The Texas Natural Resource Conservation Commission (commission) proposes the repeal of existing Chapter 325, §325.1, Definitions; §325.2, Certificates for Wastewater Treatment Plant Operators; §325.3, Certificates for Collection System Operators; §325.4, (Effective Beginning September 1, 1991)-Classification of Wastewater Treatment Facilities; §325.5, Applications and Fees; §325.6, Renewal of Operator Certificates; §325.7, Certificates for Wastewater Treatment Facility Operations Companies; §325.8, Terms of Certificates for Wastewater Treatment Facility Operations Companies; §325.9, Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies; §325.10, Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies; §325.11, Sanctions; §325.12, Notice of Hearings; §325.13, Enforcement Hearings; §325.14, Reciprocity; §325.15, Perpetual Certificates of Competency; and §325.16, Nonrenewal of Certificate of Competency Due to Loan Default.

The commission proposes new Chapter 325, Subchapter A, Certification of Public Water System Operators and Public Water System Operations Companies, including §325.1, Date for Compliance; §325.2, Applicability and General Provisions; §325.4, Definitions; §325.6, Administration; §325.7, Processing Applications; §325.8, Classification of Public Water Systems and Certificates Required; §325.10, Qualifications for Public Water System Operators; §325.12, Applications and Examinations; §325.14, Certificates of Competency, Terms, and Fees; §325.16, Reciprocity; §325.18, Renewal of Certificates of Competency; §325.20, Perpetual Certificates; §325.22, Nonrenewal of Certificates of Competency Due to Loan Default; §325.24, Nonrenewal of Certificates of Competency Due to Failure to Pay Child Support; §325.26, Training Approvals; §325.28, Certification of Public Water System

Operations Companies; and §325.30, Enforcement. By June 1, 2001, public water system operators and operations companies will be required to comply with Subchapter A.

The commission proposes new Subchapter B, Certification of Wastewater Operators and Wastewater Operations Companies, including §325.100, Date for Compliance; §325.101, Applicability and General Provisions; §325.102, Definitions; §325.104, Administration; §325.105, Processing Applications; §325.106, Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required; §325.108, Qualifications for Wastewater Treatment Facility and Collection System Operators; §325.110, Applications and Examinations; §325.112, Certificates of Competency, Terms, and Fees; §325.114, Reciprocity; §325.116, Renewal of Certificates of Competency; §325.118, Perpetual Certificates; §325.120, Nonrenewal of Certificate of Competency Due to Loan Default; §325.122, Nonrenewal of Certificate of Competency Due to Failure to Pay Child Support; §325.124, Training Approvals; §325.126, Certification of Wastewater System Operations Companies; and §325.128, Enforcement. By June 1, 2001, wastewater system operators and operations companies will be required to comply with Subchapter B.

The commission proposes new Chapter 325, Subchapter D, Certification of Waterworks Personnel, including §325.301, Applicability; §325.302, General; §325.304, Definitions; §325.306, Administration; §325.308, Processing Applications; §325.310, Qualifications; §325.312, Applications; §325.314, Examinations; §325.316, Certificates; §325.318, Training Approval; §325.320, Reciprocity; and §325.322, Fees. Until June 1, 2001, public water system operators and operations companies will be required to comply with Subchapter D.

The commission also proposes new Subchapter E, Certificates of Competency, including §325.401, Applicability; §325.402, Definitions; §325.404, Processing Applications; §325.406, Certificates for Wastewater Treatment Plant Operators; §325.408, Certificates for Collection System Operators; §325.410, (Effective Beginning September 1, 1991)-Classification of Wastewater Treatment Facilities; §325.412, Applications and Fees; §325.414, Renewal of Operator Certificates; §325.416, Certificates for Wastewater Treatment Facility Operations Companies; §325.418, Terms of Certificates for Wastewater Treatment Facility Operations Companies; §325.420, Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies; §325.422, Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies; §325.424, Sanctions; §325.426, Notice of Hearings; and §325.428, Enforcement Hearings; §325.430, Reciprocity; §325.432, Perpetual Certificates of Competency; and §325.434, Nonrenewal of Certificate of Competency Due to Loan Default. Until June 1, 2001, wastewater system operators and operations companies will be required to comply with Subchapter E.

This action is associated with the commission's notice of intention to review the rules contained in 30 TAC Chapter 290, Subchapters B and C, and Chapter 325, in accordance with Texas Government Code (TGC), §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

The commission proposes the intention to review the rules in Chapter 325, Certificates of Competency, as well as in Chapter 290, Subchapters B and C, Public Drinking Water, as mandated by TGC, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which

require state agencies, every four years, to review and consider for readoption each of their rules that were adopted under the Administrative Procedure Act. A review must include an assessment of whether the reasons for the rules continue to exist.

The commission has conducted a preliminary review of the rules under Chapter 325 and has determined that the reasons for adopting these rules continue to exist. These rules are needed to implement the provisions of Texas Water Code (TWC), §26.0301. The commission invites comments on whether the reasons for the existing rules in Chapter 325 continue to exist.

The commission's review of Chapter 325 has also revealed provisions which require modification to improve program efficiency. The commission concurrently proposes to modify the existing sections of Chapter 325. These changes are proposed as a result of the commission's rule review of Chapter 290, Subchapters B and C, and Chapter 325 and for consistency with the commission's ongoing regulatory reform initiative. The specific changes are noted in this preamble. More specifically, however, the existing provisions in Chapter 325 are proposed to be repealed. The provisions are still needed and are proposed, with changes, to be located in Chapter 325 as new provisions. The provisions of Chapter 290, Subchapters B and C, are also proposed to be repealed and are also proposed for inclusion in new Chapter 325.

EXPLANATION OF PROPOSED RULES

In accordance with the commission's ongoing regulatory reform initiative, new Chapter 325 is proposed to be completely reorganized. Chapter 325 is proposed to clarify the intent of certain requirements, correct references, establish consistency with other occupational licensing rules, and improve overall readability, thereby making the rules easier to read and reference. The proposed requirements were developed with the advice from stakeholders in the regulated community, the commission's Advisory Committee for Water Utility Operator Certification, and internal agency staff members.

This chapter is proposed to provide requirements for water and wastewater operators and operations companies. The proposed chapter provides interim provisions that are very similar to those existing provisions being proposed for repeal from Chapter 290, Subchapters B and C, and from the existing provisions in Chapter 325. The interim, proposed rules will remain in effect until June 1, 2001. The United States Environmental Protection Agency (EPA) has established the water certification standards and has developed federal requirements, effective February 5, 1999 (64 FR 5916), which were issued under the authority of the Safe Drinking Water Act Amendments of 1996, 42 United States Code (USC) §§300f et seq. New Chapter 325 proposes new requirements that are consistent with EPA's new requirements. Water and wastewater operators and operations companies must comply with these new requirements by June 1, 2001.

By proposing these phased-in compliance requirements in new Chapter 325, an extension of time is being created to allow public water systems to hire additional operators, if necessary, and to allow

operators to attend training courses and take the required examinations to become certified and compliant with the new proposed rules.

Proposed Chapter 325, Subchapter A, *Certification of Public Water System Operators and Public Water System Operations Companies,* provides the requirements for the certification of public water system operators and public water system operations companies as required by Texas Health and Safety Code (HSC), §§341.031, 341.033, and 341.034. The subchapter is proposed to be based upon the provisions currently located in Chapter 290, Subchapter B. Until June 1, 2001, public water system certified operators and public water system operations companies will comply with the provisions proposed in Chapter 325, Subchapter D. On June 1, 2001, water operators, water operations companies, and public water systems are required to comply with the rules in proposed Subchapter A. This extension of time is needed to allow some public water systems to hire additional operators, and to allow operators to attend training courses and take the required examinations to become certified and compliant with the new proposed rules. The operators, the companies, and the public water systems should be allowed sufficient time to accomplish these tasks.

Immediately after these rules have been adopted by the commission, the revised certification program will be submitted to EPA for review and approval. The Texas Water Development Board is interested in this submission date, because it is the manager of the state's drinking water state revolving fund. This proposal is primarily for compliance with EPA's requirements, effective February 5, 1999 (64 FR 5916).

The existing provisions of Chapter 325 are proposed to be repealed. Those provisions, with changes, are proposed to become new Chapter 325, Subchapter B, (Certification of Wastewater Operators and Wastewater Operations Companies), which will provide the requirements for certification of wastewater operators and wastewater operations companies as required by TWC, §26.0301.

Much like the water operators and water operations companies, the wastewater operators and wastewater operations companies will also have until June 1, 2001 for compliance with the new proposed requirements. This allows time for wastewater operators, wastewater operations companies, and wastewater facilities to achieve compliance. Wastewater systems may also need the additional time to hire additional operators who must attend training courses and then take examinations to comply with the new rules.

Proposed Chapter 325, Subchapter B, is closely related to the water operator certification program which is required for compliance with EPA's requirements, effective February 5, 1999 (64 FR 5916). The majority of water and wastewater operators hold dual certification and it is in their best interest, as well as the commission's best interest, to have consistent programs.

New Chapter 325, Subchapter D is proposed to be based upon the provisions currently located in existing Chapter 290, Subchapter B. Until June 1, 2001, water operators will comply with the provisions proposed in Chapter 325, Subchapter D. By June 1, 2001, water operators, water operations companies, and public systems are required to comply with the rules in proposed Subchapter A.

New Chapter 325, Subchapter E is proposed to be based upon the provisions currently located in existing Chapter 325. Until June 1, 2001, wastewater operators and wastewater system operations companies will comply with the provisions proposed in Chapter 325, Subchapter E. By June 1, 2001, wastewater operators, wastewater operations companies, and wastewater systems are required to comply with the rules in proposed Subchapter B.

This action is associated with the commission's notice of intention to review the rules contained in Chapters 290, Subchapter B and C, and 325, in accordance with the TGC, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which require state agencies to review and consider for readoption each of their rules every four years.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

HSC, Chapter 341 requires the commission to adopt rules requiring certification of public water system operators. Subchapter A, Public Water System Operators and Public Water System Operations Companies, is proposed to comply with this statutory provision, to comply with EPA's recently effective operator certification requirements and to comply with the required quadrennial review. The proposed water operator certification rules reflect various requirements that are mandated by EPA requirements under the 1996 Safe Drinking Water Act Amendments, §1419.

The education and training for public water system operators in Texas began in 1920 for the purpose of public health protection since there were so many deaths attributed to typhoid fever, cholera, and many other waterborne diseases. A voluntary certification program began in 1934 to continue the efforts in

training the operators. Then, in 1945, legislation was passed in Texas to mandate that public water systems have certified operators; therefore, the state established an operator certification program. The Safe Drinking Water Act Amendments of 1996 charged EPA to develop the operator certification requirements by 1999. Texas, having a strong, excellent certification program, was invited to participate in the development of these requirements. Staff took advantage of this opportunity to provide input, so the outcome of EPA's requirements closely mirrors Texas' program.

Although Texas' certification programs have been in force since 1945, and in many respects are ahead of the EPA requirements, some changes are still necessary to achieve compliance. The major revisions to the current rules include the prohibition of perpetual certification, reduction of certification validity periods to a maximum of three years, and the requirement for all individuals making process control decisions to be certified. Any omission of the EPA's certification requirements in the state's certification program would result in a 20% reduction of the drinking water state revolving fund.

Additionally, a job analysis for surface water treatment operations was conducted to improve the certification program and for program validation purposes. The study identified specific operator training needs closely related to actual job duties. The results of the survey were carefully reviewed by the commission's Advisory Committee for Water Utility Operator Certification (advisory committee) and various recommendations were integrated into the current proposed rules. Of particular concern to the advisory committee, but not considered for rule input at this time, is an additional certification category provision for a D level, a six-month work experience requirement for D license applicants, course prerequisites, and a mandatory hands-on water laboratory training course. After the completion

of the ongoing job analyses of groundwater production and distribution operations, these particular issues will be considered for inclusion in future rulemaking. Some of the operator requirements proposed for the year 2003 are a result of coordination with the commission's staff in the Public Drinking Water Section in order to parallel the EPA's surface water treatment rule requirements.

Historically, Texas recognized that well-trained, certified operators are absolutely necessary to safeguard our drinking water resources. New Chapter 325 is proposed to maintain protection of the drinking water supply by requiring operators to have appropriate experience, training, and continuing education for certification. Statute and rule provisions also allow the state to take enforcement action for inadequate operational practices.

TWC, §26.0301 requires the commission to adopt rules requiring certification of wastewater operators and wastewater operations companies. Chapter 325, Subchapter E is proposed to fulfill this law until June 1, 2001. Subchapter B is proposed to fulfill this law on June 1, 2001 and thereafter. The certification of wastewater operators began as a voluntary program in 1938. In 1945, Texas passed legislation that made the certification of wastewater operators a mandatory state program. Wastewater treatment facilities and collection systems gather, transport, and treat the wastewater from homes and businesses in the community. Wastewater operators have a direct impact on the performance of wastewater treatment facilities and collection systems. The certification of wastewater operators and companies will continue to protect the environment and public health in the State of Texas. This chapter requires that operators have the appropriate training, qualifications, and continuing education to

operate these wastewater systems. It also provides the opportunity for the state to hold these individuals and operations companies accountable for inadequate operational practices.

SECTION BY SECTION ANALYSIS

The following paragraphs describe the proposed repeals and new sections in Chapter 325.

The commission proposes the repeal of existing §§325.1-325.16. However, similar provisions are proposed as the new Chapter 325, Subchapters B and E.

SUBCHAPTER A: CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS AND PUBLIC WATER SYSTEM OPERATIONS COMPANIES

Compliance with the provisions of Chapter 325, Subchapter A is proposed to be required by June 1, 2001.

New §325.1, entitled *Date for Compliance*, is proposed to be added. This proposed section states the date when public water system operators and public water system operations companies must comply with this subchapter.

New §325.2, entitled *Applicability and General Provisions*, is proposed to be added. This section is derived from portions of §290.27, which the commission concurrently proposes to repeal. New §325.2(a) is proposed to state the legal authority for the proposed rules. New §325.2(b) is proposed to state the purpose of the rules for issuing certificates of competency to public water system operators and

certificates of registration to public water system operations companies. New §325.2(c) and (d) are proposed to state that all public water systems must have at least one certified operator with the exception of transient noncommunity systems that do not use surface water or groundwater under the influence of surface water and those systems that purchase water that has received complete treatment. New §325.2(e) is proposed to establish certificates of competency for individuals who operate or assist in the operation of drinking water distribution systems. New §325.2(f) is proposed to require certificates of registration for operations companies who operate public water systems on a contractual basis. New §325.2(g) is proposed to change and replace the designation of certificates from "Grade" to "Class." New §325.2(h) is proposed to state that all Class D certificates issued before June 1, 2001, to non-high school graduates may be renewed in accordance with the provisions of proposed Subchapter A.

New §325.4, entitled *Definitions*, is proposed to be added to describe the definitions applicable to proposed Subchapter A. This section proposes new definitions as well as others derived from §290.28, which are proposed to be repealed. The following terms are proposed to be added: §325.4(1), Certificate of competency; §325.4(2), Certificate of registration; §325.4(3), Chief operator; §325.4(4), Connection; §325.4(7), Operator in responsible charge; §325.4(8), Operator-in-training; §325.4(9), Public water system; §325.4(9)(A), Community water system; §325.4(9)(B), Noncommunity public water system; §325.4(9)(C), Nontransient noncommunity public water system; §325.4(9)(D), Transient noncommunity water system; §325.4(10), Public water system operator; §325.4(10)(A), Surface water system operator; §325.4(10)(B) Groundwater system operator; §325.4(10)(C), Distribution or purchased water system operator; §325.4(11), Public water system operations company; §325.4(12),

Training credits; and §325.4(13), Work experience. The existing §290.28, Definitions for commission and executive director are excluded from the proposed rules because they are defined in 30 TAC Chapter 3.

New §325.6, entitled *Administration,* is proposed to be added to define the responsibilities of the executive director in administering the proposed rules.

New §325.7, entitled *Processing Applications,* is proposed to be added. This section is derived from §290.37, which the commission concurrently proposes to repeal. The section is proposed to describe the procedures and time frames for processing applications and to comply with the requirements of TGC, Chapter 2005. Based on an estimate of the 12 months preceding the date of this rule proposal, the minimum application processing time has been 15 days, the maximum processing time has been 365 days, and the median time has been approximately 45 days. In this rulemaking, the commission proposes that the time frame from the initial receipt of an application to the time the commission responds to the applicant that the application is either complete or requires additional information shall be 45 days. The commission proposes that the time frame from the receipt of a complete application to the time the commission responds to the applicant with notification approving or denying the application is an additional 45 days. The minimum processing time frame of 15 days and the maximum processing time frame of 365 days are the rare exceptions. Generally, staff are able to process initial applications within 30 to 45 days. When the commission receives applications containing deficiencies, it is often incumbent upon the applicant to fulfill additional requirements necessitating additional course work or experience. This can significantly affect processing times. Once the commission receives an

application that is actually complete, processing times vary with the type of application. Under the provisions required after June 1, 2001, the applicant has no longer than four months to respond to the commission's notice of deficiency regarding the initial application. Therefore, the commission's time frames for processing these applications from the point of receipt of initial application to the very final determination have been more specifically delineated.

