

public beach access, parking, or use fees are consistent with state law.

PUBLIC COMMENT REQUEST

To comment on the proposed rulemaking or its consistency with the CMP goals and policies, please send a written comment to Mr. Walter Talley, Texas Register Liaison, Texas General Land Office, P.O. Box 12873, Austin, TX 78711, facsimile number (512) 475-1859 or email to Walter.Talley@glo.state.tx.us. Written comments must be received no later than thirty (30) days from the date of publication of this proposal.

STATUTORY AUTHORITY

The amendment is proposed under the Texas Natural Resources Code §§61.011, 61.015(b), 61.022 (b), (c), and 61.070, which provide the GLO with the authority to adopt rules to preserve and enhance the public's right to use and have access to and from the public beaches of Texas and to certify that plans to impose or increase public beach access, parking, or use fees are consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, 61.022, and 61.070 are affected by the proposed amendments.

§15.32. *Certification Status of Cameron County Dune Protection and Beach Access Plan.*

(a) Cameron County has submitted to the General Land Office a dune protection and beach access plan which is certified as consistent with state law. The county's plan was adopted on September 20, 1994.

(b) The General Land Office certifies as consistent with state law the amendment to the Cameron County plan that was adopted by the Cameron County Commissioners' Court on August 29, 2006, Order No. 2006O8004. The order amended the plan to eliminate the 440-foot building line and to increase the beach user fees imposed for access to County beach parks and parking on the beach.

(c) The General Land Office certifies as consistent with state law the amendment to the Cameron County plan that was adopted by the Cameron County Commissioners' Court on August 26, 2010 to increase the beach user fees imposed for access to County beach parks and parking on the beach.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 12, 2010.

TRD-201006509

Trace Finley

Deputy Commissioner, Policy and Governmental Affairs

General Land Office

Earliest possible date of adoption: December 26, 2010

For further information, please call: (512) 475-1859



PART 21. TEXAS LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT COMMISSION

CHAPTER 675. PRELIMINARY RULES

SUBCHAPTER B. EXPORTATION AND IMPORTATION OF WASTE

31 TAC §§675.21 - 675.24

The Texas Low Level Radioactive Waste Disposal Compact Commission ("Commission") proposes new Subchapter B, to be captioned "Exportation and Importation of Waste" (including §675.21 to be captioned "Exportation of Waste to a Non-Party State for Disposal," §675.22 to be captioned "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," §675.23 to be captioned "Importation of Waste from a Non-Compact Generator for Management or Disposal," and §675.24 to be captioned "Importation of Waste from a Non-Compact Generator for Management") to be contained in Texas Administrative Code, Title 31, Part 21, Chapter 675, 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 RULES

Entry into the Texas Low Level Radioactive Waste Disposal Compact (the "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," 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 encourage cooperation 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 U.S. Constitution.

A new Subchapter B, "Exportation and Importation of Waste," is proposed to set out the procedures and criteria by which such

petitions for export and import may be considered and granted or denied by the Commission and by which export permits and import agreements may be granted. The sections set and assess fees associated with evaluating and processing export petitions and proposed import agreements. The sections establish export permit fees and import agreement fees.

SECTION BY SECTION DISCUSSION

§675.21. Exportation of Waste by a Compact Generator to a Non-Party State for Disposal.

Proposed new §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 sections.

Proposed new §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 petition the Commission for an export permit.

Proposed new §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 new §675.21(d)(1) establishes and sets a non-refundable Petition Application Fee of \$500 that must accompany the petition form before any action will be taken by the Commission.

Proposed new §675.21(d)(2) establishes an Export Petition Evaluation Fee that will be set out in a fee schedule created by the Commission. The section sets forth the factors that will be considered in creation of the fee schedule. It provides an appeals process for the fee amount that may be assessed.

Proposed new §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. It requires that the proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste to be exported. Likewise, the Compact Facility operator is required to submit any comments on the export petition to the Compact Commission no later than 30 days after the Commission receives the petition. It requires the Commission, upon receipt, to post the export petition to the Commission's web site and to the *Texas Register*. The Commission shall distribute the export petition and comments received on the petition to the Commissioners, the petitioner and the Compact Facility operator.

Proposed new §675.21(f) requires the Commission to meet promptly, but no sooner than 60 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 new §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 new §675.21(h) states that the Commission may impose any terms or conditions on the export permit as determined by the Commission.

Proposed new §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 subsection also requires the permit holder to file with the Commission an export report

describing the disposal of waste occurring during the preceding calendar year.

