement was filed with the Commission, shall consider the import agreement utilizing the following factors:

§675.23(g)(1) The volume, type, physical form and activity of waste proposed for importation;

§675.23(g)(2) The policy and purpose of the Compact;

§675.23(g)(3) The availability of the Compact Facility for the disposal of the waste proposed to be imported;

§675.23(g)(4) The economic impact on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

§675.23(g)(5) The economic impact on the party proposing the import agreement;

§675.23(g)(6) Whether the Compact Facility operator has authorization to dispose of the proposed waste;

§675.23(g)(7) The effect on the Compact Facility’s total annual volume recommended for importation;

§675.23(g)(8) The existence of unresolved violations pending against the non person proposing to export the waste;

§675.23(g)(9) Any relevant comments received from the Compact Facility operator, the person proposing to export the waste, the Host County, the Host State, the public; and
§675.23(g)(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

§675.23(h) Decision by the Commission - The Commission may take one of the following actions on the proposed importation agreement, in whole or in part: approve the proposed agreement; deny the proposed agreement; or approve the proposed agreement subject to terms and conditions as determined by the Commission.

§675.23(i) Terms and Conditions - The Commission may impose any terms or conditions on the import agreement reasonably related to furthering the policy and purpose of the Compact.

§675.23(j) Importation Agreement Duration, Amendment, Revocation, Renewal, Reporting, Assignment and Fees

§675.23(j)(1) An importation agreement shall be issued for the term specified in the agreement and shall remain in effect for that term unless amended, revoked, or canceled by the Commission, or renewed or extended as authorized by the Commission for an additional period of time.

§675.23(j)(2) The Commission may, through renewal or amendment of an importation agreement for which prior written notice has been given to the permit holder and the Compact Facility operator, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the existing exporter and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

§675.23(j)(3) An Import Agreement is not assignable or transferable to any other person.
§675.23(j)(4) Import Agreement Fees – After the Compact Facility has been declared operational, the following schedule of fees will apply to all imported waste:

§675.23(j)(4)(A) Schedule of Fees

<table>
<thead>
<tr>
<th>VOLUME IMPORTED</th>
<th>FEE</th>
</tr>
</thead>
<tbody>
<tr>
<td>0-999 cubic feet</td>
<td>[reserved]</td>
</tr>
<tr>
<td>1,000 – 9,999 cubic feet</td>
<td>[reserved]</td>
</tr>
<tr>
<td>10,000 – 99,999 cubic feet</td>
<td>[reserved]</td>
</tr>
<tr>
<td>&gt;100,000 cubic feet</td>
<td>[reserved]</td>
</tr>
</tbody>
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MAXIMUM FEE NOT TO EXCEED [reserved]

§675.23(j)(4)(A)(i) In addition to the fees based on volume, an additional surcharge of [reserved] per milliCurie shall be assessed on any proposal to import:

§675.23(j)(4)(A)(i)(a) the following radioisotopes in any quantity: Tc-99, Np-237, Ra-226, C-14, H-3, I-129, Am-241, Cm-244.

§675.23(j)(4)(A)(i)(b) low-level radioactive waste whose radioactivity exceeds 0.1 times the value in Table 1 or that exceeds any value in Column 1, Table 2 in 10 CFR 61.55; or

§675.23(j)(4)(A)(i)(c) any low-level radioactive waste whose shipment must be defined as a highway route controlled quantity as set out in 49 CFR 173.403.
§675.23(j)(4)(A)(ii) Any amendment to an import agreement approved by the Commission that does not result in an increase in the volume of waste or contained radioactivity, or that does not increase the surcharges in §675.23(j)(4)(A) above, shall be accompanied by a fee of [reserved]. Amendments that result in an increase in volume or contained radioactivity, or that increase the surcharges in §675.23(j)(4)(A) above shall, if approved by the Commission, be charged the same fee as a new import agreement for the increase.

§675.23(j)(4)(A)(iii) The import agreement fee shall be paid prior to the issuance of an import agreement by the Commission and shall be made by check or money order payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

§675.23(k) The Compact Facility operator shall file with the Commission a Quarterly Import Report describing the imported waste that was disposed under the Agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste. Each Quarterly Import Report will provide the manifested volume and activity of each imported class of waste (A, B, and C, or in the case of waste imported for management, Greater Than Class C), the state or other place of origin, and the date(s) of waste disposal, if applicable. The Quarterly Report shall provide this information for the imported waste disposed of during the most recent quarter, as well as the cumulative information for imported waste managed or disposed of in prior quarters under this Agreement. The Compact Facility also shall certify in each Quarterly Import Report that each generator of imported waste was authorized to export that type of waste from the region in which the waste was generated. The forms of the Quarterly Import Report shall be prescribed by the Commission and shall be posted on
the Commission’s website, or may be obtained at a location that will be posted on the
Commission’s website.

§675.23(l) Agreements to Import - Nothing in this Rule shall be construed to prohibit the
storage or management of low-level radioactive waste by a generator, nor its disposal
pursuant to 10 C.F.R. § 20.2002.

§675.23(m) Form of Import Agreement - The import agreement shall be on a form
promulgated by the Commission and posted on the Commission's website. The form may
be amended by the Commission from time to time.

§675.23(n) Definitions - Terms used in this Rule shall have the meaning ascribed to them
in the Compact.