New §325.8, entitled *Classification of Public Water Systems and Certificates Required*, is proposed to be added and is partially derived from §290.46 and §290.33. Section 290.33 is concurrently proposed to be repealed. The proposed section explains which level of certification is required. New §325.8(a) is proposed to exclude operators of transient noncommunity water systems that purchase water from an acceptable source, groundwater unaffected by surface water, and operators-in-training from certification. New §325.8(b) is proposed to allow the employment of an operator-in-training for a period of up to one year. New §325.8(b)(1) proposes that all duties performed by an operator-in-training must be performed in the presence of a certified operator. New §325.8(b)(2) proposes that all duties performed by an operator-in-training at a surface water treatment plant must be performed in the presence of a Class C or higher certified operator. New §325.8(c) is proposed to require each public water system, except transient noncommunity systems that use purchased water or groundwater unaffected by surface water, to employ or contract with one or more certified operators.

New §325.8(d) is proposed to require that public water systems, including community and nontransient noncommunity systems, be classified and minimally staffed with chief operators holding specific certifications as provided in the table located in subsection (d). New §325.8(e) is proposed to require

each public water system to be operated on a daily basis by the certified chief operator or an operator holding a certificate of equal level or higher. The commission intends to conduct future rulemaking that will amend §290.46(e) to provide a cross-reference to the provisions in Chapter 325, Subchapter A. After June 1, 2001, should any conflict or inconsistency arise between §290.46(e) or (r) and the provisions of Chapter 325, Subchapter A, the provisions of Chapter 325, Subchapter A shall control.

New §325.8(g) is proposed to prohibit the issuance of certification to employees of state or federal agencies having regulatory authority over public water systems. New §325.8(h) is proposed to have the chief operator or operator in charge be present for scheduled agency inspections. New §325.8(i) proposes to require a Class C certificate or higher for persons operating multiple systems when the total number of connections exceed 250. New §325.8(j)(1) proposes that any person who maintains distribution system pressures and performs water disinfection duties, sampling, and tests after repairs or installation of lines must be certified. New §325.8(j)(2) proposes that any non-certified person who performs maintenance, expansion, or repair activities on a public water distribution system must be supervised by an on-site certified public water system operator. New §325.8(k)-(l) proposes to indicate certification requirements for groundwater systems under the influence of surface water as indicated in §290.46(e)(3).

New §325.10, entitled *Qualifications for Public Water System Operators*, is proposed to be added and is derived from §290.30, which the commission concurrently proposes to be repealed. This proposed section provides the experience and training requirements for water operators and adds an additional course requirement for surface water operators. New §325.10(b), including a table, is proposed to

present the education, work experience, examination, and training credit requirements for each class of certification. A high school diploma or GED is proposed as a requirement for all levels of certification. New §325.10(b) also proposes to require, commencing January 1, 2003, 120 hours of training credit, including a management course to obtain surface water operator certification. New §325.10(c)(4) is proposed to require that the acceptable laboratory experience be gained in a lab which is owned by a public waster system. The laboratory analyst must also consult with water plant operators regarding process control decisions on a daily basis. New §325.10(f), including a table, proposes the need for sequential completion of a Surface Water Production I course, and then a Surface Water Production II training course, to obtain surface water operator certification.

New §325.12, entitled *Applications and Examinations*, is proposed to be added. This proposed section is derived from §290.31, which the commission concurrently proposes to repeal. New §325.12(3) proposes that all applications must be completed in full and any deficiencies corrected within four months of notification.

New §325.14, entitled *Certificates of Competency, Terms, and Fees*, is proposed to be added. This proposed section is derived from portions of §290.33 and §290.36, which are proposed to be repealed. New §325.14(b) is proposed to increase the application processing and certification fees by $10 per year and shall limit the certification validity periods of A and B certificates to three years. The D water certificate will be $40 for a two-year period and the A, B, and C certificates will be $60 for three-year terms. New §325.14(c) is also proposed to implement a charge of $10 for a duplicate certificate copy or for any change to the certificate.

New §325.16, entitled *Reciprocity*, is proposed to be added. This proposed section is derived from §290.35, which the commission intends to repeal after June 1, 2001. There are no significant changes to this proposed section.

New §325.18, entitled *Renewal of Certificates of Competency*, is proposed to be added. This section is derived from §290.33(c), which the commission concurrently proposes to repeal. Renewal periods for certificates are proposed to change for Class A and B operators. New §325.18(b) is proposed to prohibit the renewal or recertification of Class D certificates for operators working at groundwater systems with over 250 connections, surface water treatment systems, groundwater systems under the influence of surface water, and for supervisors of distribution systems with over 250 connections. New §325.18(c) is proposed to require that the certified operator submit a completed renewal application and fee no later than 30 days following the expiration date of the certificate. New §325.18(d), including a table, proposes to require an application and processing fee increase of $10 per year of certification, to require Class A and B certificates to be renewed every three years, and to require the completion of 30 hours of training for renewal of Class A and B certificates of competency. The proposed required training hours must be earned before the expiration date of the certificate. New §325.18(e) proposes certification renewal by examination no later than 30 days after the expiration date. An application and fee must be submitted and the examination passed to renew certification. New §325.18(f) is proposed to allow reinstatement of a certificate within one year of the expiration date. An application and fee must be submitted and the examination passed to reinstate certification. New §325.18(g) proposes that recertification is necessary after one year of the certificate expiration date. All current requirements,

including passing the examination must be met in order to recertify. New §325.18(i) is proposed to require specific renewal courses on a case-by-case basis.

New §325.20, entitled *Perpetual Certificates*, is proposed to be added. This section is derived from §290.33(a)(8), which the commission concurrently proposes to repeal. New §325.20, as proposed, eliminates the issuance of perpetual certification. New §325.20 is also proposed to require conversion of existing perpetual certificates to either an active certificate or an honorary certificate. The active certificate will be renewable by the completion of training credits, listed in proposed §325.20(d), or by examination. The holder of an honorary certificate will not be allowed to perform any operational duties in a public water treatment system.

New §325.22, entitled *Nonrenewal of Certificate of Competency Due to Loan Default*, is proposed to be added to comply with Texas Education Code, Chapter 57.

New §325.24, entitled *Nonrenewal of Certificate of Competency Due to Failure to Pay Child Support*, is proposed to be added to comply with Texas Family Code, Chapter 232.

New §325.26, entitled *Training Approvals*, is proposed to be added. This section is derived from §290.34, which the commission concurrently proposes to repeal. New §325.26 is proposed to require approval of all training courses and training providers and to describe the applicability of training credits. New §325.26(f) proposes that training approvals may be rescinded or denied.

New §325.28, entitled *Certification of Public Water System Operations Companies,* is proposed to be added and is partially derived from §290.46(r)(2). New §325.28(a) is proposed to require the certification of all public water system operations companies. New §325.28(b) is proposed to require certification of the operators and chief operators of these companies as required by §325.8. New §325.28(c) is proposed to allow the suspension or revocation of a certificate of registration. New §325.28(d) is proposed to require that an application and an appropriate fee be submitted for obtaining new or renewed operations company certification. The new table in subsection (d) proposes the fee to be based on the number of public water systems that are managed by an operations company. New §325.28(e) proposes a two-year validity period for operations companies certificates. New §325.28(f) is proposed to prohibit the issuance of certification until all requirements have been met. New §325.28(g) proposes that operations companies submit a yearly report to the executive director within one year and 30 days after issuance of renewal of the certificate. New §325.28(h) proposes that the information required under §325.28(g) and the applicable fee be submitted with an application for new or renewal certification. New §325.28(i) proposes that any changes to personnel or the systems that are operated must be reported to the executive director within ten days of the change. New §325.28(j) is proposed to prevent the transfer of operations company's certifications. New §325.28(k) is proposed to nullify certification should the operations company be sold or reorganized under different management. The newly organized company must apply for a new certificate. New §325.28(l) is proposed to require that governmental and quasi-governmental entities, including river authorities, report the information from §325.28(g) on an annual basis.

New §325.30, entitled *Enforcement*, is proposed to be added. This proposed section is partially derived from existing §290.33(e), which the commission concurrently proposes to repeal. New §325.30(a) is proposed to require public water system operators to apply current best management practices in the performance of their duties, and an operator whose negligence results in system violations may incur administrative penalties or other sanctions. New §325.30(b) is proposed to stipulate the penalties for an operator or operations company that violates the rules or falsifies documents. Formal notification of any violation will be issued in writing and delivered by certified mail. New §325.30(c) proposes to identify a reprimand as a warning that further offenses or violations may incur more serious consequences. New §325.30(d) proposes to identify suspension as the temporary loss of operator certification or authorization of an operations company to operate a treatment or distribution system. New §325.30(d)(1) is proposed to state that suspension may extend up to one year. New §325.30(d)(2) is proposed to state that upon completing the suspension penalty period, an examination will not be required to reinstate a certificate. New §325.30(d)(3) is proposed to require operators and operations companies to renew certification while on suspension and upon completing the suspension penalty period, certification will be reinstated. New §325.30(e) proposes to identify revocation as the loss of certification by operators or operations companies. New §325.30(e)(1) is proposed to state that revocation shall not be less than one year and upon a second similar violation, the commission may permanently revoke the certificate. New §325.30(e)(2) is proposed to state that upon completing the revocation period, an operator or operations company may reapply for certification by meeting all requirements. New §325.30(f) proposes to not penalize an operator or operations company for rule violations if the public water system management failed or refused to provide adequate operational funds or violations were caused by faulty system design or construction.

SUBCHAPTER B: CERTIFICATION OF WASTEWATER OPERATORS AND WASTEWATER OPERATIONS COMPANIES

Compliance with the provisions of Chapter 325, Subchapter B is required by June 1, 2001.

New §325.100, entitled *Date for Compliance*, is proposed to be added. This proposed section states the date when wastewater operators and wastewater operations companies must comply with this subchapter.

New §325.101, entitled *Applicability and General Provisions,* is proposed to be added. This proposed section states the legal authority for the proposed rules and clarifies the applicability and general provisions for the certification of wastewater treatment plant operators, wastewater collection system operators, and wastewater operations companies. New §325.101(e) is proposed to state that all Class D and Class I certificates, issued by June 1, 2001, to operators who do not possess a high school diploma or its equivalent, may still be renewed according to the provisions in this proposed subchapter.

New §325.102, entitled *Definitions*, is proposed to be added to describe the definitions applicable to this proposed subchapter. This section is derived from existing §325.1, which is proposed to be repealed. The existing §325.1 definitions of commission and executive director are excluded from the proposed rules because they are defined in Chapter 3. The following terms are proposed to be added to those that were previously defined in §325.1: Certificate of registration, which is the certificate issued to wastewater operations companies; Chief operator; Designated courses; Operator in responsible charge; Operator-in-training; Training credit; and Work experience. New §325.102(11) is proposed to provide

a definition of wastewater disposal permit. New §325.102(13) is proposed to include contract operations of wastewater collection systems in the definition of wastewater system operations company.

New §325.104, entitled *Administration,* is proposed to be added to provide the responsibilities of the executive director in administering the proposed rules.

New §325.105, entitled *Processing Applications,* is proposed to be added. This section is derived from §290.37, which the commission concurrently proposes to repeal. The section is proposed to describe the procedures and time frames for processing applications and to comply with the requirements of TGC, §2005.003. Based on an estimate of the 12 months preceding the date of this rule proposal, the minimum application processing time has been 15 days, the maximum processing time has been 365 days, and the median time has been approximately 45 days. In this rulemaking, the commission proposes that the time frame from the initial receipt of an application to the time the commission responds to the applicant that the application is either complete or requires additional information shall be 45 days. The commission proposes that the time frame from the receipt of a complete application to the time the commission responds to the applicant with notification approving or denying the application is an additional 45 days. The minimum processing time frame of 15 days and the maximum processing time frame of 365 days are the rare exceptions. Generally, staff are able to process initial applications within 30 to 45 days. When the commission receives applications containing deficiencies, it is often incumbent upon the applicant to fulfill additional requirements necessitating additional course work or experience. This can significantly affect processing times. Once the commission receives an application that is actually complete, processing times vary with the type of application. Under the

provisions required after June 1, 2001, the applicant has no longer than four months to respond to the commission's notice of deficiency regarding the initial application. Therefore, the commission's time frames for processing these applications from the point of receipt of initial application to the very final determination have been more specifically delineated.

New §325.106, entitled *Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required*, is proposed to be added. This proposed section is derived from portions of existing §§325.2, 325.3, and 325.4, which are proposed to be repealed. As proposed, new §325.106 does not include the requirements of existing §325.4(f), and the second sentence in existing §325.2(b), because permittees are required by new §325.106(f) to employ or contract with one or more certified treatment facility operators or operations companies. New §325.106(c) is proposed to require certification for operators of remote or mobile sludge processing facilities. New §325.106(l) is proposed to clarify that facilities must be operated on a daily basis by the chief operator or operator with the same or higher level of certificate. New §325.106(n) is proposed to require the chief operator or operator in responsible charge to be present for scheduled agency inspections. New §325.106(p) is proposed to state the classification criteria for Class III collection systems. New §325.106(q) is proposed to require that certificates of competency will not be issued to state or federal employees having regulatory authority over wastewater systems.

New §325.108, entitled *Qualifications for Wastewater Treatment Facility and Collection System Operators*, is proposed to be added. This proposed section is derived from portions of existing §325.2 and §325.3, which are proposed to be repealed. New §325.108(b) is proposed to require a high school

diploma or equivalent for Class D and Class I certificates. New §325.108(b) also proposes the education, experience, and training requirements for the Class III certificate. New §325.108(g) is proposed to require the water utility safety course for Class A and Class B applicants and to list the course requirements for the Class III certificate.

New §325.110, entitled *Applications and Examinations*, is proposed to be added. This proposed section is derived from existing §325.5, which is proposed to be repealed. New §325.110(a)(1) is proposed to require that all statements and qualifications are subject to verification. New §325.110(a)(2) is proposed to state that misrepresentation or falsification of any information will be grounds for rejection of an application or for enforcement action. New §325.110(a)(3) is proposed to extend the time for an applicant to correct application deficiencies from the existing 60 days to a proposed four months. New §325.110(a)(4) is proposed to require an applicant to furnish evidence of training or education, when requested.

New §325.112, entitled *Certificates of Competency, Terms, and Fees*, is proposed to be added. This proposed section is derived from portions of existing §§325.2, 325.3, and 325.5, which are proposed to be repealed. New §325.112(b) proposes the term and fee for the Class III collection certificate. New §325.112(c) is proposed to require a $10 replacement fee for a duplicate certificate or replacement of a lost or damaged certificate.

New §325.114, entitled *Reciprocity*, is proposed to be added. This proposed section is derived from existing §325.14, which is proposed to be repealed. There are no significant changes to this section.

New §325.116, entitled *Renewal of Certificates of Competency,* is proposed to be added. This proposed section is derived from existing §325.6, which is proposed to be repealed. Additionally, new §325.116(b) is proposed to clarify that Class D certificates are not eligible for recertification for operators of any activated sludge facilities or any trickling filter or RBC facilities with a permitted daily average flow of 100,000 gallons per day or greater. New §325.116(d) is proposed to require the provisions for renewing a certificate of competency by obtaining training credits and clarifies that training credits used for renewal must be earned after the issuance date and before the expiration date. New §325.116(d) is proposed to state the Class III certificate renewal term, training credits required to renew, and renewal fee. New §325.116(d) also is proposed to reduce the term of Class A and B certificates to three years, reduce the renewal training credits required for Class A and Class B operators to 30 hours, and reduce the Class A and Class B renewal fee to $60. New §325.116(f) is proposed to state the requirements for reinstating a certificate within one year of the expiration date. New §325.116(g) is proposed to require that operators recertify after a certificate has been expired over one year. To recertify, an operator must meet all current requirements and pass an examination. New §325.116(i) is proposed to give the executive director the ability to require specific courses for renewal, on a case-by-case basis. New §325.116(j) is proposed to clarify that a certificate is no longer valid after the expiration date.

New §325.118, entitled *Perpetual Certificates*, is proposed to be added. This proposed section is derived from existing §325.15, which is proposed to be repealed. New §325.118 as proposed, will no longer provide perpetual certification after 30 years of continuous certification. New §325.118 is also proposed to require conversion of existing perpetual certificates, within a specific time frame, to either

an active certificate or an honorary certificate. The converted active certificate will be renewable by completion of training credits which are listed in proposed §325.118(d), or by examination. An application for renewal will be required at the time of renewal. The holder of an honorary certificate will not be allowed to perform any operational duties in a wastewater system.

New §325.120, entitled *Nonrenewal of Certificate of Competency Due to Loan Default*, is proposed to be added. This section is derived from existing §325.16, which is proposed to be repealed. There are no significant changes to this section.