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

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

Proposed new §675.21(l) provides that the Commission will receive, but not begin to process, export petitions until the Commission determines by affirmative vote that it has adequate resources to examine the permit applications and enforce the terms and conditions of any permit issued. The new subsection authorizes the Commission to continue to approve export permit applications pursuant to its December 11, 2009 resolution until the Commission determines by vote that it has adequate resources to consider the export petitions under the criteria set out in this rule.

Proposed new §675.21(m) states that the definitions in this section 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 new §675.22(a) provides that party state generators are not required to obtain an export permit to export waste for the purpose of managing or processing if the waste will be returned to the party states for disposal in the Compact Facility.

Proposed new §675.22(b) requires party state generators to notify the Commission by report not later than 10 days after the shipment of waste under §675.22(a). New §675.22(b) authorizes generators to submit U.S. Nuclear Regulatory Commission Forms 540 and 541 to satisfy the reporting requirement, along with the information set out in new subsection (b)(2). In the alternative, the new subsection specifies what information must be in the report submitted to the Commission, including waste characteristics and the location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or blended with waste from other generators, and whether the exported waste is treated to encapsulate the waste.

Proposed new §675.22(c) requires the generator, upon return of the waste to the generator, to file a report informing the Commission of the volume, physical form and activity of the waste returned. The new subsection requires the generator and processor to certify that the waste has not been downblended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, not to exceed 1 percent of the total activity.

§675.23. Importation of Waste for Disposal by a Non-Compact Generator.

Proposed new §675.23(a) states that it is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It also provides that it is the policy of the Commission that it will not accept the importation of waste of international origin.

Proposed new §675.23(b) states that disposal capacity is reserved for Texas and Vermont calculated by total, as-disposed volume and total activity, and provides that neither shall be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual host State status report, which includes projections of the facility's anticipated future capacity.

Proposed new §675.23(c) prohibits the granting of an agreement to import unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certified that the disposal of imported waste will not reduce capacity for Party State-generated waste based on the currently licensed volume and activity. It states that the recommendation shall become final after Commission approval and that the approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

Proposed new §675.23(d) prohibits any person from importing any low-level radioactive waste for 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 these sections; provides that violation of new subsection (d) may result in the Commission prohibiting the violator from disposing of waste in the Compact Facility or imposition of penalty surcharges on the shipments to the facility.

Proposed new §675.23(e) 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 new §675.23(f) assesses and sets a non-refundable Import Agreement Application fee that must accompany the proposed agreement form before any action will be taken by the Commission. New subsection (f)(3) establishes the Import Agreement Evaluation Fee that will be assessed in a fee schedule adopted by the Commission. The new subsection sets out the factors that will be considered by the Commission in creating the new fee schedule. Once assessed, the fee is due whether or not the Commission grants the import agreement.

Proposed new §675.23(g) requires a person to file a proposed import agreement with the Commission and receive approval by the Commission prior to the proposed importation date. It specifies that the proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation. The new subsection (g)(2) - (7) sets out processes by which the Commission will receive; process; provide notice; and receive comments upon proposed import agreements.

Proposed new §675.23(h) requires the Commission to meet promptly, but no sooner than 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed to act upon the proposed import agreement. The new subsection sets out the factors to be utilized in consideration of the proposed import agreement.

Proposed new §675.23(i) 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 new §675.23(j) 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 new §675.23(k) requires an import agreement to be issued for a term certain, and further provides for amendment, revocation, or cancellation of the agreement.

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

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

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

Proposed new §675.23(o) provides that the Commission will receive, but not begin to process, applications for import agreements until the Commission determines by affirmative vote that it has adequate resources to examine the applications and enforce the terms and conditions of any agreements entered.

Proposed new §675.23(p) states that the definitions in this section shall have the same meaning ascribed to them in the Compact.

§675.24. Importation of Waste from a Non-Compact Generator for Management.

Proposed new §675.24(a) states it is the policy of the Commission that it will not accept, for the purpose of management, the importation of low-level radioactive waste of international origin.

Proposed new §675.24(b) states no person shall import any low-level radioactive waste for management that was generated in a non-party state unless the Commission has entered into an agreement for the importation of that waste.

Proposed new §675.24(c) states that a violation of §675.24(b) may result in prohibiting the violator from importing for any purpose low-level radioactive waste into a Compact State or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

Proposed new §675.24(d) states 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.

Proposed new §675.24(e)(1) states a non-refundable, application fee of \$100 shall accompany the proposed agreement, and payments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(e)(2) states no action shall be taken on any proposed agreement until the application fees are paid.

Proposed new §675.24(e)(3) states that prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee, based on a fee schedule as adopted by the Commission, may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. This fee shall be by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(e)(4) states the fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to certain factors.

Proposed new §675.24(e)(5) states the importation for management agreement evaluation fee will be due regardless of whether or not an agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

Proposed new §675.24(f) requires a person to file a proposed importation for management agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

Proposed new §675.24(f)(1) requires the proposed importation for management agreement to be accompanied by a certification by the Compact Disposal Facility that the waste acceptance criteria have been met for the proposed waste importation.

Proposed new §675.24(f)(2) states the applicant shall deliver to the Compact Facility operator by electronic mail and certified U.S. mail a copy of the proposed importation for management agreement at the time of filing with the Commission.

Proposed new §675.24(f)(3) states the proposed importation for management agreement received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month, establishes the date of receipt of proposed agreements, and requires the Commission to post the importation for management agreement to the Commission's web site and to transmit it to the *Texas Register* within 15 days of the date of receipt.

Proposed new §675.24(f)(4) provides that comments on the proposed importation for management agreement may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

Proposed new §675.24(f)(5) requires the Commission to distribute the proposed importation for management agreement and comments received to interested parties for information and comment and to post the importation for management agreement and comments received, and other pertinent information, on the Commission's web site.

Proposed new §675.24(g) establishes the time frame in which the Commission must act upon receipt of the proposed importation for management agreement and any comments thereon.

Proposed new §675.24(g)(1) - (8) sets out the factors to be considered by the Commission in acting upon the proposed agreement.

Proposed new §675.24(h) defines the actions that the Commission may take on the proposed agreement.

Proposed new §675.24(i) states the Commission may impose any terms or conditions on the importation for management agreement reasonably related to furthering the policy and purpose of the Compact.

Proposed new §675.24(j)(1) states an importation for management 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.

Proposed new §675.24(j)(2) defines the conditions under which the Commission may add or delete requirements or limitations to the agreement and provides a reasonable time for the applicant

to make changes to the agreement to satisfy the requirements of the Commission.

Proposed new §675.24(j)(3) states an importation for management agreement is not assignable or transferable to any other person.

Proposed new §675.24(j)(4) provides the Commission may provide for the assessment of fees for an importation for management agreement upon conclusion of a policy analysis of the fees based volume and activity of the imported waste.

Proposed new §675.24(k) states that the form of the importation for management agreement must be promulgated by the Commission, posted on the Commission's website, and must contain at a minimum the criteria contained in subsection (g).

Proposed new §675.24(l) provides that the definitions used in this subchapter shall have the meaning ascribed to them in the Compact and that where time requirements are specified in "days," that shall be in calendar days.

REGULATORY ANALYSIS OF MAJOR ENVIRONMENTAL RULES

The Commission does not find that this is a major environmental rule as defined in §2001.0225(g) of the Texas Administrative Procedure Act ("APA"). The primary objective of the new rules is to create economically viable options for waste disposal for Compact generators. The Texas Commission on Environmental Quality (TCEQ) has the sole authority to license the facility for disposal of radioactive substances. Tex. Health & Safety Code §401.011. The TCEQ currently licenses the quantity, quality, and sources of materials that may be disposed of at the Compact Facility. While protection of the environment and human health are concerns for the Commission, the Commission is charged with determining whether waste may be lawfully imported or exported from the state, not whether such waste may be lawfully disposed of at the site. The proposed new rules require the Commission to consider whether the Compact Facility will be licensed to dispose of the waste prior to granting an import agreement for the waste. The rules proposed to be adopted in new Chapter 675, Subchapter B, set out the procedural requirements for obtaining permits and do not themselves authorize either the exportation or importation of waste.

The Commission is not required to conduct a regulatory analysis under §2001.0225(a) because §2001.0225(a)(1) - (4) does not apply. The Commission is acting pursuant to the express authority of both the state and federal governments, which have both adopted the Compact, to create processes to enter into import agreements and grant export petitions. Tex. Health & Safety Code ch. 403, §3.05(6) - (7), PL 105-236. Such authority is specifically granted under state and federal law. The proposed rules implement, and do not exceed, federal and state laws. Further, the Commission will not adopt the rules solely under the Commission's general powers. The Commission proposes these rules under the specific authority of Compact §3.05(4), (6) and (7), which respectively grant the Commission the authority to adopt rules necessary to carry out its powers and duties under the Compact; approve agreements for importation of waste; and, upon petition, allow generators to export waste out of the Compact. Thus, §2001.0225, by its own terms, is inapplicable to the Commission's exercise of rulemaking authority in the Texas Administrative Code, Title 31, Part 21, Chapter 675, Subchapter B, "Exportation and Importation of Waste."