New §325.122, entitled *Nonrenewal of Certificate of Competency Due to Failure to Pay Child Support*, is proposed to be added, to comply with Texas Family Code, Chapter 232.

New §325.124, entitled *Training Approvals*, is proposed to be added. This proposed section is derived from existing §325.2(k) and §325.3(k), which are proposed to be repealed. New §325.124 is proposed to require approval of all training courses and training providers, and to describe the applicability of training credits. New §325.124 also proposes that training approvals may be rescinded or denied.

New §325.126, entitled *Certification of Wastewater System Operations Companies*, is proposed to be added. This proposed section is derived from existing §§325.7, 325.8, and 325.9, which are proposed to be repealed. New §325.126(f) is proposed to require that certificates of registration will not be issued until all requirements are met. New §325.126(i) is proposed to require that companies amend reports and applications within ten days of any change in personnel or in the systems operated. New

§325.126(l) is proposed to require a yearly report from governmental entities, or quasi-governmental entities, that contract to operate wastewater systems. This report will contain the information listed in proposed §325.126(g).

New §325.128, entitled *Enforcement*, is proposed to be added. This section is derived from existing §325.11, which is proposed to be repealed. The probation sanction in existing §325.11(a)(2) is excluded from the proposed rules. New §325.128(b) is proposed to give the executive director the ability to require additional training, on a case-by-case basis. New §325.128(e)(1) is proposed to provide that a second, similar violation may result in permanent revocation of the certificate.

The provisions of §§325.10, 325.12, and 325.13 are not proposed to be included in this rulemaking because rules governing hearings are found in 30 TAC Chapters 39, 55, and 80.

SUBCHAPTER D: CERTIFICATION OF WATERWORKS PERSONNEL

Compliance with the provisions of Chapter 325, Subchapter D is proposed to be required until June 1, 2001. At that time, the provisions will be superceded by proposed Chapter 325, Subchapter A. It is the intention of the commission to repeal Subchapter D after June 1, 2001.

Proposed Chapter 325, Subchapter D is derived from existing Chapter 290, Subchapters B and C, which are concurrently proposed to be repealed. The provisions proposed in Subchapter D are

substantially similar to those in Chapter 290, Subchapters B and C. However, additional changes are proposed which are described in the following paragraphs.

New §325.301, entitled *Applicability*, has been added to clarify that compliance with the provisions of Chapter 325, Subchapter D is required until June 1, 2001. At that time, compliance with Subchapter A will be required.

Proposed new §325.304, entitled *Definitions*, is derived from existing §290.28, which is concurrently proposed to be repealed. The new section no longer provides definitions for commission or for executive director, because those terms are already defined in Chapter 3.

Proposed new §325.308, entitled *Processing Applications*, is derived from existing Chapter 290, Subchapter C, which is concurrently proposed to be repealed. The proposed rule fulfills the requirements of TGC, §2005.003. Based on an estimate of the 12 months preceding the date of this rule proposal, the minimum application processing time has been 15 days, the maximum processing time has been 365 days, and the median time has been approximately 45 days. In this rulemaking, the commission proposes that the time frame from the initial receipt of an application to the time the commission responds to the applicant that the application is either complete or requires additional information shall be 45 days. The commission proposes that the time frame from the receipt of a complete application to the time the commission responds to the applicant with notification approving or denying the application is an additional 45 days. The minimum processing time frame of 15 days and the maximum processing time frame of 365 days are the rare exceptions. Generally, staff are able to

process initial applications within 30 to 45 days. When the commission receives applications containing deficiencies, it is often incumbent upon the applicant to fulfill additional requirements necessitating additional course work or experience. This can significantly affect processing times. Once the commission receives an application that is actually complete, processing times vary with the type of application. Under the provisions required after June 1, 2001, the applicant has no longer than four months to respond to the commission's notice of deficiency regarding the initial application. Therefore, the commission's time frames for processing these applications from the point of receipt of initial application to the very final determination have been more specifically delineated.

Proposed new §325.316, entitled *Certificates*, is derived from existing §290.33, which is concurrently proposed to be repealed. However, as proposed, new §325.316 clarifies the requirements for the levels of certificates and clarifies that exchange of operators' certificates is no longer allowed. The modifications are necessary for compatibility with EPA's water certification standards established as federal requirements, effective February 5, 1999 (64 FR 5916), which were issued under the authority of the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et seq.

Proposed new §325.318, entitled *Training Approval*, is derived from existing §290.34, which is concurrently proposed to be repealed. Proposed new §325.318 amends text to clarify that the training credit provisions are applicable to several professional and trade associations rather than just the Texas Water Utilities Association.

SUBCHAPTER E: CERTIFICATES OF COMPETENCY

Compliance with the provisions of Chapter 325, Subchapter E is proposed to be required until June 1, 2001. At that time, the provisions will be superceded by proposed Chapter 325, Subchapter B. It is the intention of the commission to repeal Subchapter E after June 1, 2001.

Proposed Chapter 325, Subchapter E is derived from existing Chapter 325 and from §290.37, which is concurrently proposed to be repealed. The provisions proposed in Subchapter E are substantially similar to those in existing Chapter 325. However, additional changes are proposed which are described in the paragraphs which follow. For example, cross-references are corrected throughout the subchapter.

New §325.401 has been added to clarify that compliance with the provisions of Chapter 325, Subchapter E is required until June 1, 2001. At that time, compliance with Subchapter B will be required.

Proposed new §325.402, entitled *Definitions*, is derived from existing §325.1, which is concurrently proposed to be repealed. The new section no longer provides definitions for commission or for executive director, because those terms are already defined in Chapter 3. This section is proposed to update references from the Texas Water Commission to the Texas Natural Resource Conservation Commission (TNRCC) in accordance with the commission's regulatory reform initiative.

Proposed new §325.404, entitled *Processing Applications*, is derived from existing Chapter 290, Subchapter C, which is concurrently proposed to be repealed. The proposed rule fulfills the

requirements of TGC, §2005.003. Based on an estimate of the 12 months preceding the date of this rule proposal, the minimum application processing time has been 15 days, the maximum processing time has been 365 days, and the median time has been approximately 45 days. In this rulemaking, the commission proposes that the time frame from the initial receipt of an application to the time the commission responds to the applicant that the application is either complete or requires additional information shall be 45 days. The commission proposes that the time frame from the receipt of a complete application to the time the commission responds to the applicant with notification approving or denying the application is an additional 45 days. The minimum processing time frame of 15 days and the maximum processing time frame of 365 days are the rare exceptions. Generally, staff are able to process initial applications within 30 to 45 days. When the commission receives applications containing deficiencies, it is often incumbent upon the applicant to fulfill additional requirements necessitating additional course work or experience. This can significantly affect processing times. Once the commission receives an application that is actually complete, processing times vary with the type of application. Under the provisions required after June 1, 2001, the applicant has no longer than four months to respond to the commission's notice of deficiency regarding the initial application. Therefore, the commission's time frames for processing these applications from the point of receipt of initial application to the very final determination have been more specifically delineated.

Proposed new §325.406 amends the text to clarify that the training credit provisions are applicable to several professional and trade associations rather than just the Texas Water Utilities Association.

Finally, proposed new §325.434 updates references from the Texas Water Commission to the TNRCC in accordance with the commission's regulatory reform initiative.

FISCAL NOTE

Jeff Grymkoski, Director, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed rules are in effect, certain units of state and local government that own and operate public drinking water and wastewater treatment facilities will incur fiscal implications which may not be significant.

Chapter 290, Subchapter B, Certification of Waterworks Personnel, is proposed to be repealed and replaced with Chapter 325, Subchapter A, Certification of Public Water System Operators and Public Water System Operations Companies. This proposed subchapter provides the requirements for the certification of public water system operators and public water system operations companies. This proposed rulemaking is meant to comply with EPA's new operator certification requirements as specified in the February 5, 1999, *Federal Register* (64 FR 5916).

The existing provisions of Chapter 325 are also proposed to be repealed and replaced with a new Chapter 325, Subchapter B, Certification of Wastewater Operators and Wastewater Operations Companies, which will provide the requirements for the certification of wastewater operators and wastewater operation companies.

This action is also associated with the commission's notice of intention to review the rules contained in Chapters 290 and 325 in accordance with the provisions of TGC, §2001.039; and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999, which requires state agencies to review and consider each rule for readoption every four years.

Specifically, the rules would increase the fees assessed on public water system operators when their current certifications expire. The rules also change the renewal period for both A and B operators. For the approximately 3,500 Class D operators, the certification fee would increase from $20 per two-year term to $40 per two-year term. The certification fee for the nearly 6,000 Class C operators would increase from $30 per three-year term to $60 per three-year term. The certification fee for the approximately 2,500 Class B operators would increase from $50 per five-year term to $60 per three-year term. The certification fee for the approximately 826 Class A operators would increase from $80 per eight-year term to $60 per three-year term. Additionally, the estimated 300 perpetual certificate holders would be required to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

The proposed rules require anyone performing process control activities at a public water system to receive a certification from the commission. Approximately 5,704 public water systems are required to have certified operators, and the commission estimates that 1,900, or one-third, of these systems will now be required to certify an additional operator to perform systems process control activities. Because the rules pose no additional work requirement, the commission does not anticipate an increase in the

number of operators at any facility. This certification could be at any given level and the commission anticipates that operators will apply for the lowest class, Class D. The estimated cost of certification will be $140 per individual operator. This cost includes the required training course of $100 per 20-hour training course and the $40 certification fee.

The rules would also require Class D operators who operate multiple systems, where the total number of connections exceed 250 connections, to upgrade their certification to a Class C. The estimated cost for training and licensing to upgrade this certification is $200. This estimate includes the cost of two 20-hour training courses at $100 per course to go from a Class D to a Class C certification.

In 2003, surface water systems will be required to have a Class B surface water operator on staff. There are approximately 475 surface water systems, and the commission estimates that 30%, or 142 systems, do not currently employ a Class B surface water operator. The estimated cost of upgrading from a Class C to a Class B certification is $300. This estimate includes the cost of three 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operations companies will be required to register the number the systems served and the individuals operating them. The commission estimates that there are 100 water operations companies, and the fee will be based on the number of systems served. The fee for companies operating zero to four systems would be $75; for five to nine systems, $150; for 10 to 19 systems, $250; and for 20 or more systems, $400.

The rules would also require public water systems and wastewater systems to designate a chief operator or operators who must be present at the facility daily. For purposes of this fiscal note, it is assumed that most systems are operated by a person or persons who would be able to comply with this provision without any additional cost.

The proposed rules would change the renewal period for both Class A and Class B wastewater plant operators. The approximately 840 Class A operators would be required to renew their certifications every three years instead of the current eight years, and the approximately 2,070 Class B operators would be required to renew their certifications every three years instead of the current five years.

Wastewater collection systems transporting over one million gallons per day (MGD) will be required to have at least one operator certified at the Class III or Class B level. There are 359 permitted domestic waste treatment facilities with a permitted daily average flow of one MGD or greater, and approximately 35 separate collection systems with a daily average flow of one MGD or greater. The commission believes that the majority of these systems currently comply with the proposed rules. The estimated cost of upgrading from a Class C to a Class B certification is $200. This estimate includes the cost of two 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operators of mobile and remote sludge facilities will be required to hold a Class D Wastewater Operator Certificate. The commission does not know how many mobile facilities are in operation; however, there are two known remote sludge facilities in Texas, and both currently have operators

certified above the Class D level. The estimated cost of Class D certification is $100, which is the cost of the required 20-hour training course.

The rules would also require the estimated 300 wastewater plant operators who hold a perpetual certificate to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

Finally, anyone requesting a duplicate or replacement water or wastewater certificate would be required to pay a $10 fee. The agency currently produces 50 to 100 duplicate certificates per year. However, it is assumed that the number of requests will go down once a fee is charged for this service.

Although not required to do so, many public water and wastewater systems are owned and operated by units of state and local government that may chose to pay for the costs to comply with the proposed rules.

PUBLIC BENEFIT

Mr. Grymkoski has also determined that the public benefit for each of the first five years these rules are in effect, when considered with the new rules, will potentially be greater compliance with agency rules. The new certification requirements will continue to assure the protection of public health and the environment by requiring additional training for operators of certain public water and wastewater systems. The repeal, reorganization, and clarification of agency rules should also increase the

protection of human health and the environment by making rules easier to understand, thereby potentially increasing compliance with commission rules.

Although most public water and wastewater systems are owned and operated by units of state and local government that may chose to pay the costs to comply with the rules, any person, business, or facility that owns or operates a water or wastewater system may incur additional costs, which are not anticipated to be significant.

Specifically, the rules would increase the fees assessed on public water system operators when their current certification expires. It also changes the renewal period for both A and B operators. For the approximately 3,500 Class D operators, the certification fee would increase from $20 per-year term to $40 per two-year term. The certification fee for the nearly 6,000 Class C operators would increase from $30 per three-year term to $60 per three-year term. The certification fee for the approximately 2,500 Class B operators would increase from $50 per five-year term to $60 per three-year term. The certification fee for the approximately 826 Class A operators would increase from $80 per eight-year term to $60 per three-year term. Additionally, the estimated 300 perpetual certificate holders would be required to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

The rules would require anyone performing process control activities at a public water system to receive a certification from the commission. Approximately 5,704 public water systems are required to

have certified operators, and it is estimated that 1,900, or one-third, of these systems will now be required to certify an additional operator to perform systems process control activities. Because the rules pose no additional work requirement, the commission does not anticipate increasing the number of operators at any facility. This certification could initially be at any given level and the commission anticipates that operators will apply for the lowest class, Class D. The estimated cost of certification will be $140. This estimate includes the training cost of $100 per 20-hour training course and the $40 certification fee.

The rules would also require Class D operators who operate multiple systems where the total number of connections exceed 250 connections to upgrade their certification to a Class C. The estimated cost for training and licensing to upgrade this certification is $200. This estimate is the cost of two 20-hour training courses.

In 2003, surface water systems will be required to have a Class B surface water operator on staff. There are approximately 475 surface water systems, and the commission estimates that 30%, or 142 systems, do not currently employ a Class B surface water operator. The estimated cost of upgrading from a Class C to a Class B certification is $300. This estimate includes the cost of three 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operations companies will be required to register the number the systems served and the individuals operating them. The commission estimates that there are 100 water operations companies, and the fee will be based on the number of systems served. The fee for companies operating zero to four systems

would be $75; for five to nine systems, $150; for 10 to 19 systems, $250; and for 20 or more systems, $400.

The rules would also require public water systems and wastewater facilities to designate a chief operator or operators who must be present at the facility daily. For purposes of this fiscal note, the commission assumes that most systems are operated by a person or persons who would be able comply with this provision without any additional cost.

The proposed rules would change the renewal period for both Class A and Class B wastewater plant operators. The approximately 840 Class A operators would be required to renew their certification every three years instead of the current eight years, and the approximately 2,070 Class B operators would also be required to renew their certification every three years instead of the current five years.

Wastewater collection systems transporting over one MGD will be required to have at least one operator certified at the Class III or Class B level. There are 359 permitted domestic waste treatment facilities with a permitted daily average flow of one MGD or greater, and approximately 35 separate collection systems with a daily average flow of one MGD or greater. The commission believes that the majority of these systems currently comply with the proposed rules. The estimated cost of upgrading from a Class C to a Class B certification is $200. This estimate includes the cost of two 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operators of mobile and remote sludge facilities will be required to hold a Class D wastewater operator certificate. The commission does not know how many mobile facilities are in operation; however, there are two known remote sludge facilities in Texas, and both currently have operators certified above the Class D level. The estimated cost of Class D certification is $100, which includes the required 20-hour training course at $100.

The rules would also require the estimated 300 wastewater plant operators who hold a perpetual certificate to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

Finally, anyone requesting a duplicate or replacement water or wastewater certificate would be required to pay a $10 fee. The agency currently produces 50 to 100 duplicate certificates per year. However, the commission assumes that the number of requests will go down once a fee is charged for this service.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

Small businesses and micro-businesses that own or operate water and wastewater systems should not be significantly adversely affected by this rulemaking.

Although most public water and wastewater systems are owned and operated by units of state and local government that may chose to pay the costs to comply with the rules, any small business and micro-

business or facility that owns or operates a water or wastewater system may incur additional costs, which are not anticipated to be significant.

Specifically, the rules would increase the fees assessed on public water system operators when their current certification expires. It also changes the renewal period for both A and B operators. For the approximately 3,500 Class D operators, the certification fee would increase from $20 per two-year term to $40 per two-year term. The certification fee for the nearly 6,000 Class C operators would increase from $30 per three-year term to $60 per three-year term. The certification fee for the approximately 2,500 Class B operators would increase from $50 per five-year term to $60 per three-year term. The certification fee for the 826 Class A operators would increase from $80 per eight-year term to $60 per three-year term. Additionally, the estimated 300 perpetual certificate holders would be required to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

The rules would require anyone performing process control activities at a public water system to receive a certification from the commission. Approximately 5,704 public water systems are required to have certified operators, and it is estimated that 1,900, or one-third, of these systems will now be required to certify an additional operator to perform systems process control activities. Because the rules pose no additional work requirement, the commission does not anticipate increasing the number of operators at any facility. This certification could be at any level and the commission anticipates that

operators will apply for the lowest class, Class D. The estimated cost of training is estimated to be $100. This cost estimate includes $100 for a 20-hour training course.