TAKINGS IMPACT ASSESSMENT

These rules are proposed to create a process for obtaining authorization to export or import low-level radioactive waste from or into the Compact. The rules do not affect the ownership of private real property. 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 §2007.043, Texas Government Code. Currently, there is no right under existing law to export or import radioactive waste from the party states without a permit or authorization granted by the Commission, as currently stated in §§3.05(6), (7), 6.01, 6.02 of the Compact. Texas Health and Safety Code Chapter 403, §§3.05(6) - (7), 6.01-.02; PL 105-236. These rules simply create a mechanism for obtaining the authorization currently required by law.

IMPACT STATEMENT: IMPACT TO STATE OF TEXAS; PUBLIC BENEFIT

Michael Ford, Chairman of the Commission, has determined that for each year of the first five years that the proposed rules are in effect the fees generated by wastes imported into Texas and disposed in the Compact Facility will have a positive effect on the State of Texas General Revenue Fund. As required by statute, the Compact Facility will transfer to the State of Texas General Revenue Fund five percent of the gross receipts per quarter. At the time the Compact Facility becomes operational, there will be no additional cost to the State for administering the rules because the costs will be included in the disposal fee pursuant to §4.04(4) of the Compact. Tex. Health & Safety Code §4.04(4).

Mr. Ford has determined for each year of the first five years that the rules are in effect that permits issued for export of wastes may have a negative effect on the State of Texas General Revenue Fund because gross receipts may decrease if disposal at the Compact Disposal Facility is ultimately reduced or is not offset by importation. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established in rule.

Mr. Ford has further determined that the State will benefit from additional regulatory controls on the flow of waste to and from the State of Texas for both management and disposal.

Mr. Ford has determined that for each year of the first five years that the rule is in effect the public benefit anticipated from the adoption of the proposed sections 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.

IMPACT STATEMENT: LOCAL EMPLOYMENT IMPACT STATEMENT

In general, local employment could be negatively impacted due to export of waste that could be sent to and accepted by the Compact Facility for disposal. While certain types of waste may be classified as "low-level radioactive waste," those wastes may not meet the waste acceptance criteria of the facility. Additionally, there may be certain types of waste that may not be economically disposed at the facility due to the current Compact Facility license conditions. Currently, the facility operator employs 150 positions. Exports may reduce the number of positions the facility employs as business volumes decline or make the disposal facility uneconomical to operate and result in discontinuance of operation. Local employment could be positively impacted if import agreements are issued to allow disposal of

low-level radioactive waste at the Compact Facility to replace exported volumes and/or to provide sufficient operational volumes to create affordable rates for Compact generators. Currently, the facility operator employs 150 positions and will add 75 positions when the site opens for disposal. Additionally, indirect employment may result from the additional direct employment impact. Also, the Compact provisions require the Compact 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 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. The dollar amount of gross receipts cannot be estimated at this time because disposal fees have not been established. However, it is anticipated that the increase in local government revenue resulting from disposal of imported waste would result in additional local employment.

SMALL AND MICRO BUSINESS COST ANALYSIS

Michael Ford, Chairman of the Compact Commission, has determined that there are approximately 2,500 licensed generators of low-level radioactive waste in Texas and Vermont. Of these, approximately 100 are estimated to be small or micro-businesses that would be subject to the provisions of these rules. The Compact Commission estimates the economic impact of the cost of compliance with these rules to these businesses will be associated with accessing their existing inventory records in order to supply information about the radioactive waste for which they are requesting export approval. This information on radioactive materials should be readily available to them for compliance with other radiation control regulations. Submission costs should be minimal for data preparation and submission of a petition. The Commission acknowledges that it is possible that there could be a greater cost associated with disposal in the Compact Facility; however, that impact cannot be determined at this time because the rates for disposal at the Compact Facility have not been set. The Commission does not control the disposal rate set for the facility. The Commission does not have sufficient information to address this issue at this time.

Mr. Ford has determined that, in addition to the application fees identified in the rules, the probable economic costs for persons required to comply with this proposed rule will be a total of approximately 8 hours or fewer labor time to compile and provide the information required by the Commission. It is anticipated, based on the information required by the Commission that an engineering professional (or similar) would likely be required to compile the required information (shown in §675.21(e) and (h)) and submit it to the Commission. Based on estimated labor costs of \$50 to \$100 per hour, depending on the organization and the relationship of the engineering professional to the waste generator (i.e., employee or consultant), the overall cost to persons required to comply with this rule could range from an estimated low of \$450 for small volume waste generators to an estimated high of \$1300 for large volume generators. Additional costs incurred by persons due to delays encountered in waiting for determinations by the Commission are not included in this cost estimate since the proposed rule does not change the requirement for persons seeking export from or import into the Compact to have an Agreement with the Commission prior to any such action taking place. Finally, persons may choose to engage legal counsel or professionally certified personnel in the preparation of information required by the Commission. Such legal or professional endorsements are not required by the proposed rules.