The rules would also require Class D operators who operate multiple systems where the total number of connections exceeds 250 connections to upgrade their certifications to a Class C. The estimated cost for training to upgrade this certification is $200. This estimate includes the cost of two required 20-hour training courses at $100 per course to go from a Class D to a Class C certification.

In 2003, surface water systems will be required to have a Class B surface water operator on staff. There are approximately 475 surface water systems, and the commission estimates that 30%, or 142 systems, do not currently employ a Class B surface water operator. The estimated cost of upgrading from a Class C to a Class B certification is $300. This estimate includes the cost of three 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operations companies will be required to register the number the systems served and the individual operating them. The commission estimates that there are 100 water operations companies, and the fee will be based on the number of systems served. The fee for companies operating 0 to four systems would be $75; for five to nine systems, $150; for 10 to 19 systems, $250; and for 20 or more systems, $400.

The rules would also require water systems and wastewater facilities to designate a chief operator or operators who must be present at the facility daily. For purposes of this fiscal note, the commission

assumes that most systems are currently have a person present at the facility daily that could be designated as a chief operator.

The proposed rules would change the renewal period for both Class A and Class B wastewater plant operators. The approximately 840 Class A operators would be required to renew their certifications every three years instead of the current eight years, and the approximately 2,070 Class B operators would also be required to renew their certification every three years instead of the current five years.

Wastewater collection systems transporting over one MGD will be required to have at least one operator certified at the Class III or Class B level. There are 359 permitted domestic waste treatment facilities with a permitted daily average flow of one MGD or greater, and approximately 35 separate collection systems with a daily average flow of one MGD or greater. The commission believes that the majority of these systems currently comply with the proposed rules. The estimated cost of upgrading from a Class C to a Class B certification is $200. This estimate includes the cost of two 20-hour training courses at $100 per course to go from a Class C to a Class B certification.

Operators of mobile or remote sludge facilities will be required to hold a Class D wastewater operator certificate. The commission does not know how many mobile facilities are currently in operation; however, there are two known remote sludge facilities in Texas, and both currently have operators certified above the Class D level. The estimated cost of Class D certification is $100, which includes the required 20-hour training course at $100.

The rules would also require the estimated 300 wastewater plant operators who hold a perpetual certificate to renew their certificates every three years. These perpetual certificate holders would also be subject to the continuing education requirements appropriate for their class. These costs are estimated at $100 per 20-hour training course.

Finally, anyone requesting a duplicate or replacement water or wastewater certificate would be required to pay a $10 fee. The agency currently produces 50 to 100 duplicate certificates per year. However, the commission assumes that the number of requests will go down once a fee is charged for this service.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of TGC, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in TGC. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). The procedures proposed in new Chapter 325 will reduce risks to human health from environmental exposure by ensuring that water and wastewater treatment plants as well as facilities for water distribution and collection will be operated correctly. Although the rules are proposed to reduce the risk to human health from environmental exposure, this is not a major environmental rule because the rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, while they maintain the public health and safety of the state. The rules update the state's current water certification standards to be compatible with newly established federal requirements effective February 5, 1999 (64 FR 5916), issued by EPA under the authority of the Safe Drinking

Water Act Amendments of 1996, 42 USC §§300f et seq. The rules ensure competent operation of water and wastewater facilities, which in turn will provide an overall benefit to the affected economy, sectors of the economy, productivity, competition, jobs, the environment, and the public health and safety of the state and affected sectors of the state.

The proposed rules do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law, because the purpose of this proposal is to adopt state rules which are equivalent to the corresponding federal requirements. This proposal does not exceed an express requirement of state law, because the express requirements of state law are equivalent to the requirements set forth in this proposal. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The state proposes water treatment plant operator certification rules under Chapter 325, Subchapter A, that are substantially equivalent to federal requirements in order to receive the maximum amount of federal funds for the state's drinking water state revolving fund. Water and wastewater operator certification has been a mandatory requirement under state law since 1945. The proposal makes minor changes to the wastewater operator certification rules under Chapter 325, Subchapter B that do not exceed state law. This proposal does not adopt a rule solely under the general powers of the commission (e.g., TWC, §5.103 and §5.105), but rather under a specific state law (i.e., HSC, §§341.031, 341.033 and 341.034; TWC, §26.0301; and TGC, §2005.003).

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these proposed rules under TGC, §2007.043. The following is a summary of that assessment. The purpose of Chapter 325, Subchapter A is to bring the water treatment plant operator certification rules into compliance with the federal requirements issued under the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et. seq. effective February 5, 1999 (64 FR 5916). Chapter 325, Subchapter B revises and reorganizes the wastewater operator certification rules for greater consistency and clarity. The proposed rules substantially advance this stated purpose by introducing language to ensure that state rules regarding water operator certification are equivalent to the corresponding federal requirements. Promulgation and enforcement of these proposed rules do not affect private real property which is the subject of the rules because the proposed rules bring certain water operator certification rules into equivalence with federal requirements and ensure that wastewater rules are consistent with state law requirements. There is no burden on private real property because the rules do not subject any private real property to regulation. Also, the following exception to the application of TGC, §2007.003(b) applies to a portion of these proposed rules: this action is reasonably taken to fulfill an obligation mandated by federal law.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The commission has reviewed this rulemaking and found that the proposal is not a rulemaking subject to the Texas Coastal Management Program (CMP). The purpose of these rules is to bring the water treatment plant operator certification rules into compliance with the federal requirements adopted under the Safe Drinking Water Act Amendments of 1996, 42 USC §§300f et seq. effective February 5, 1999 (64 FR 5916); and to revise the wastewater operator certification rules for greater consistency and

clarity. The rulemaking does not govern air pollutant emissions, on-site sewage disposal systems, or underground storage tanks which would make it subject to the CMP under 31 TAC §505.11(b)(2). The rulemaking also does not govern or authorize actions listed in Coastal Coordination Act Implementation Rules (i.e., 31 TAC §505.11(a)(6)), and is not a rule certified under the CMP.

PUBLIC HEARING

A public hearing on this proposal will be held in Austin on August 24, 2000 at 10:00 a.m. at the TNRCC complex in Building F, Room 3202A, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments regarding this proposal may be submitted to Lisa Martin, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-013-290-WT. Comments must be received by 5:00 p.m., August 28, 2000. For further information or questions concerning this

proposal, please contact Juanita Lopez, Manager, Operator Certification Section, (512) 239-6165, or Michelle Lingo of the Office of Environmental Policy, Analysis, and Assessment, (512) 239-6757.

STATUTORY AUTHORITY

The repeals are proposed under TWC, §§5.103, 5.105, and 26.0301, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state.

The proposed repeals implement TWC, §26.0301 and TGC, Chapter 2005.

CHAPTER 325. CERTIFICATES OF COMPETENCY

§§325.1 - 325.16

§325.1. Definitions.

§325.2. Certificates for Wastewater Treatment Plant Operators.

§325.3. Certificates for Collection System Operators.

§325.4. (Effective beginning September 1, 1991) - Classification of Wastewater Treatment Facilities.

§325.5. Applications and Fees.

§325.6. Renewal of Operator Certificates.

§325.7. Certificates for Wastewater Treatment Facility Operations Companies.

§325.8. Terms of Certificates for Wastewater Treatment Facility Operations Companies.

§325.9. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.

§325.10. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.

§325.11. Sanctions.

§325.12. Notice of Hearings.

§325.13. Enforcement Hearings.

§325.14. Reciprocity.

§325.15. Perpetual Certificates of Competency.

§325.16. Nonrenewal of Certificate of Competency Due to Loan Default.

SUBCHAPTER A: CERTIFICATION OF PUBLIC WATER SYSTEM OPERATORS AND PUBLIC WATER SYSTEM OPERATIONS COMPANIES

§§325.1, 325.2, 325.4, 325.6 - 325.8, 325.10, 325.12, 325.14, 325.16, 325.18, 325.20, 325.22, 325.24, 325.26, 325.28, 325.30

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; under HSC, §§341.031, 341.033, and 341.034, which authorize the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act (42 USC §§300f et seq.); and under TGC, Chapter 2005, regarding permit processing.

The proposed new sections implement HSC, §§341.031, 341.033, and 341.034; and TGC, Chapter 2005.

§325.1. Date for Compliance.

By June 1, 2001, all public water system certified operators and public water system operations companies must comply with the provisions of this subchapter.

§325.2. Applicability and General Provisions.

(a) The legal authority for the rules in this subchapter is Texas Health and Safety Code, §§341.031, 341.033, and 341.034.

(b) The purpose of the rules in this subchapter is to provide a uniform procedure for issuing certificates of competency to public water system operators and certificates of registration to public water system operations companies.

(c) Except as provided in section (d) of this section, all public water systems must have at least one certified operator as required under §325.8 of this title (relating to Classification of Public Water Systems and Certificates Required).

(d) Transient noncommunity public water systems are not required to have a certified operator as required under §325.8 of this title if the transient noncommunity public water system uses:

(1) groundwater that is not under the influence of surface water; or

(2) purchased treated water that meets the drinking water standards of Chapter 290, Subchapter D of this title (relating to Certification of Waterworks Personnel).

(e) Certificates of competency are established for water treatment plant operators and water distribution system operators to operate or assist in the operation of water treatment or distribution systems.

(f) Certificates of registration are established for public water system operations companies to operate public water systems on a contract basis.

(g) The currently named "Grade" certificates are valid until they are replaced by the new "Class" certificates.

(h) All renewable Class D certificates that were issued to operators who do not possess a high school diploma or its equivalent may still be renewed according to §325.18 of this title (relating to Renewal of Certificates of Competency).

§325.4. Definitions.

The following words and terms when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Certificate of competency** - Certificate issued by the commission stating that the operator has qualified for public water system certification at the class specified.

(2) **Certificate of registration** - Certificate issued by the commission to public water system operations companies to allow companies to provide operational services to public water treatment facilities or potable water distribution systems on a contract basis.

(3) **Chief operator** - Person with overall responsibility for the operation of a public water system.

(4) **Connection** - Shall have the same meaning as defined in §290.38 of this title (relating to Definitions).

(5) **Daily on-site responsibility** - Daily assigned duties of a certified operator who performs work, makes decisions, or gives directions to others about the operation of a public water system. These actions are part of the daily assigned job duties of that person.

(6) **Designated courses** - Courses or their equivalent which are required to obtain or renew a water operator certificate of competency.

(7) **Operator in responsible charge** - Certified operator who has been charged with the on-site supervision of the public water system in the absence of the chief operator.

(8) **Operator-in-training** - Person entering the field of potable water treatment or distribution for the first time.

(9) **Public water system** - Shall have the same meaning as defined in §290.38 of this title.

(A) **Community water system** - Shall have the same meaning as defined in §290.38 of this title.

(B) **Noncommunity public water system** - Shall have the same meaning as defined in §290.38 of this title.

(C) **Nontransient noncommunity public water system** - Shall have the same meaning as defined in §290.38 of this title.

(D) **Transient noncommunity water system** - Shall have the same meaning as defined in §290.38 of this title.

(10) **Public water system operator** - Certified operator who performs process control in production or distribution of drinking water.

(A) **Surface water system operator -** Certified operator who has daily on-site responsibility for activities that result in production, treatment, and possible distribution of any surface water used as a water source for a public water system.

(B) **Groundwater system operator** - Certified operator who has daily on-site responsibility for activities that result in production, treatment, and possible distribution of any groundwater used as a water source for a public water system.

(C) **Distribution/purchased system operator** - Certified operator who has daily on-site responsibility for activities that result in the distribution of potable water for a public water system and responsibility for a purchased water system.

(11) **Public water system operations company** - Any business, company, corporation, firm, partnership, individual, or other nongovernmental entity that provides operations services for public water systems on a contract basis.

(12) **Training credits** - Hours of water credit allowed by the executive director for attendance at an approved training event.

(13) **Work experience** - Actual performance of job tasks in public water systems considered essential for the production, treatment, or distribution of drinking water.

§325.6. Administration.

The executive director will be responsible for the following:

(1) reviewing applications;

(2) developing, administering, and grading examinations;

(3) issuing and renewing certificates;

(4) maintaining records related to operator and company certificates;

(5) collecting fees; and

(6) approving training for certification credits.

§325.7. Processing Applications.

(a) Complete applications for public water system operators must comply with §325.10 of this title (relating to Qualifications for Public Water System Operators). Complete renewal applications for public water system operators must comply with §325.18 of this title (relating to Renewal of Certificates of Competency). Complete applications for public water system operations companies must comply with §325.28 of this title (relating to Certification of Public Water System Operations Companies).

(b) Applications for certification will be processed in accordance with the following time periods.

(1) Within 45 days following the receipt of an initial application, the executive director shall provide written notice to the applicant containing:

(A) a statement that the application is complete and accepted for filing; or

(B) a statement that the application is incomplete and a listing of the specific additional information required for acceptance of the application.

(2) Within 45 days following the receipt of a complete application, the executive director shall approve or deny an application. If the executive director determines to deny the application, the applicant shall be provided notice and an opportunity for a hearing prior to denying the application.

(c) Good cause for exceeding the established processing periods under subsection (b) of this section exists if:

(1) the number of applications to be processed exceeds by at least 15% the number of applications processed in the same quarter of the previous calendar year;

(2) a public or private entity other than the commission was used to process all or a part of the permit applications received by the commission, and the delay is caused by that entity; or

(3) other conditions exist, giving the commission good cause for exceeding the established processing period.

(d) If the commission exceeds the processing time periods established in subsection (b) of this section, an applicant for certification may file a written complaint with the executive director and request a timely resolution of any dispute arising from the delay.

(e) An applicant who files a written complaint under subsection (d) of this section is entitled to full reimbursement of all application filing fees paid if the executive director determines that the established period for application processing was exceeded and good cause for exceeding the established processing period does not exist.

(f) If the executive director does not agree that the established processing periods have been exceeded or finds that good cause exists for exceeding the established processing periods, the request will be denied.

§325.8. Classification of Public Water Systems and Certificates Required.

(a) Any public water system operator as defined in §325.4 of this title (relating to Definitions) must hold a valid certificate of competency as a public water system operator. The only exceptions are:

(1) an operator for a transient noncommunity system which uses only purchased treated water or groundwater sources that are not under the direct influence of surface water; or

(2) an operator-in-training.

(b) A person first entering the field of drinking water treatment may be employed as an operator-in-training for a period up to one year.

(1) All duties performed by an operator-in-training will be performed in the presence of a certified operator.

(2) All duties performed by an operator-in-training at surface water systems will be performed in the presence of a certified operator with a Class C or higher certificate.

(c) Each public water system, except transient noncommunity systems using only purchased water or groundwater not under the direct influence of surface water, will employ or contract with one or more operators holding valid certificates of competency.

(d) Public water systems, both community and nontransient noncommunity, must be classified and minimally staffed with certified chief operators in accordance with the following criteria.

Figure: 30 TAC §325.8(d)

(e) Each public water system must be operated on a daily basis by the certified chief operator or an operator holding a certificate of the same class or higher.

(f) A certified ground or surface water treatment operator may perform all duties relating to the operation and maintenance of drinking water production, purchased water, and water distribution systems. It is not necessary to hold both production and distribution certificates.

(g) Certificates of competency will not be issued to employees of state or federal agencies having regulatory authority over public water systems.

(h) Either the certified chief operator or certified operator in responsible charge will be present for scheduled agency inspections.

(i) A Class C certificate or higher will be required for persons operating multiple systems and when the total number of connections exceed 250.

(j) For the operation of groundwater or purchased water systems, any person who treats the water to ensure or improve its potability or delivery, including the operation of chemical feed systems, filtration, disinfection, or pressure maintenance equipment must be a certified waterworks operator.

(1) A person who maintains system pressures, determines the adequacy of disinfection and disinfection procedures, takes daily chlorine residuals, takes routine microbiological samples, and takes microbiological samples and chlorine residual tests after repairs or installation of lines or appurtenances must be certified.

(2) An uncertified person who performs maintenance, expansion, or repair activities on a public water distribution system, which causes the pressure in all or part of the line to fall below 20 pounds per square inch, may do the work only when supervised by an on-site certified public water system operator.

(k) For the operation of groundwater sources under the direct influence of surface water and using cartridge filters or coagulant addition with direct filtration, any person who operates the system must have a Class C or higher groundwater certificate and have completed additional training as required in §325.10 of this title (relating to Qualifications for Public Water System Operators). As an alternative, the operator may have a Class C or higher surface water certificate.

(l) For the operation of surface water systems, any person who performs any type of process control must be certified. Each plant must have a qualified operator on duty when the plant is in

operation or have continuous turbidity and disinfectant residual monitors with automatic plant shutdown and alarms to summon operators to ensure that the water produced continues to meet the commission's drinking water standards during the time that the plant is unattended. This section also applies to any groundwater system under the influence of surface water that receives complete surface water treatment.

(m) After June 1, 2001, should any conflict or inconsistency arise between §290.46(e) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the provisions of this subsection, the provisions of this subsection shall control.

§325.10. Qualifications for Public Water System Operators.

(a) The qualification requirements for each class of certificate include:

(1) a minimum level of education;

(2) a minimum level of training;

(3) a period of experience as a treatment plant operator or distribution system operator;

(4) a grade of 70% or higher on a written examination for that certificate class; and

(5) a payment of the applicable fee.

(b) The education, work experience, and training credit requirements for each class of certificate are as follows.

Figure: 30 TAC §325.10(b)

(c) At least one-half of the total experience requirement must be actual experience in public water system operations in the specific field for the certification that is needed, as stated in paragraphs (1)-(4) of this subsection.

(1) For Class C and B surface water certificates, at least one-half of the required experience must be obtained through operations activities at the production or treatment facilities for surface water source or groundwater source that is under the direct influence of surface water.

(2) For Class C and B groundwater certificates, at least one-half of the required experience must be obtained through operations activities at the production or treatment facilities for groundwater source or groundwater source that is under the direct influence of surface water.

(3) For Class C and B distribution certificates, at least one-half of the required experience must be obtained as a result of operations activities at treated water storage, pumping, or distribution facilities.

(4) For laboratory experience to count fully toward operator certification, the laboratory must be owned and operated by the public water system and the laboratory technician must consult daily with public water system personnel.

(d) Bachelors or Masters degrees which will substitute for experience at the Class A and Class B level are those with a major in chemistry, biology, engineering, microbiology, bacteriology, or other similar disciplines that are approved by the executive director on a case-by-case basis.

(e) For applicants with a high school diploma or equivalent, 32 semester hours of college or an additional 40 hours of training credits may be substituted for one year of the experience requirement. The maximum years allowed for substitution are as follows.

(1) Class A and Class B applicants may substitute up to two years of the required work experience.

(2) Class C applicants may substitute up to one year of the required work experience.

(f) The hours of training credit required for certification must be in approved courses which include the following or their equivalents.

Figure: 30 TAC §325.10(f)

§325.12. Applications and Examinations.

(a) All applications for certificates of competency will be made on an agency approved form.

(1) All statements and qualifications provided by each applicant are subject to verification.

(2) Misrepresentation or falsification of any information will be grounds for rejection of an application or for enforcement action.

(3) All applications must be completed in full. All deficiencies must be corrected within four months of notification or the examination will be considered invalid.

(4) An applicant must furnish evidence of any training credit or proof of education when requested.

(b) Certificates of competency will not be issued until all requirements of this subchapter have been met.

(c) If an applicant does not pass an examination, the applicant must wait three months before taking the examination again. If the applicant fails the first examination, the application will be valid for one year. During this year, the applicant may take the examination two more times without paying an additional fee. On a case-by-case basis, the executive director may require additional training after a failed examination.

(d) To pass an examination, an applicant must make a score of 70% or higher.

(e) If an applicant takes more than one level of examination at the same time, the appropriate fee must be submitted for each application.

§325.14. Certificates of Competency, Terms, and Fees.

(a) All applications for certificates of competency must be accompanied by the appropriate fees. Fees are not refundable.

(b) The required fee must be paid with each application. The fees and terms of certificates are as follows.

Figure: 30 TAC §325.14(b)

(c) A fee of $10 will be charged for a duplicate copy, the replacement of a lost or damaged certificate, or for any requested change to a certificate.

§325.16. Reciprocity.

A certificate of competency may be issued, without examination, if the applicant holds a valid public water system operator certificate issued under the laws of any other state, territory, or possession of the United States of America, or any other country provided:

(1) the out-of-state requirements are equal to, or more stringent than, the provisions of this subchapter;

(2) the applicant passed a written examination in order to obtain the out-of-state certificate;

(3) the corresponding state recognizes and honors certificates of competency issued by the commission; and

(4) an application has been submitted and the appropriate fee has been paid.

§325.18. Renewal of Certificates of Competency.

(a) A certificate may be renewed unless revoked or replaced by a higher class of certificate.

(b) Class D certificates are not renewable or eligible for reinstatement or recertification for:

(1) certified operators at groundwater treatment systems of 250 connections or more;

(2) certified operators at surface water treatment systems;

(3) certified operators at groundwater under the influence of surface water systems; or

(4) certified operators who are supervisors of distribution systems that have over 250 connections.

(c) The executive director will mail a renewal application to each certified operator before the expiration date of the certificate. It will be mailed to the most recent address provided by the certified operator. It is the responsibility of the certified operator to make sure that a completed application for renewal and the appropriate fee is submitted no later than 30 days following the expiration date of the certificate.

(d) A certificate of competency may be renewed by completion of training credits. The training credit hours must be earned after the issuance date and before the expiration date of the certificate. A completed renewal application, with the appropriate fee, must also be submitted. The training and fees required for renewal are as follows.

Figure: 30 TAC §325.18(d)

(e) A certificate of competency may also be renewed by examination, within 30 days following the expiration date. To renew a certificate of competency by examination, an applicant must submit an application, pay the required renewal fee, and pass an examination.

(f) A certificate of competency may be reinstated after one year after the certificate expiration date. To reinstate a certificate of competency, an applicant must submit an application with the appropriate fee and pass an examination.

(g) If a certificate of competency has been expired over one year, the operator must recertify. To recertify, an operator must meet all current education, training, and experience requirements, submit an application with the appropriate fee, and pass the examination.

(h) The basic water course may not be used to renew a Class A or B certificate.

(i) The executive director may require specific courses for renewal on a case-by-case basis.

(j) After the expiration date, the certificate is no longer valid.

(k) All certified operators must notify the executive director of any change in address or employment within ten days from the date the change occurs.

(l) If a certificate of competency expires while a certified operator is in full-time active military service, the certificate may be renewed without examination upon:

(1) proof of military service;

(2) proof of the previously held certificate; and

(3) payment of the appropriate fee.

§325.20. Perpetual Certificates.

(a) If a certified operator holds a perpetual certificate and wants to maintain an active certificate, the certified operator must notify the executive director of the operator's intention to keep the certificate active. This request must be made by June 1, 2001.

(b) If the holder of a perpetual certificate does not want to maintain an active certificate, the certificate will be converted to an honorary certificate. If the certified operator does not contact the executive director by June 1, 2001, an honorary certificate will be issued. The holder of an honorary certificate will not be allowed to perform any operational duties in a water system.

(c) To obtain an active certificate after June 1, 2001, the operator must meet the current education, training, and experience requirements, pay the appropriate fee, and pass an examination.

(d) Terms and renewal training credits of perpetual certificates converted to active certificates are as follows.

Figure: 30 TAC §325.20(d)

(e) To renew a converted active certificate, a renewal application must be submitted. This will include proof of completion of training credit hours and current employment information. It must be received by the executive director no later than 30 days after the expiration date, or the certificate will be renewable only by examination.

(f) Training credit hours must be earned after the issuance date and before the expiration date of the certificate.

§325.22. Nonrenewal of Certificates of Competency Due to Loan Default.

In accordance with Texas Education Code, Chapter 57, the executive director shall not renew the certificate of a person identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as being in default on loans guaranteed by the TGSLC unless:

(1) the renewal is the first renewal following the executive director's receipt of notification that the person holding a certificate of competency is in default; or

(2) the person submits to the executive director a certificate from the TGSLC indicating that the person is not in default on a loan guaranteed by TGSLC; or

(3) the person submits to the executive director a certificate from TGSLC indicating that the person has entered a repayment agreement on the defaulted loan guaranteed by TGSLC.

§325.24. Nonrenewal of Certificates of Competency Due to Failure to Pay Child Support.

In accordance with Texas Family Code, Chapter 232, the executive director shall not renew the certificate of a person identified by the Office of the Attorney General as being delinquent on child support payments unless:

(1) the person submits to the executive director a certificate from the Office of the Attorney General indicating that the person is not delinquent on child support payments; or

(2) the person submits to the executive director a certificate from the Office of the Attorney General indicating that the person has entered a child support repayment agreement with the Office of the Attorney General.

§325.26. Training Approvals.

(a) Training used to meet the requirements for obtaining or renewing operator certificates of competency must be in water-related topics, as approved by the executive director prior to the receipt of the training.

(b) Training credit for attendance at meetings of water and wastewater-related organizations will be approved only when the meetings include training sessions related to water utility operations.

Training credit will be based upon recorded attendance or by other means determined by the executive director.

(c) If the specific course and subject are approved, the executive director will determine the number of hours of credit that will be granted for the course. Training credit for attendance at training courses and seminars approved by the executive director will be allowed in accordance with the following provisions:

(1) one hour of credit per hour in attendance; and

(2) training credit will be recorded as approved by the executive director.

(d) Upon approval by the executive director, training credit may also be satisfied by other professional activities, such as publication of articles or by teaching training courses.

(e) The executive director must approve the providers of training courses.

(f) The executive director may rescind or deny training approvals.

§325.28. Certification of Public Water System Operations Companies.

(a) Every public water system operations company as defined in §325.4 of this title (relating to Definitions) must hold a valid certificate of registration issued under the direction of the executive director.

(b) Any operator employed by a public water system operations company must hold a valid certificate of competency. The certified chief operator of each public water system must hold the appropriate level of certification required by §325.8 of this title (relating to Classification of Public Water Systems and Certifications Required).

(c) When a certificate of registration is suspended or revoked, the operations company is no longer authorized to operate or assist in operation of any public water system, unless specifically authorized to do so by the executive director, or unless the certificate has been reinstated.

(d) Prior to issuance or renewal of an operations company's certificate, an application must be submitted with the appropriate fee. The fee is based on the number of public water systems served, as follows.

Figure: 30 TAC §325.28(d)

(e) Certificates of registration for public water system operations companies will be valid for a term of two years.

(f) Certificates of registration will not be issued until all requirements have been met.

(g) Every public water system operations company must submit a yearly report to the executive director within one year and 30 days after issuance or renewal of the certificate. The report will include for each system:

(1) public water system name, location, and mailing address;

(2) name and mailing addresses of the responsible party;

(3) public water system identification number;

(4) date of operation during the reporting year;

(5) names of all operators employed by the operations company, including their mailing addresses, classes and certificate numbers, and systems for which all employees work or have worked during the reporting year;

(6) chief certified operators and supervisors; and

(7) any additional information required by the executive director.

(8) After June 1, 2001, should any conflict or inconsistency arise between §290.46(r) of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems) and the provisions of this subsection, the provisions of this subsection shall control.

(h) The information in subsection (g) of this section must be submitted with any application for a new or renewal certificate along with the appropriate fee.

(i) The information in subsection (g) of this section must be amended in writing within ten days of any change in personnel or change in the systems operated.

(j) Operations company certificates are not transferable.

(k) If a company is sold or reorganized such that control of the operation of the company is transferred from one person to another, the operations company certificate will be considered invalid. The newly organized company must apply for a new certificate.

(l) Once a year, governmental entities or quasi-governmental entities, such as river authorities, that contract to operate public water systems must report to the commission the information required by subsection (g) of this section.

§325.30. Enforcement.

(a) Operators are responsible for performing adequate process control of public water systems as recognized by current best management practices. Operator performance that results in violations may subject the operator to administrative penalties or other sanctions as described in this section.

(b) If an operator or company causes or allows a violation of the rules or falsifies documents, they may be subject to a reprimand, suspension, revocation of the certificate, or other penalties. Additional training may also be required on a case-by-case basis as a remedial action. Notification of enforcement actions will be issued in writing and delivered by certified mail.

(c) A reprimand is a warning that further violations or offenses may warrant suspension or revocation proceedings.

(d) Suspension means that a certificate is no longer valid and the certified operator or company is not authorized to operate any water treatment or distribution systems until the suspension period is complete.

(1) A certificate may be suspended for up to one year.

(2) After the suspension period has ended, the certified operator will not have to retest to reinstate the certificate.

(3) If a certificate expiration date falls within the suspension period, the certified operator or company must still renew the certificate according to §325.18 of this title (relating to Renewal of Certificates of Competency) and §325.28 of this title (relating to Certification of Public Water System Operations Companies). After the suspension period has ended, the certificate will be reinstated.

(e) Revocation means that a certificate is no longer valid and that the previously certified operator or company is not authorized to operate any drinking water treatment or distribution systems.

(1) A certificate may be revoked for a period of not less than one year. Upon a second similar violation, the commission may permanently revoke the certificate.

(2) After the revocation period has ended, the operator or company may reapply for a certificate as if applying for the first time.

(f) The holder of a certificate is not subject to revocation or suspension of a certificate if the certified operator or operations company is unable to properly operate the public water system due to:

(1) faulty system design or construction; or

(2) the refusal of the owner or the management of the system to authorize the necessary funds to operate the water system properly.

SUBCHAPTER B: CERTIFICATION OF WASTEWATER OPERATORS AND WASTEWATER OPERATIONS COMPANIES

§§325.100 - 325.102, 325.104 - 325.106, 325.108, 325.110, 325.112, 325.114, 325.116, 325.118, 325.120, 325.122, 325.124, 325.126, 325.128

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; under TWC, §26.0301 regarding wastewater operator certification; and under TGC, §2005, regarding permit processing.

The proposed new sections implement TWC, §26.0301; and TGC, Chapter 2005.

§325.100. Date for Compliance.

By June 1, 2001, all wastewater operators and wastewater operations companies must comply with the provisions of this subchapter.

§325.101. Applicability and General Provisions.

(a) The legal authority for these rules is Texas Water Code, §26.0301.

(b) The purpose of these rules is to provide a uniform procedure for issuing certificates to domestic wastewater treatment facility operators, wastewater collection system operators, and companies who operate these facilities contractually.

(c) Certificates of competency are established for domestic wastewater treatment facility operators and wastewater collection system operators to operate, or assist in the operation of, wastewater treatment facilities or wastewater collection systems.

(d) Certificates of registration are established for wastewater system operations companies to operate wastewater treatment and collection facilities on a contract basis.

(e) All Class D and Class I certificates issued to operators who do not possess a high school diploma or its equivalent, may still be renewed according to §325.116 of this title (relating to Renewal of Certificates of Competency).

§325.102. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Certificate of competency** - Certificates issued by the commission stating that the operator has qualified for wastewater operator certification at the class specified.

(2) **Certificate of registration** - Certificate issued by the commission to wastewater system operations companies to allow the companies to provide operational services to wastewater treatment facilities or wastewater collection systems on a contract basis.

(3) **Chief operator** - The certified operator with overall responsibility for the operation of a wastewater treatment facility.

(4) **Designated courses** - Courses or their equivalent which are required to obtain a wastewater operator certificate of competency.

(5) **Domestic wastewater** - Waste and wastewater from humans or household operations that are discharged to a wastewater collection system or otherwise enters a wastewater facility.

(6) **Operator in responsible charge** - Certified operator who has been charged with the on-site supervision and operation of the wastewater facility in the absence of the chief operator.

(7) **Operator-in-training** - A person entering the field of wastewater treatment or collection for the first time.

(8) **Training credit** - Hours of wastewater credit allowed by the executive director for attendance at an approved training event.

(9) **Wastewater collection system** - Lines, manholes, pumps, pumping stations, and other components necessary to collect and transport domestic wastewater.

(10) **Wastewater collection system operator** - Any person, in active field supervision, who provides frequent on-site inspection and supervision of wastewater collection system operation or maintenance activities.

(11) **Wastewater disposal permit** - A domestic wastewater disposal permit issued by the commission in accordance with Texas Water Code, Chapter 26.

(12) **Wastewater treatment facility** - Any facility installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater disposal permit from the commission.

(13) **Wastewater system operations company** - Any business, company, corporation, firm, partnership, individual, or other non-governmental entity that provides operations services, on a contract basis, to one or more wastewater treatment facilities or collection systems.

(14) **Wastewater treatment facility operator** - Any person who performs process control tasks at a wastewater treatment facility.

(15) **Work experience** - The actual performance of job tasks in domestic wastewater, considered essential for the treatment or collection of domestic wastewater.

§325.104. Administration.

The executive director will be responsible for the following:

(1) reviewing applications;

(2) developing, administering, and grading examinations;

(3) issuing and renewing certificates;

(4) maintaining records related to operator and company certificates;

(5) collecting fees; and

(6) approving training for certification credits.

§325.105. Processing Applications.

(a) Complete applications for wastewater system operators must comply with §325.108 of this title (relating to Qualifications for Wastewater Treatment Facility and Collection System Operators). Complete renewal applications for wastewater system operators must comply with §325.116 of this title (relating to Renewal of Certificates of Competency). Complete applications for wastewater system operations companies must comply with §325.126 of this title (relating to Certification of Wastewater System Operations Companies).

(b) Applications for certification will be processed in accordance with the following time periods.