The Commission has designated a reduced fee of \$50 for generators submitting export petitions for 100 or fewer cubic feet of waste to lessen the impact on these generators. Additionally, small generators are unlikely to need to export low-level radioactive waste once the disposal site in the host state of Texas begins operations, estimated to happen in early 2011. Therefore, this fee impact may have limited duration.

The Commission developed the proposed sections according to the provisions of state and federal statutes. Variance from the state and federal requirements would be inconsistent with the compact provisions. Consequently, any variance from such requirements would not be consistent with the state and federal statutes and therefore, no alternative regulatory methods have been considered.

SUBMISSION OF COMMENTS

Written comments may be submitted by mail to TLLRWDCDC at 3616 Far West Blvd., Suite 117, #294, Austin, TX 78731, or by electronic mail to rule.comments@tllrwdcc.org. To be considered, written comments must be received within 30 days of publication of the proposed rule in the *Texas Register*. A public hearing will be held by the Commission during the 30-day comment period and posted as appropriate.

STATUTORY AUTHORITY

New §675.21 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. The proposed rule also would be adopted pursuant to §§3.05(7), 6.01 and 6.03 of the Compact, which authorize the Commission to regulate the exportation of low-level radioactive waste and prohibit unauthorized exportation of waste.

New §675.22 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §3.05(8) of the Compact, which authorizes the Commission to monitor the exportation of waste for the sole purpose of management or processing.

Proposed new §675.23 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Compact Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for disposal and prohibit unauthorized importation of waste.

Proposed new §675.24 is proposed to be adopted under P.L. 105-236 and Texas Health and Safety Code, Chapter 403 (Compact Act §3.05(4)), which grants the Compact Commission rulemaking authority to carry out the terms of the Compact. This proposed rule also would be adopted pursuant to §§3.05(6), 6.02, and 6.03 of the Compact, which authorize the Compact Commission to enter into an agreement for the importation of low-level radioactive waste into the compact for management and prohibit unauthorized importation of waste.

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

(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.

(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.

(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.

(d) Petition Fees--

(1) Export Petition Application Fee--A non-refundable, application fee of \$500 shall accompany the petition, except that for petitioners seeking to export 100 cubic feet or less shall pay an application fee of \$50. Payments shall be made by check, money order or electronic transfer, made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission. No action shall be taken on any petition until the application fee is paid in full.

(2) Export Petition Evaluation Fee. In accordance with a fee schedule adopted by the Commission, an export petition evaluation fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the petition, if the expense exceeds the export petition application fee. This estimated fee will be communicated to the applicant prior to any action by the Commission.

(A) The fee schedule will be based on the estimated 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.

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

(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.

(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. The proposed export petition shall be accompanied by a certification by the disposal facility receiving the waste that the waste acceptance criteria have been met for the proposed waste importation. By electronic 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, and a copy shall also be delivered by Certified mail. Upon receipt, the Commission shall post the export petition to the Commission's web site and to the *Texas Register*. Any comments by the Compact Facility operator on the export petition shall be filed in writing with the Commission no later than 30 days after the date the petition was received by the Commission. By electronic 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, and a copy shall also be delivered by Certified mail. The Commission shall distribute the export petition and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the export petition, comments received and other pertinent information on the Commission's web site. 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.

(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 60 days or later than 120 days after the date the export petition was filed with the Commission, shall act on the export petition utilizing the following factors:

(1) The volume of waste proposed for exportation, the type of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, the time period of the proposed exportation, and the location and name of the facility which will receive the waste for treatment and ultimate disposal;

(2) The policy and purpose of the Compact;

(3) The availability of the Compact Facility for the disposal of the waste involved;

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

(5) The economic impact on the petitioner;

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

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or passed due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility, the petitioner, the Host County, the Host State, or the public; and

(10) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(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.

(h) Terms and Conditions--The Commission may impose any terms or conditions on the export permit as is determined by the Commission.

(i) Permit Duration, Amendment, Revocation, Reporting, and Assignment.

(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.

(2) The Commission may, on its own motion or in response to a petition for amendment from the permit holder 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.

(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. Failure to timely file this report may result in denial of future export petitions.

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

(j) Agreements to Export--Nothing in this subchapter 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 subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, or its disposal pursuant to 10 CFR §20.302 (now 10 CFR §20.2002).

(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.