(1) Within 45 days following the receipt of an initial application, the executive director shall provide written notice to the applicant containing:

(A) a statement that the application is complete and accepted for filing; or

(B) a statement that the application is incomplete and a listing of the specific additional information required for acceptance of the application.

(2) Within 45 days following the receipt of a complete application, the executive director shall approve or deny an application. If the executive director determines to deny the

application, the applicant shall be provided notice and an opportunity for a hearing prior to denying the application.

(c) Good cause for exceeding the established processing periods under subsection (b) of this section exists if:

(1) the number of applications to be processed exceeds by at least 15% the number of applications processed in the same quarter of the previous calendar year;

(2) a public or private entity other than the commission was used to process all or a part of the permit applications received by the commission, and the delay is caused by that entity; or

(3) other conditions exist, giving the commission good cause for exceeding the established processing period.

(d) If the commission exceeds the processing time periods established in subsection (b) of this section, an applicant for certification may file a written complaint with the executive director and request a timely resolution of any dispute arising from the delay.

(e) An applicant who files a written complaint under subsection (d) of this section is entitled to full reimbursement of all application filing fees paid if the executive director determines that the

established period for application processing was exceeded and good cause for exceeding the established processing period does not exist.

(f) If the executive director does not agree that the established processing periods have been exceeded or finds that good cause exists for exceeding the established processing periods, the request will be denied.

§325.106. Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required.

(a) Any wastewater treatment facility operator as defined in §325.102 of this title (relating to Definitions) must hold a valid certificate of competency as a wastewater treatment facility operator. The only exception is an operator-in-training.

(b) Any wastewater collection system operator as defined in §325.102 of this title who does not hold a wastewater treatment facility operator's certificate must hold a valid certificate of competency as a wastewater collection system operator. The only exception is an operator-in-training.

(c) Operators of remote or mobile sludge processing facilities are required to hold a valid Class D or higher certificate of competency.

(d) Operators of domestic wastewater treatment facilities owned and located on industrial sites which are regulated by industrial-type wastewater disposal permits are required to be certified. This is required only if the point of discharge is separate from any other industrial outfalls and the domestic wastewater is not mixed with other industrial wastewater prior to discharge.

(e) A person first entering the field of wastewater treatment or collection may be employed as an operator-in-training for a period up to one year. An operator-in-training must work in the presence of a certified operator during this time.

(f) Each holder of a wastewater disposal permit for a wastewater treatment facility will employ or contract with one or more certified wastewater treatment facility operators or wastewater system operations companies holding a valid certificate of competency or registration.

(g) Domestic wastewater treatment facilities will be classified in accordance with the following criteria.

Figure: 30 TAC §325.106(g)

(h) Category D wastewater treatment facilities will be reclassified as Category C facilities if any of the following conditions exist:

(1) a Category D facility incorporating anaerobic sludge digestion, except Imhoff tanks with sludge drawn off to drying beds;

(2) a Category D facility whose permit requires nutrient reduction; or

(3) a Category D facility whose permit requires the final effluent to meet a daily average biochemical oxygen demand$_5$ (BOD_5) or total suspended solids (TSS) concentration less than ten mg/l.

(i) A wastewater treatment facility having a combination of treatment processes which are in different categories will be assigned the higher category.

(j) The executive director may increase the treatment facility classification for facilities which include unusually complex processes or present unusual operation or maintenance conditions.

(k) The chief operator of each wastewater treatment facility must possess a certificate equal to or higher than that of the category of treatment facility.

(l) Each category of facility must be operated on a daily basis by the certified chief operator or a certified operator holding a certificate of the same class or higher.

(m) Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the certified chief operator must be supervised by an operator in responsible charge who is certified at not less than one level below the category of the facility.

(n) Either the certified chief operator or certified operator in responsible charge must be present for scheduled agency inspections.

(o) A certified wastewater treatment facility operator may perform all duties relating to the operation and maintenance of both wastewater treatment facilities and wastewater collection systems. It is not necessary to hold both types of certificates. A certified collection system operator may perform only those duties relating to the operation and maintenance of wastewater collection systems.

(p) Each classified wastewater collection system must have at least one certified operator who holds a certificate class equal to or higher than that category of system. Wastewater collection systems will be classified as follows.

Figure: 30 TAC §325.106(p)

(q) Certificates of competency will not be issued to employees of state or federal agencies having regulatory authority over wastewater systems.

§325.108. Qualifications for Wastewater Treatment Facility and Collection System Operators.

(a) The qualification requirements for each class of certificate include:

(1) a minimum level of formal education;

(2) a minimum level of training;

(3) a period of experience as a treatment facility or collection system operator;

(4) a grade of 70% or higher on a written examination for that certificate class; and

(5) a payment of the applicable fee.

(b) The education, work experience, and training credit requirements for each class of certificate are as follows.

Figure: 30 TAC §325.108(b)

(c) Each year of related experience will count as only one-half year of experience if the experience involves tasks similar to those required for operation of wastewater treatment facilities. At least one-half of the total experience requirement must be in actual domestic wastewater treatment facility operation or maintenance duties. In order for laboratory experience to be fully applicable, the laboratory must be owned and operated by the permittee and the laboratory technician must consult daily with operational personnel.

(d) Wastewater collection system experience must be in actual wastewater collection system operation or maintenance duties. Credit for experience not directly connected with collection system operation or maintenance will be approved if the experience involves tasks that are similar to that

required for the operation and maintenance of collection systems. Each year of related experience will count as only one-half year of experience. Each year of experience in collection system operation and maintenance will only count as one-half year of experience toward a wastewater treatment facility operator certificate.

(e) Bachelors or Masters degrees which will substitute for experience at the Class A and Class B level are those with a major in chemistry, biology, engineering, microbiology, bacteriology, or other similar disciplines, approved by the executive director on a case-by-case basis.

(f) For applicants with a high school diploma or equivalent, 32 semester hours of college or an additional 40 hours of training credits may be substituted for one year of the experience requirement. The maximum years allowed for substitution are as follows:

(1) Class A, Class B, and Class III applicants may substitute up to two years of the required work experience; and

(2) Class C and Class II applicants may substitute up to one year of the required work experience.

(g) The hours of training credit required for certification must be in approved courses, which include the following or their equivalents.

Figure: 30 TAC §325.108(g)

§325.110. Applications and Examinations.

(a) All applications for certificates of competency will be made on an agency approved form.

(1) All statements and qualifications provided by each applicant are subject to verification.

(2) Misrepresentation or falsification of any information will be grounds for rejection of an application or for enforcement action.

(3) All applications must be completed in full. All deficiencies must be corrected within four months of notification, or the application and examination will be considered invalid.

(4) An applicant must furnish evidence of any training credit or proof of education when requested.

(b) Certificates of competency will not be issued until all requirements of this subchapter have been met.

(c) If an applicant does not pass an examination, the applicant must wait three months before taking the examination again. If the applicant fails the first examination, the application will be valid for one year. During this year, the applicant may take the examination two more times without paying

an additional fee. On a case-by-case basis, the executive director may require additional training after a failed examination.

(d) To pass an examination, an applicant must make a score of 70% or higher.

(e) If an applicant takes more than one level of examination at the same time, the appropriate fee must be submitted for each application.

§325.112. Certificates of Competency, Terms, and Fees.

(a) All applications for certificates of competency must be accompanied by the appropriate fee. Fees are not refundable.

(b) The required fee must be paid with each application. The required fee and term of certificates are as follows.

Figure: 30 TAC §325.112(b)

(c) A fee of $10 will be charged for a duplicate certificate, the replacement of a lost or damaged certificate, or for any requested change to a certificate.

§325.114. Reciprocity.

A certificate of competency may be issued, without examination, if the applicant holds a valid wastewater operator certificate issued under the laws of any other state, territory, or possession of the United States of America, or any other country, provided:

(1) the out-of-state requirements are equal to, or more stringent than, the provisions of this subchapter;

(2) the applicant passed a written examination in obtaining the out-of-state certificate;

(3) the corresponding state recognizes and honors wastewater operator certificates of competency issued by the commission; and

(4) an application has been submitted and the appropriate fee has been paid.

§325.116. Renewal of Certificates of Competency.

(a) A certificate of competency may be renewed unless it is revoked or replaced by a higher class of certificate.

(b) Class D certificates are not renewable, or eligible for reinstatement or recertification, for operators of:

(1) any activated sludge type facilities; or

(2) any trickling filter or RBC facilities with a permitted daily average flow of 100,000 gallons per day or greater.

(c) The executive director will mail a renewal application to each certified operator before the expiration date of the certificate. It will be mailed to the most recent address provided by the certified operator. It is the responsibility of the certified operator to make sure that a completed application for renewal and appropriate fee is submitted no later than 30 days after the expiration date of the certificate.

(d) A certificate of competency may be renewed by completion of training credits. The training credit hours must be earned after the issuance date and before the expiration date of the certificate. A completed renewal application, with the appropriate fee, must also be submitted. The training credits and fees required for renewal are as follows.

Figure: 30 TAC §325.116(d)

(e) A certificate of competency may also be renewed by examination within 30 days after the expiration date. To renew a certificate of competency by examination, an applicant must submit an application, pay the required renewal fee, and pass an examination.

(f) A certificate of competency may be reinstated within one year after the certificate expiration date. To reinstate a certificate of competency, an applicant must submit an application with the appropriate fee, and pass an examination.

(g) If a certificate of competency has been expired over one year, the operator must recertify. To recertify, an operator must meet all current education, training, and experience requirements, submit an application with the appropriate fee, and pass the examination.

(h) The basic wastewater course may not be used to renew a Class A or a Class B certificate.

(i) The executive director may require specific courses for renewal, on a case-by-case basis.

(j) After the expiration date, the certificate is no longer valid.

(k) All certified operators must notify the executive director of any change in address or employment within ten days from the date the change occurs.

(l) If a certificate of competency expires while a certified operator is in full-time active military service, the certificate may be renewed, without examination, upon:

(1) proof of military service;

(2) proof of the previously held certificate; and

(3) payment of the appropriate fee.

§325.118. Perpetual Certificates.

(a) If a certified operator holds a perpetual certificate and wants to maintain an active certificate, the certified operator must notify the executive director of the operator's intention to keep the certificate active. This request must be made by June 1, 2001.

(b) If the holder of a perpetual certificate does not want to maintain an active certificate, the certificate will be converted to an honorary certificate. If the operator does not contact the executive director by June 1, 2001, an honorary certificate will be issued. The holder of an honorary certificate will not be allowed to perform any operational duties in a wastewater system.

(c) To obtain an active certificate after June 1, 2001, the operator must meet the current education, training, and experience requirements, pay the appropriate fee, and pass an examination.

(d) The terms and required renewal training credits for perpetual certificates converted to active certificates are as follows.

Figure: 30 TAC §325.118(d)

(e) To renew a converted active certificate, a renewal application must be submitted. This will include proof of completion of training credit hours and current employment information. It must be received by the executive director no later than 30 days after the expiration date, or the certificate will be renewable only by examination.

(f) Training credit hours must be earned after the issuance date and before expiration date of the certificate.

§325.120. Nonrenewal of Certificate of Competency Due to Loan Default.

In accordance with Texas Education Code, Chapter 57, the executive director shall not renew the certificate of a person identified by the Texas Guaranteed Student Loan Corporation (TGSLC) as being in default on loans guaranteed by the TGSLC unless:

(1) the renewal is the first renewal following the executive director's receipt of notification that the person holding a certificate of competency is in default;

(2) the person submits to the executive director a certificate from the TGSLC that indicates that the person is not in default on a loan guaranteed by TGSLC; or

(3) the person submits to the executive director a certificate from the TGSLC indicating that the person has entered a repayment agreement on the defaulted loan guaranteed by TGSLC.

§325.122. Nonrenewal of Certificate of Competency Due to Failure to Pay Child Support.

In accordance with Texas Family Code, Chapter 232, the executive director shall not renew the certificate of a person identified by the Office of the Attorney General as being delinquent on child support payments unless:

(1) the person submits to the executive director a certificate from the Office of the Attorney General indicating that the person is not delinquent on child support payments; or

(2) the person submits to the executive director a certificate from the Office of the Attorney General indicating that the person has entered a child support repayment agreement with the Office of the Attorney General.

§325.124. Training Approvals.

(a) Training used to meet the requirements for obtaining or renewing wastewater certificates of competency must be in wastewater related topics, as approved by the executive director prior to the receipt of the training.

(b) Training credit for attendance at meetings of water and wastewater related organizations will be approved only when the meetings include training sessions related to water utility operations. Training credit will be based upon recorded attendance or by other means determined by the executive director.

(c) If the specific course and subject are approved, the executive director will determine the number of hours of credit that will be granted for the course. Training credit for attendance at training courses and seminars approved by the executive director will be allowed in accordance with the following provisions:

(1) one hour of credit per hour in attendance; and

(2) training credit will be recorded as approved by the executive director.

(d) Upon approval by the executive director, training credit may also be satisfied by other professional activities, such as publication of articles or by teaching training courses.

(e) The executive director must approve the providers of training courses.

(f) The executive director may rescind or deny training approvals.

§325.126. Certification of Wastewater System Operations Companies.

(a) Every wastewater system operations company as defined in §325.102 of this title (relating to Definitions) must hold a valid certificate of registration issued under the direction of the executive director.

(b) Any operator employed by a wastewater system operations company must hold a valid certificate of competency. The certified chief operator of each facility must hold the appropriate level of certification as required by §325.106 of this title (relating to Classification of Wastewater Treatment Facilities, Wastewater Collection Systems, and Certificates Required).

(c) When a certificate of registration is suspended or revoked, the wastewater system operations company is no longer authorized to operate or assist in the operation of any wastewater treatment facility or collection system unless specifically authorized to do so by the executive director, or unless the certificate has been reinstated.

(d) Prior to the issuance or renewal of a wastewater system operations company certificate, an application must be submitted with the appropriate fee. The fee is based on the number of facilities served, as follows.

Figure: 30 TAC §325.126(d)

(e) Certificates of registration for wastewater system operations companies will be valid for a term of two years.

(f) Certificates of registration will not be issued until all requirements have been met.

(g) Every wastewater system operations company must submit a yearly report to the executive director within one year and 30 days after issuance or renewal of the certificate. The report will include for each wastewater treatment facility or wastewater collection system:

(1) name, location, and mailing address;

(2) permittee's name and mailing addresses;

(3) commission permit number, if applicable;

(4) dates of operation during the reporting year;

(5) names of all operators employed by the operations company, including their mailing addresses, certificate classes, certificate numbers, and the name of each wastewater treatment facility or wastewater collection system for which the operators work or have worked;

(6) certified chief operator for each facility; and

(7) any additional information required by the executive director.

(h) The information in subsection (g) of this section must be submitted with any application for a new or renewal certificate, along with the appropriate fee.

(i) The information in subsection (g) of this section must be amended in writing within ten days of any change in personnel or change in the systems operated.

(j) Operations company certificates are not transferable.

(k) If a company is sold or reorganized such that control of the operation of the company is transferred from one person to another, the operations company certificate will be considered invalid. The newly organized company must apply for a new certificate.

(l) Once a year, governmental entities or quasi-governmental entities, such as river authorities, that contract to operate wastewater systems, must report to the commission the information required by subsection (g) of this section.

§325.128. Enforcement.

(a) Operators are responsible for performing adequate process control of wastewater treatment facilities. Operator performance that results in permit violations may subject the operator to administrative penalties or other sanctions as described in this section.

(b) If an operator or company causes or allows a violation of the rules or falsifies documents, the operator or company may be subject to a reprimand, suspension, or revocation of the certificate, or other penalties. Additional training may also be required on a case-by-case basis as a remedial action. Notification of enforcement actions will be issued in writing and delivered by certified mail.

(c) A reprimand is a warning that further violations or offenses may warrant suspension or revocation proceedings.

(d) Suspension means that a certificate is no longer valid and the certified operator or company is not authorized to operate any wastewater treatment facilities or collection systems until the suspension period is complete.

(1) A certificate may be suspended for up to one year.

(2) After the suspension period has ended, the certified operator will not have to retest to reinstate the certificate.

(3) If a certificate expiration date falls within the suspension period, the certified operator or company must still renew the certificate according to §325.116 of this title (relating to Renewal of Certificates of Competency) and §325.126 of this title (relating to Certification of Wastewater System Operations Companies). After the suspension period has ended, the certificate will be reinstated.

(e) Revocation means that a certificate is no longer valid and that the previously certified operator or company is not authorized to operate any wastewater treatment facilities or collection systems.

(1) A certificate may be revoked for a period of not less than one year. Upon a second similar violation, the commission may permanently revoke the certificate.

(2) After the revocation period has ended, the operator or company may reapply for a certificate, as if applying for the first time.

(f) The holder of a certificate is not subject to revocation or suspension of a certificate if the certified operator or company is unable to properly operate the wastewater treatment facility due to:

(1) the refusal of the permittee to authorize the necessary funds to operate the wastewater treatment facility properly; or

(2) the failure of the wastewater treatment facility to comply with its wastewater disposal permit resulting from faulty design or construction.

SUBCHAPTER D: CERTIFICATION OF WATERWORKS PERSONNEL

§§325.301, 325.302, 325.304, 325.306, 325.308, 325.310, 325.312, 325.314, 325.316, 325.318, 325.320, 325.322

STATUTORY AUTHORITY

The new sections are proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; under HSC, §§341.031, 341.033, and 341.034, which authorize the commission to adopt and enforce rules to implement the federal Safe Drinking Water Act (42 USC §§300f et seq.); and under TGC, Chapter 2005, which provides for permit processing.

The proposed new sections implement HSC, §§341.031, 341.033, and 341.034; and TGC, Chapter 2005.

§325.301. Applicability.

The provisions of this subchapter remain in effect until June 1, 2001, at which time they are superceded by the provisions of Chapter 325, Subchapter A of this title (relating to Certification of Public Water System Operators and Public Water System Operations Companies). By June 1, 2001, all public water system operators, systems, and operations companies must comply with the provisions of Chapter 325, Subchapter A of this title.

§325.302. General.

(a) It is the purpose of these rules and regulations to set forth a uniform procedure for the administrative issuance of certificates of competency to waterworks personnel seeking compliance with state statutes regulating their operations.

(b) Certificates of competency are established for persons in direct responsible charge, that is, who have active daily on-site responsibility for a water production system, a water treatment plant, a water distribution system, or a major portion of such a system. Certification of supervisors is encouraged, as is that of subordinates, who are directly involved in water supply technical operations.

(c) Certification is available to operators of all systems which furnish drinking water to the public, whether or not a certified operator for a particular water system is required by law.

(d) The Texas certification program is designed to stimulate training among its thousands of waterworks operators who are widely spread throughout the entire state. Such training helps to develop knowledge and technical skills which promotes career growth in the water utility industry and protects the public health by increasing assurance that safe drinking water is being provided to the consumer. Water personnel should become certified at the highest grade commensurate with his or her qualifications.

(e) Certification may be made a part of an employee position requirement to provide adequate staffing of utility systems, and it might result in a means for a person to advance into a better and more responsible position; however, certification is not intended to be a rating system for upgrading employees or for establishing salary levels. It is a process whereby a person can be recognized for his or her skills and knowledge in the water utility industry.

(f) The statutory authorization for these rules is the Texas Health and Safety Code, Chapter 341, Minimum Standards of Sanitation and Health Protection Measures.

§325.304. Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Certificate** - The certificate of competency issued by the commission which states that the operator has qualified for certification at the grade specified. The certificate shall have the original or printed signature of the executive director and chair of the commission. The commission may issue the following certificates:

(A) Grade A water;

(B) Grade B surface water;

(C) Grade B groundwater;

(D) Grade B distribution;

(E) Grade C surface water;

(F) Grade C groundwater;

(G) Grade C distribution; and

(H) Grade D water.

(2) **Daily on-site responsibility** - An individual who actually performs work, makes decisions, or gives direction to others concerning the operation of a water plant, water well, or water distribution system; and such work, decision, or direction is a part of the daily responsibilities of such individual as opposed to periodic, occasional, or regular responsibilities on a less frequent basis.

(3) **Designated courses** - The minimum 20-hour courses or their equivalent required to obtain a certificate, as specified in these rules and regulations. The designated courses shall include one or more of the following: basic water works operation, groundwater production, surface water production, water distribution, water laboratory, safety, pump, and motor maintenance and management. Courses offered by the Water and Wastewater Training Division, Texas A&M

University Engineering Extension Service or similar approved courses shall be considered by the commission to be designated courses.

(4) **Experience** - Actual work experience, full or part-time, in water supply operation, maintenance, distribution, laboratory analysis, or other approved practices considered essential for production of final product from the water supply system.

(A) Certificates of competency shall not be issued to managerial or administrative officials such as mayors, city managers, councilpersons, or utility board members unless they conduct daily, on-site operational activities for a public water system. Certificates also will not be issued to support personnel such as secretaries, billing clerks, customer service representatives, meter readers, radio dispatchers, nor to employees of state and/or federal agencies having regulatory authority over public water systems.

(B) To be fully acceptable, work experience presented to meet requirements for a surface water production certificate must be in surface water operations; work experience presented to meet requirements for a groundwater production certificate must be in groundwater operations; and work experience presented to meet requirements for a distribution certificate must be in distribution operations.

(C) At least one-half of the minimum required experience must be in the same field as the certificate applied for. For example, at least one year of actual surface water

treatment/production experience must be obtained to qualify for a Grade C surface water certificate and 2 1/2 years of actual surface water treatment production experience must be obtained before applying for a Grade B surface water certificate.

(5) **Training credit** - The hours of credit allowed by the commission for attendance at training which has been approved in accordance with the provisions in these rules and regulations.

(6) **Water supply system** - The works and auxiliaries for production, treatment, storage, and distribution of the water from the sources of supply to the free-flowing outlet of the ultimate consumer.

(7) **Waterworks operator** - Any person trained in the purification or distribution of a public water supply who has a practical working knowledge of the chemistry and bacteriology essential to the practical mechanics of water purification and who is capable of conducting and maintaining the purification processes in an efficient manner.

(A) Surface water operator - An operator with daily on-site responsibility for producing or treating any surface water used as a water source for a public water supply.

(B) Groundwater operator - An operator with daily on-site responsibility for producing and/or treating any groundwater used as a water source for a public water supply.

(C) Distribution system operator - An operator with daily on-site responsibility for delivering a sufficient volume of drinking water at the required pressure while maintaining water quality.

§325.306. Administration.

The commission shall be responsible for the following:

(1) receiving and evaluating applications and pertinent documents to determine whether qualification requirements are met by the applicant and notifying applicant as to action taken;

(2) preparing and administering examinations;

(3) supervising and grading examinations or arranging for the supervision and grading of examinations and notifying applicant as to result of examination (pass or fail);

(4) issuing new and renewal certificates;

(5) maintaining records of qualifications of operators having valid certificates;

(6) maintaining a register of operators having valid certificates;

(7) maintaining a register of water supply systems having certified personnel;

(8) approving training for certification credit;

(9) maintaining transactions of committee meetings;

(10) collection of fees.

§325.308. Processing Applications.

(a) Complete applications for public water system operators must comply with §325.310 of this title (relating to Qualifications). Complete renewal applications for public water system operators must comply with §325.316 of this title (relating to Certificates).

(b) Applications for certification will be processed in accordance with the following time periods.

(1) Within 45 days following the receipt of an initial application, the executive director shall provide written notice to the applicant containing:

(A) a statement that the application is complete and accepted for filing; or

(B) a statement that the application is incomplete and a listing of the specific additional information required for acceptance of the application.

(2) Within 45 days following the receipt of a complete application, the executive director shall approve or deny an application. If the executive director determines to deny the application, the applicant shall be provided notice and an opportunity for a hearing prior to denying the application.

(c) Good cause for exceeding the established processing periods under subsection (b) of this section exists if:

(1) the number of applications to be processed exceeds by at least 15% the number of applications processed in the same quarter of the previous calendar year;

(2) a public or private entity other than the commission was used to process all or a part of the permit applications received by the commission, and the delay is caused by that entity; or

(3) other conditions exist, giving the commission good cause for exceeding the established processing period.

(d) If the commission exceeds the processing time periods established in subsection (b) of this section, an applicant for certification may file a written complaint with the executive director and request a timely resolution of any dispute arising from the delay.

(e) An applicant who files a written complaint under subsection (d) of this section is entitled to full reimbursement of all application filing fees paid if the executive director determines that the established period for application processing was exceeded and good cause for exceeding the established processing period does not exist.

(f) If the executive director does not agree that the established processing periods have been exceeded or finds that good cause exists for exceeding the established processing periods, the request will be denied.

§325.310. Qualifications.

(a) Certification by examination. All individuals shall meet the following requirements based upon formal education, specialized training courses, actual operating experience, and passing of written examinations. All applicants shall be required to pass the current examinations covering the fields of waterworks operation.

(b) Grade A water certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent, eight years of experience, 160 hours of training credit in accordance with paragraph (4) of this subsection;

(2) college degree (bachelor's) with a major in an engineering discipline eligible for registration as a professional engineer, or in chemistry, biology, or bacteriology, and five years of experience, and 160 hours of training credit in accordance with paragraph (4) of this subsection;

(3) college degree (master's) with a major in any engineering discipline eligible for registration as a professional engineer, or in chemistry, biology, or bacteriology, and four years of experience, and 160 hours of training credit in accordance with paragraph (4) of this subsection;

(4) the 160 hours of training credit indicated in paragraphs (1)-(3) of this subsection shall include each of the following designated courses, or the equivalent:

(A) groundwater production;

(B) surface water production;

(C) water distribution;

(D) water laboratory;

(E) safety; and

(F) management;

(5) for the years of experience required for Grade A certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than six years for high school graduates, five years for college graduates with bachelor's degrees, or four years for college graduates with master's degrees.

(c) Grade B surface water certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and five years of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(2) college degree (bachelor's) with a major in any engineering discipline eligible for registration as a professional engineer, or in chemistry, biology, or bacteriology; and one year of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(3) the 100 hours of training credit indicated in paragraphs (1) and (2) of this subsection shall include each of the following designated courses, or the equivalent:

(A) surface water production;

(B) water distribution;

(C) safety; and

(D) water laboratory.

(d) Grade B groundwater certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and five years of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(2) college degree (bachelor's) with a major in any engineering discipline eligible for registration as a professional engineer, or in chemistry, biology, or bacteriology; and one year of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(3) the 100 hours of training credit indicated in paragraphs (1) and (2) of this subsection shall include each of the following designated courses, or the equivalent:

(A) groundwater production;

(B) water distribution;

(C) water laboratory; and

(D) safety;

(4) for the years of experience required for Grade B groundwater certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than three years for a high school graduate or one year for a college graduate.

(e) Grade B distribution certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and five years of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(2) college degree (bachelor's) with a major in any engineering discipline eligible for registration as a professional engineer, or in chemistry, biology, or bacteriology; and one year of experience, and 100 hours of training credit in accordance with paragraph (3) of this subsection;

(3) the 100 hours of training credit indicated in paragraphs (1) and (2) of this subsection shall include each of the following designated courses, or the equivalent:

(A) water distribution;

(B) safety;

(C) pump and motor maintenance; and

(D) water laboratory;

(4) for the years of experience required for Grade b distribution certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than three years for a high school graduate or one year for a college graduate.

(f) Grade C surface water certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and two years of experience, and 60 hours of training credit in accordance with paragraphs (2) and (3) of this subsection;

(2) 40 hours of training credit, which shall consist of the following designated courses, or their equivalent:

(A) basic waterworks operation; and

(B) surface water production;

(3) the remaining 20 hours, which shall be in one of the following courses:

(A) water laboratory;

(B) water utility safety;

(C) water distribution;

(D) chlorinator maintenance;

(E) pump and motor maintenance; or

(F) water utility calculations.

(4) for the years of experience for Grade C surface water certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than one year.

(g) Grade C groundwater certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and two years of experience and 60 hours of training credit in accordance with paragraphs (2) and (3) of this subsection.

(2) 40 hours of training credit, which shall consist of the following designated courses, or their equivalent:

(A) basic waterworks operation; and

(B) groundwater production;

(3) the remaining 20 hours, which must be in one of the following courses:

(A) water laboratory;

(B) water distribution;

(C) chlorinator maintenance;

(D) pump and motor maintenance;

(E) water utility safety; or

(F) water utilities calculations;

(4) for the years of experience for Grade C groundwater certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than one year.

(h) Grade C distribution certificate. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and two years of experience and 60 hours of training credit in accordance with paragraphs (2) and (3) of this subsection;

(2) 40 hours of the training, which shall consist of the following designated courses, or their equivalent:

(A) basic waterworks operations; and

(B) water distribution;

(3) the remaining 20 hours, which must be in one of the following courses:

(A) pump and motor maintenance;

(B) chlorinator maintenance;

(C) water laboratory;

(D) water utility safety;

(E) water utilities calculations; or

(F) valve and hydrant maintenance.

(4) for the years of experience for Grade C distribution certificates, one year of college (32 semester hours) or an additional 40 hours of approved training credits, which may be substituted for one year of the experience requirement. In no case shall the actual experience be less than one year.

(i) Grade D water certificate. A Grade D water certificate is not renewable if the operator is employed at a system of 250 connections or more. Surface water systems must have an operator with at least Grade C surface water certification. Education, experience, and training requirements are as follows:

(1) high school graduation, or the equivalent; and no experience, and 20 hours of training credit in accordance with paragraph (3) of this subsection;

(2) less than high school, and no experience, and 40 hours of training credit in accordance with paragraph (3) of this subsection;

(3) 20 hours of training credit indicated in paragraphs (1) and (2) of this subsection which must be a course in basic waterworks operation, or its equivalent.

§325.312. Applications.

(a) Application for certification shall be made on a standard form provided by the commission and signed by the applicant. All statements and qualifications given by the applicant are subject to verification by the commission. Misrepresentation or falsification of information by the applicant shall be grounds for rejection of an application.

(b) Each application shall be accompanied by the appropriate fee. If application is made for two or more grades, the fee shall be for the sum of each certificate applied for on the application form. A certificate will be issued for the highest level passed. Approved applications and fees are valid for 12 months from the date of application. If an examination has not been taken within 12 months from the date of application, a new application must be submitted with another fee.

(c) Grade A, B, and C applicants shall list two references, preferably a current and a previous supervisor, whom the commission may contact to verify the applicant's work experience.

(d) The applicant shall furnish evidence of any training credit or proof of education when requested by the commission.

(e) Any examination taken by the applicant prior to the commission's approving the corresponding application shall be held by the commission for a maximum of six months pending approval of the application for one or more grades of certificates. If the application is not approved within six months for one or more grades of certificate, the applicant shall submit a new application with the appropriate fee and retake the examination.

(f) Any applicant for a Grade A certificate shall meet qualification requirements and submit the appropriate fee before taking the examination. An approved application will be held for a maximum of nine months, then discarded if an examination has not been taken.

§325.314. Examinations.

(a) The passing score for the examination for each grade of certificate shall be 70%.

(b) Any applicant who fails to pass an examination may repeat the same examination after a period of 90 days following the date of the previous examination. Following the failure of an initial examination, the application shall be held for a maximum of 12 months pending the repeat of the examination. During this period, the examination may be retaken twice more without payment of an additional fee. If the examination is not repeated within 12 months, the applicant shall submit another application with the appropriate fee.

(c) Examinations shall be supervised by the commission, by any member of the committee, or by any person designated by the commission. Examinations shall be given at places and times determined by the commission, by any member of the advisory certification committee, or by persons designated by the commission.

(d) Examinations shall be graded by the commission or by any member of the advisory certification committee, at the request of the commission.

§325.316. Certificates.

(a) Issuance of certificates.

(1) Upon satisfactory fulfillment of the requirements provided in these rules and regulations, a suitable certificate shall be issued by the commission.

(2) Dual surface and groundwater certificates will not be issued unless the operator has duties in both groundwater and surface water. However, a distribution certificate may be held in addition to a ground or surface water certificate.

(3) The certificate shall be prominently displayed in the utility plant or office of the certified operator.

(4) Distribution certificates of competency are developed for operators having solely distribution system responsibilities. Operators working in distribution systems may be certified as distribution system operators and are not required to be certified as ground or surface water treatment plant operators. A certified distribution system operator may perform only those duties relating to the operation and maintenance of distribution systems.

(5) An operator holding a valid groundwater or surface water certificate may perform all duties relating to distribution systems, and need not hold a distribution certificate.

(6) Grade A certificates previously issued in perpetuity will remain perpetual certificates until June 1, 2001 and thereafter must be converted to active or honorary status in order to be compliant with the provisions of Chapter 325, Subchapter A of this title (relating to Certification of Public Water Systems Operators and Public Water Systems Operations Companies).

(b) Period of validity of certificates.

(1) The period of validity shall be as follows:

(A) Grade A: eight years;

(B) Grade B: five years;

(C) Grade C: three years;

(D) Grade D: two years.

(2) The certified operator shall inform the commission of any change in address or employment during the period of validity of the certificate.

(c) Renewal of certificates.

(1) Certificates may be renewed, unless revoked or replaced by a higher grade of certificate.

(2) The following requirements shall be met for renewal of each certificate along with payment of the appropriate fee.

(A) Certificates may be renewed by substitution of hours if the required training credits and the appropriate fee are submitted within 30 days following the expiration date of the certificate. Training required for renewal is as follows: Grade A-80 hours; Grade B-50 hours; Grade C-30 hours; and Grade D-20 hours.

(B) Certificates may be renewed by retaking and passing the written examination within 30 days following the expiration date of the certificate, in which case renewal shall be effective on the date of examination.

(C) When the certificate of an operator expires while he or she is in military service, it may be renewed without examination upon proof of military service and of the previously held certificate.