(l) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for exportation of waste under this section by a compact generator to a non-party state for disposal until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications prior to issuing permits and thereafter to enforce the terms and conditions of such permits as are issued. During the period between the adoption of this rule and the required determination pursuant to §3.02 of the Compact, permits granted pursuant to the resolution adopted by the Commission on December 11, 2009 will continue to be in effect. If, in the judgment of the Commission, circumstances warrant, new permits may be granted under the terms of that same resolution until such time as the Commission makes the required determination under §3.02 of the Compact.

(m) Definitions--Terms used in this subchapter 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.

(a) Where the sole purpose of the exportation is to manage or process the waste 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 permit; however,

(b) The generator shall be required to file a report with the Commission no later than 10 days after the shipment of the waste under Sec. 675.22(a). Reports may be filed by facsimile or e-mail. A generator may satisfy the reporting requirement by timely filing with the Commission Forms 540 and 541 promulgated by the U.S. Nuclear Regulatory Commission, as applicable, with supplemental data indicating the types of waste management employed at the waste management

facility. Alternatively, generator reports shall include the following information:

(1) The volume of waste proposed for exportation, the type, physical and chemical form of waste proposed for exportation, the approximate radioactivity of the waste, the specific radionuclides contained therein, and the location and name of the facility that will receive the waste for treatment;

(2) The location and name of waste processing facility(ies) receiving and processing the waste, the type of waste management employed at the waste management facility, whether the exported waste is mixed or blended with waste from other generators;

(c) Upon return of the waste to the generator:

(1) The generator shall file a report informing the Commission of the volume, physical form and activity of the waste returned to the party state generator; and

(2) The generator and the processor shall certify that the waste has not been downblended or blended, mixed or commingled with low-level radioactive waste that was not generated in the party states, except for waste incidental to processing, and that does not exceed 1 percent of the total activity.

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

(a) It is the policy of the Commission that any savings generated by importation accrue to the benefit of the party states. It is also the policy of the Commission that it will not accept the importation of low-level radioactive waste of international origin.

(b) Disposal capacity is reserved for Texas and Vermont calculated by total estimated, as-disposed volume and total activity, and neither shall be reduced by non-Compact waste. Such disposal capacity shall be established at least every 5 years by a report of the Commission. The Commission's report shall be informed by the annual report by the host State on the status of the facility, including projections of the facility's anticipated future capacity.

(c) No petition for an agreement to import low-level radioactive waste for disposal shall be granted by the Commission unless the Compact Facility operator has provided to the Commission a recommended total annual volume to be imported for disposal to the Compact Facility and certify that the disposal of imported waste will not reduce capacity for Party State-generated waste, based on the currently licensed volume and activity. The recommendation shall become final after Commission approval. The approval shall be based on timely renewal of the Compact Facility License by the licensee, assigns, or successors.

(d) Agreement Required--No person shall import any low-level radioactive waste for 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. Violations of this subsection may result in prohibiting the violator from disposing of low-level radioactive waste in the Compact Facility, or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(e) 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.

(f) Fee for Proposed Importation Agreements.

(1) Import Agreement Application Fee--A non-refundable, application fee of \$500 shall accompany the proposed agreement. Pay-

ments shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Import Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on a fee schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

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

(F) other expenses reasonably related to the evaluation.

(5) This import agreement evaluation fee will be due regardless of whether or not an import agreement is issued and shall be made by check or money order made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(g) 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.

(1) The proposed import agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By electronic 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, and a copy shall also be delivered by Certified mail.

(3) Proposed import agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of proposed import agreements shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the import agreement to the Commission's web site and transmit it to the *Texas Register*.

(4) Any comments by the Compact Facility operator on the import agreement shall be filed in writing with the Commission not later than 30 days after the deemed date of receipt of the proposed import agreement. By electronic 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, and a copy shall also be delivered by Certified mail.

(5) Within 15 days of the date of receipt of the Compact Facility operator comments, the Commission shall post the import agreement to the Commission's web site.

(6) Comments on the proposed import application may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

(7) The Commission shall distribute the import agreement and comments received from the Compact Facility operator, petitioner, and public to other interested parties by mail or email for information and comment and shall post the import agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed 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, the petitioner, and the public.

(h) Review of Proposed Import 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 60 days nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed import agreement was filed with the Commission, shall act upon the import agreement utilizing the following factors:

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

(2) The policy and purpose of the Compact;

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

(4) The economic impact, including both potential benefits and liabilities, on the Host County, the Host State, and the Compact Facility operator of entering into the import agreement;

(5) Whether the Compact Facility operator has or will obtain, prior to importation, authorization from TCEQ to dispose of the proposed waste;

(6) The effect on the Compact Facility's total annual volume recommended for importation;

(7) The existence of unresolved violations pending against the petitioner with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the petitioner has unresolved violations;

(8) Any unresolved violation, complaint, unpaid fee, or past due report that the petitioner has with the Commission;

(9) Any relevant comments received from the Compact Facility operator, compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(10) The authorization of a person to export (if applicable);

(11) The impacts, if any, on the availability of disposal capacity on the Compact Facility to meet the current and future needs of Compact generators; and

(12) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(i) 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; approve the proposed agreement subject to terms and conditions as determined by the Commission; or request additional information needed for a decision.

(j) 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.

(k) Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(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.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder for amendment of an importation agreement for which prior written notice has been given to the agreement 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 agreement holder and the Compact Facility operator to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An import agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(l) The Compact Facility operator shall file with the Commission a Quarterly Import Report, no later than 30 days after the end of each calendar quarter, describing the imported waste that was disposed and stored under the import agreement during the quarter by the Compact Facility, including the physical, radiological and chemical properties of the waste consistent with the identification required by the Compact Waste Facility license. Each Quarterly Import Report will provide the identity of the generator, 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 disposed of in prior quarters under this Agreement. 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.

(m) Agreements to Import--Nothing in this subchapter shall be construed to prohibit the storage or management of low-level radioactive waste by a generator, nor its disposal pursuant to 10 CFR §20.2002.

(n) Form of Import Agreement--The import agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (h) of this section. The form may be amended by the Commission from time to time.

(o) Notwithstanding any other provision of this section, the Commission shall receive but will not begin to process applications for agreements to import waste from a non-compact generator for disposal under this section until such time as the Commission determines by vote taken pursuant to §3.02 of the Compact as compiled at §403.006, Texas Health and Safety Code that it has adequate resources to properly examine applications to enter into agreements prior to entering into such agreements and thereafter to enforce the terms and conditions of such agreements as are entered into.

(p) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

§675.24. Importation of Waste from a Non-Compact Generator for Management.

(a) It is the policy of the Commission that it will not accept for the purpose of management the importation of low-level radioactive waste of international origin.

(b) Agreement Required--No person shall import into a party state any low-level radioactive waste for management that was generated in a non-party state unless the Commission has entered into an importation for management agreement for that waste pursuant to this rule.

(c) Violations of subsection (b) of this section may result in prohibiting the violator from importing for any purpose low-level radioactive waste into a party state or in the imposition of penalty surcharges on shipments to the facility, as determined by the Commission.

(d) Form of the Importation for Management 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.

(e) Fee for Proposed Importation for Management Agreements.

(1) Importation for Management Agreement Application Fee--A non-refundable, application fee of \$100 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.

(2) No action shall be taken on any proposed agreement until the application fees are paid.

(3) Importation for Management Agreement Evaluation Fee--Prior to any action on the proposed agreement by the Commission, an additional, non-refundable fee may be assessed based on the estimated time and expenses to be incurred in evaluating and acting on the proposed agreement, if the expense exceeds the application fee. The estimated fee shall be based on the Importation for Management Agreement Evaluation Fee Schedule as adopted by the Commission. This fee shall be paid by check, money order, or electronic transfer and made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(4) The Importation for Management Agreement Evaluation fee schedule will be based on the estimated cost of evaluating the proposed agreement and may include, but not be limited to these factors:

(A) the complexity of the proposed agreement (e.g., the number of generators, isotopes, waste streams, waste classifications/activities, waste forms, etc.);

(B) staff expenses;

(C) supplies;

(D) direct and indirect expenses;

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

(F) other expenses reasonably related to the evaluation.

(5) The Importation for Management Agreement Evaluation fee will be due regardless of whether an importation for management agreement is issued and shall be made by check or money or-

der made payable to the Texas Low Level Radioactive Waste Disposal Compact Commission.

(f) Notice and Timing of Agreement--A person shall file a proposed importation for management agreement with the Commission and receive approval by the Commission prior to the proposed importation date.

(1) The proposed importation for management agreement shall be accompanied by a certification by the Compact Facility that the waste acceptance criteria have been met for the proposed waste importation.

(2) By both electronic mail and certified U.S. mail, the applicant shall deliver to the Compact Facility operator a copy of the proposed importation for management agreement (and any supplements or amendments thereto) at the time of filing with the Commission.

(3) Proposed importation for management agreements received by the Commission during any calendar month may be processed in aggregate at the beginning of the following calendar month. The date of receipt of the proposed agreement shall be deemed the first business day of the following calendar month. Within 15 days of the date of receipt, the Commission shall post the proposed importation for management agreement to the Commission's web site and transmit it to the Texas Register.

(4) Comments on the proposed importation for management agreement may be submitted by any person, other than the Compact Facility operator, during the 60-day period following the date of posting to the Commission's website.

(5) The Commission shall distribute the proposed importation for management agreement and comments received from the Compact Facility operator, applicant, and public to other interested parties by mail or email for information and comment and shall post the proposed importation for management agreement, comments received and other pertinent information on the Commission's web site. The Commission shall distribute the proposed importation for management 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, the applicant, and the public.

(g) Review of Proposed Importation for Management Agreement--After receiving the proposed importation for management agreement and any comments that have been made thereon, the Commission at a meeting held promptly, but no sooner than 60 days, nor later than 365 days, subject to the financial resources of the Commission, after the date the proposed importation for management agreement was filed with the Commission, shall act upon the proposed importation for management agreement utilizing the following factors:

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

(2) The policy and purpose of the Compact;

(3) Whether the receiving person in one of the party states has or will obtain, prior to importation, authorization from party state authorities to manage the waste;

(4) The existence of unresolved violations pending against the applicant with any other regulatory agency with jurisdiction to regulate radioactive material, and any comments by the regulatory agency with which the applicant has unresolved violations;

(5) Any unresolved violation, complaint, unpaid fee, or past due report that the applicant has with the Commission;

(6) Any relevant comments received from the Compact Facility operator, Compact generators, the person proposing to export the waste, the Host County, the Host State, interested state or federal regulatory agencies, or the public;

(7) The authorization of a person to export (if applicable);
and

(8) Any other factor the Commission deems relevant to carry out the policy and purpose of the Compact.

(h) Decision by the Commission--The Commission may take one of the following actions on the proposed importation for management 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.

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

(j) Management Importation Agreement Duration, Amendment, Revocation, Reporting, Assignment and Fees.

(1) An importation for management 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.

(2) The Commission may, on its own motion or in response to a petition by the agreement holder, add or delete requirements or limitations to the agreement. The Commission may provide a reasonable time to allow the existing importer and the managing person to make the changes necessary to comply with any additional requirements imposed by the Commission.

(3) An importation for management agreement is not assignable or transferable to any other person.

(4) The Commission continues to consider the policy issues related to assessment of fees for the importation of low-level radioactive waste based on volume or activity of the waste. Upon conclusion of consideration of this issue, the Commission may provide for such fees in this section.

(k) Form of Importation for Management Agreement--The agreement shall be on a form promulgated by the Commission, posted on the Commission's website, and shall contain at a minimum the criteria contained in subsection (g) of this section. The form may be amended by the Commission from time to time.

(l) Definitions--Terms used in this subchapter shall have the meaning ascribed to them in the Compact. Where time requirements are specified in "days," that shall be in calendar days.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on November 15, 2010.

TRD-201006533

Michael S. Ford

Commission Chair

Texas Low Level Radioactive Waste Disposal Compact Commission

Earliest possible date of adoption: December 26, 2010

For further information, please call: (512) 820-2930



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 427. TRAINING FACILITY CERTIFICATION

SUBCHAPTER C. TRAINING PROGRAMS FOR ON-SITE AND DISTANCE TRAINING PROVIDERS

37 TAC §427.305

The Texas Commission on Fire Protection (the Commission) proposes amendments to Chapter 427, Training Facility Certification, Subchapter C, Training Programs for On-Site and Distance Training Providers, §427.305, Procedures for Testing Conducted by On-Site and Distance Training Providers. The proposed amendment will allow a student to achieve an average score of 70% on all required periodic tests and a comprehensive final test with a passing score of 70%. The proposed amendment also requires that if a Fire Investigator course is taught in phases then a comprehensive final test be administered and a passing score of 70% must be achieved.

Jake Soteriou, Director of Standards and Certification Division, has determined that for the first five-year period these proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section as amended.

Mr. Soteriou has also determined that for the first five years these proposed amendments are in effect, there will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regulator flexibility analysis is required. The public will benefit from the passage of this section because it will allow a student to average his or her periodic test scores to achieve 70% but requires the student to achieve a passing score of 70% on the final comprehensive test.

Written comments on this proposal may be submitted to Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, 1701 N. Congress, Suite 1-105, Austin, Texas 78701. Written comments must be received no later than 30 days from the date of publication of the proposed amendments in the *Texas Register*.

These amendments are proposed under Texas Government Code, Title 4, Subtitle B, Chapter 419, Subchapter B, Regulating and Assisting Fire Fighters and Fire Departments.

Cross reference to statute: Texas Government Code §419.022 and §419.028.

§427.305. *Procedures for Testing Conducted by On-Site and Distance Training Providers.*

(a) The requirements and provisions in this section apply to procedures for periodic and final testing conducted by training providers. For procedures regarding state examinations for certification Commission examinations that occur after a training program is completed, see Chapter 439 of this title.