(3) Operators may be recertified by passing the appropriate examination up to one year following a certificate's expiration date without meeting current training requirements. Operators who

wish to recertify after one year following a certificate's expiration date must meet the current training requirements.

(4) The basic water course may not be used to meet renewal requirements for Grade A or Grade B certificates after one year following the effective date of these rules.

(5) Training credit hours may be used only once for renewal purposes and must be earned before the issuance date and expiration date of the certificate.

(6) When the certificate of an operator expires while he or she is in military service, it may be renewed without examination upon proof of military service and of the previously held certificate.

(d) Application renewal procedure.

(1) Before the expiration date of the certificate, the commission shall mail to the certified operator a renewal application showing the expiration date, the requirements for renewal, and the fee to be paid. The commission shall mail the renewal application to the operator at the most recent address provided by the operator to the commission.

(2) The operator shall return the renewal application with the appropriate fee to the commission, and shall submit any required record or evidence of completion of training credit.

(3) Upon the applicant's satisfactory fulfillment of the requirements for renewal provided in these rules and regulations, a suitable renewal certificate shall be issued by the commission.

(e) Suspension or revocation of certificates.

(1) The certificate of an operator shall be suspended or revoked if:

(A) the certificate was issued erroneously;

(B) the operator obtained the certificate through fraud, deceit, or through the submission of incorrect data on his/her qualifications; or

(C) the operator practiced fraud and deceit, or failed to use reasonable care, judgment, or application of his or her knowledge in the performance of his or her duties.

(2) When the commission has reason to believe that charges against a certified operator may be valid, the commission shall notify the operator by personal service or certified mail at his last known address:

(A) of the charges made against him/her;

(B) that it intends to conduct an examination of the charges;

(C) that the operator has an opportunity to refute and prove the charges invalid.

(3) After the commission's examination of the charges and the operator's rebuttal, if the commission still has reason to believe there is cause for suspension or revocation, the commission shall initiate a formal hearing in accordance with the commission's formal hearing procedures.

(4) Upon revocation of an operator's certificate, a new certificate shall not be obtained for at least one year and until his/her application is approved by the certification committee and all other requirements of the rules have been met.

(5) Upon suspension of an operator's certificate for one year, reinstatement may be considered upon approval by the advisory certification committee.

(6) An operator may be placed on "probation" if, in the judgment of the commission, he/she commits an offense not serious enough to warrant suspension of revocation of the certificate. Such "probationary" status shall serve as a warning to the operator and additional or repeat offenses shall warrant suspension or revocation proceedings. The period of probation shall be at the discretion of the commission, and may vary depending upon the circumstances and nature of the offense. Notification and rebuttal procedures for probation shall be the same as for suspension and revocation except that the commission shall not be required to hold a formal hearing in accordance with paragraph (3) of this subsection.

§325.318. Training Approval.

(a) Training used to meet the requirements for obtaining or renewing water certificates shall be in water-related topics, as determined by the commission.

(b) Training credit for attendance at meetings of professional or trade associations shall be allowed only when the meeting includes a training session related to waterworks or wastewater operations. Training credit shall be allowed in accordance with the following provisions:

(1) district monthly meetings: two hours of credit per meeting attended and verified;

(2) district all day meetings: one hour of credit per hour of verified attendance;

(3) training credit, which shall be based upon the attendance report submitted by the entity which provides the training;

(4) persons earning training hours at district meetings may use these hours toward obtaining renewal certificates and new certificates where allowed under these rules.

(c) Training credit for attendance at training sessions of annual or regional water utilities schools, recognized by the commission, shall be allowed in accordance with the following provisions:

(1) annual or regional school: one hour of credit per hour in attendance at training sessions;

(2) training credit, which shall be based upon attendance recorded by the commission or by other means determined by the commission.

(d) Training credit for certification will be granted for those courses which have been reviewed and approved by the commission prior to the receipt of the training.

(e) Upon application, an individual may be granted four hours of training credit for presenting one hour of training at training events and ten hours of training credit for articles published in journals such as the American Water Works Association, Texas Water Utilities Association Journal, and others relating to the water utilities industry.

§325.320. Reciprocity.

The commission may issue certificates, without examination, to applicants who hold valid certification issued under laws of any other state, territory, or possession of the United States of America or any country provided:

(1) the out-of-state requirements are equal to the provisions of the Texas regulations;

(2) the applicant passed a written examination in obtaining the out-of-state certificate;

(3) the corresponding state reciprocates with operators holding Texas certificates;

(4) the applicant lives in Texas or is employed in the waterworks field in Texas; and

(5) the appropriate fee has been paid.

§325.322. Fees.

(a) The Health and Safety Code, §341.034(b), requires the payment of a fee of $10 per year before a certificate of competency can be issued or renewed. Fees for certification shall be established as follows.

(1) application fees:

(A) Grade D certificate-$20;

(B) Grade C certificate-$30;

(C) Grade B certificate-$50;

(D) Grade A certificate-$80;

(2) renewal fees:

(A) Grade D certificate-$20;

(B) Grade C certificate-$30;

(C) Grade B certificate-$50;

(D) Grade A certificate-$80.

(b) Certificates that have not been renewed within 30 days of the expiration date with the appropriate fee will be considered invalid. A new certificate shall be obtained by submitting a new application with the appropriate fee and receiving a passing score on the examination if application is made within 12 months following the expiration date of the certificate.

(c) Fees shall be paid by personal check, cashier's check, or money order. Cash cannot be accepted for payment of fees.

(d) An applicant or holder of a certificate shall pay all required fees before taking the examination or receiving a certificate of competency.

(e) All fees shall be made payable to the Texas Natural Resource Conservation Commission and are not refundable.

(f) If an applicant does not submit the appropriate payment with the new or renewal application, the certificate shall not be issued.

SUBCHAPTER E: CERTIFICATES OF COMPETENCY

§§325.401, 325.402, 325.404, 325.406, 325.408, 325.410, 325.412, 325.414, 326.416, 325.418, 325.420, 325.422, 325.424, 325.426, 325.428, 325.430, 325.432, 325.434

STATUTORY AUTHORITY

Chapter 325, Subchapter E is proposed under TWC, §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the TWC or other laws of this state; under TWC, §26.0301 regarding wastewater operator certification; and under TGC, §2005, regarding permit processing.

Subchapter E implements TWC, §26.0301; and TGC, Chapter 2005.

§325.401. Applicability.

The provisions of this subchapter remain in effect until June 1, 2001, at which time they are superceded by the provisions of Chapter 325, Subchapter B of this title (relating to Certification of Wastewater Operators and Wastewater Operations Companies). By June 1, 2001, all wastewater operators and wastewater system operations companies must comply with the provisions of Chapter 325, Subchapter B of this title.

§325.402. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Certificate of competency** - The certificate issued by the commission to treatment plant operators and wastewater treatment facility operations companies to operate or assist in the operation of a wastewater treatment facility or collection system.

(2) **Permit** - A wastewater disposal permit issued by the commission under Texas Water Code, Chapter 26.

(3) **Wastewater** - Waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(4) **Wastewater collection system** - The trunks, arterials, channels, conduits, manholes, pumps, pumping stations, piping, and other appurtenances necessary to collect wastewater from a community, water district, corporation, company, or other entity which produces domestic sewage or a majority of domestic sewage with other liquid wastes treatable in a wastewater treatment facility.

(5) **Wastewater collection system operator** - Any person, in active field supervision, who provides frequent on-site inspection and supervision of collection system operation and/or maintenance activities.

(6) **Wastewater treatment facility** - Any plant, disposal field, lagoon, or other facility installed for the purpose of treating, neutralizing, or stabilizing wastewater, the operation of which requires a wastewater disposal permit from the commission.

(7) **Wastewater treatment facility operations company** - Any business, company, corporation, firm, partnership, or other nongovernmental entity that employs one or more wastewater treatment plant operators for the purpose of providing operations services, on a contractual basis, to one or more than one wastewater treatment facility.

(8) **Wastewater treatment plant operator** - Any person who operates a domestic wastewater treatment facility, including those who perform day-to-day maintenance work so long as the primary function of the operator involves process control, but excluding such persons as directors of public works, city engineers, city managers, and other persons whose duties do not include actual operation or direct supervision of wastewater disposal facilities.

§325.404. Processing Applications.

(a) Complete applications for wastewater system operators must comply with §325.406 of this title (relating to Certificates for Wastewater Treatment Plant Operators) and with §325.408 of this title (relating to Certificates for Collection System Operators). Complete renewal applications for wastewater system operators must comply with §325.414 of this title (relating to Renewal of Operator Certificates). Complete applications for wastewater system operations companies must comply with §325.420 of this title (relating to Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies).

(b) Applications for certification will be processed in accordance with the following time periods.

(1) Within 45 days following the receipt of an initial application, the executive director shall provide written notice to the applicant containing:

(A) a statement that the application is complete and accepted for filing; or

(B) a statement that the application is incomplete and a listing of the specific additional information required for acceptance of the application.

(2) Within 45 days following the receipt of a complete application, the executive director shall approve or deny an application. If the executive director determines to deny the application, the applicant shall be provided notice and an opportunity for a hearing prior to denying the application.

(c) Good cause for exceeding the established processing periods under subsection (b) of this section exists if:

(1) the number of applications to be processed exceeds by at least 15% the number of applications processed in the same quarter of the previous calendar year;

(2) a public or private entity other than the commission was used to process all or a part of the permit applications received by the commission, and the delay is caused by that entity; or

(3) other conditions exist, giving the commission good cause for exceeding the established processing period.

(d) If the commission exceeds the processing time periods established in subsection (b) of this section, an applicant for certification may file a written complaint with the executive director and request a timely resolution of any dispute arising from the delay.

(e) An applicant who files a written complaint under subsection (d) of this section is entitled to full reimbursement of all application filing fees paid if the executive director determines that the established period for application processing was exceeded and good cause for exceeding the established processing period does not exist.

(f) If the executive director does not agree that the established processing periods have been exceeded or finds that good cause exists for exceeding the established processing periods, the request will be denied.

§325.406. Certificates for Wastewater Treatment Plant Operators.

(a) Any wastewater treatment plant operator as defined in §325.402 of this title (relating to Definitions) must hold a valid certificate of competency issued under this chapter with the following exception. A person first entering the field of wastewater treatment may be employed as an operator-in-training without certification under constant supervision of another certified operator for a maximum of one year after employment. This time period will allow the person to obtain the required designated training courses and take the appropriate examination. Any operator-in-training who is unable to acquire current certification within one year of his or her employment is prohibited from performing any operational functions at the facility unless specifically authorized to do so by the commission. Upon suspension or revocation of a certificate under §325.424 of this title (relating to Sanctions), the operator shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated.

(b) Each holder of a wastewater disposal permit for a wastewater treatment facility shall employ one or more treatment plant operators holding valid certificates of competency issued under the direction of the commission. At any small wastewater treatment facility where there is only one operator, when the permittee's certified operator leaves the employment of the permittee, the permittee will take prompt and diligent action to have employed a qualified and properly certified wastewater operator.

(c) The certificates of competency for wastewater treatment plant operators shall be Class A, Class B, Class C, and Class D. The qualification requirements for each class of certificate shall include a minimum level of formal education, a minimum level of training, a period of experience as a treatment plant operator, a grade of 70% or higher on a written examination for that certificate class, and payment of the applicable fee. If the applicant fails to pass an examination, the applicant must wait a minimum of three months before taking any examination. The executive director may require additional training after a failed examination.

(d) The qualification requirements for each class of certificate for treatment plant operators are as follows.

Figure: 30 TAC §325.406(d)

(e) Credit for related experience not directly connected with wastewater treatment facility operation, laboratory analyses, or maintenance will be approved at a rate of 50% of actual experience and only if the experience involves tasks similar to those required for operation of wastewater treatment

facilities. At least one-half of the total experience requirement must be in actual, "hands-on" wastewater treatment plant operation. In no case (except for Class D) shall the amount of actual experience be less than one year. In order for laboratory experience to be applicable at a rate of 100% toward operator certification, the laboratory must be on-site and owned by the permittee such that the laboratory technician consults on a daily basis with operational personnel.

(f) The only college degrees which will satisfy the college degree requirement are those with a major in chemistry, biology, microbiology, bacteriology, or similar disciplines, or in any engineering discipline eligible for registration as a professional engineer in the State of Texas.

(g) The hours of training which are required in subsection (d) of this section must be in approved courses which include, but are not limited to, the following or their equivalents:

(1) Class A - wastewater treatment, wastewater collection, wastewater laboratory, water utility management, and either water utility safety, utility calculations or advanced wastewater laboratory;

(2) Class B - wastewater treatment, wastewater collection, wastewater laboratory, and either water utility safety, utility calculations, water utility management or advanced wastewater laboratory;

(3) Class C - basic wastewater operation, wastewater treatment, and either wastewater collection, wastewater laboratory, utility calculations or water utility safety;

(4) Class D - basic wastewater operation (plus either wastewater treatment, utility calculations or water utility safety for 40-hour requirement).

(h) For treatment plant operators who qualify for Classes A-C with an education of high school or equivalent, one year of college (32 semester hours approved by the executive director) or an additional 40 hours of training credits approved by the executive director may be substituted for either 1/2-year or one year of the experience requirement.

(i) Subject to revocation or suspension under §325.424 of this title, Class A certificates shall be valid for a term of eight years; Class B certificates shall be valid for a term of five years; Class C certificates shall be valid for a term of three years; and Class D certificates shall be valid for a term of two years. Certificates of competency for operators which were issued by the Texas Department of Health prior to August 15, 1985, will remain valid for the terms stated thereon.

(j) A certified wastewater treatment plant operator may perform all duties relating to the operation and maintenance of both wastewater treatment plants and collection systems and need not hold both types of certificates.

(k) Training used to meet the requirements of this section for obtaining or renewing wastewater certificates may be granted in areas of training other than those stated in subsections (g) and (h) of this section upon executive director approval of the training material. If the specific course and subject matter are approved, the executive director will determine the number of hours of credit that will be recognized for the course. The executive director shall review and approve the qualifications for all instructors of the training courses. Two hours of training credit will be recognized for verified attendance at professional or trade association meetings when the meetings include a training session related to wastewater utilities. Training credit may also be satisfied by other professional activities, such as publication of articles and teaching training courses, upon approval of the executive director.

(l) Operators of domestic wastewater treatment facilities owned and located on industrial sites which are regulated by industrial-type wastewater disposal permits are required to be certified only if the point of discharge is separate from any other industrial outfalls and the domestic wastewater is not commingled with other industrial wastewater prior to discharge.

§325.408. Certificates for Collection System Operators.

(a) Any collection system operator as defined in §325.402(5) of this title (relating to Definitions) who does not hold a wastewater treatment plant operator's certificate must hold a valid certificate of competency as a collection system operator issued under this chapter with the following exception. A person first entering the field of wastewater collection may be employed as an operator-in-training without certification under constant supervision of another certified operator for a maximum

of one year after employment. This time period will allow the person to obtain the required designated training courses and take the appropriate examination. Any operator-in-training who is unable to acquire current certification within one year of his or her employment is prohibited from performing any operational functions in the collection system unless specifically authorized to do so by the commission. Upon suspension or revocation of a certificate under §325.424 of this title (relating to Sanctions), the collection system operator shall no longer supervise a collection system maintenance crew if the operator determines remedial actions or makes operating decisions, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated.

(b) The certificates of competency for collection system operators shall be Class I and Class II. The qualification requirements for each class of certificate shall include a minimum level of formal education, a minimum level of training, a period of experience as a collection system operator, a grade of 70% or higher on a written examination for that certificate class, and the payment of the applicable fee. If the applicant fails to pass an examination, the applicant must wait a minimum of three months before taking any examination. The executive director may require additional training after a failed examination.

(c) The qualification requirements for each class of certificate for collection system operators are as follows.

Figure: 30 TAC §325.408(c)

(d) Experience must be actual wastewater collection system experience and not experience which is nonoperational in nature. Credit for experience not directly connected with collection system operation will be approved if the experience involves tasks that are similar to that required for operation of collection systems. Each year of related experience will count as only one-half year of experience.

(e) The hours of training which are required in subsection (c) of this section must be in approved courses which include, but are not limited to, the following or their equivalents:

(1) Class II - basic wastewater operations, wastewater collection, and either water utility safety or pump and motor maintenance;

(2) Class I - wastewater collection (plus basic wastewater operation for 40-hour requirement).

(f) When applying at the Class II level, a collection system operator may substitute one year of college (32 semester hours approved by the executive director) or an additional 40 hours of wastewater training credits approved by the executive director for one year of the experience requirement.

(g) Subject to revocation or suspension under §325.424 of this title, Class I certificates shall be valid for a term of two years; and Class II certificates shall be valid for a term of three years.

(h) Ordinarily, collection systems are considered as a part of the treatment works and are under the operation and supervision of certified wastewater treatment plant personnel; however, in those instances where an entity does not own the treatment facility treating its wastewater and the wastewater is routed elsewhere for treatment or the responsibility for operation and maintenance of the collection system is distinctly separated from the wastewater treatment facility, the operators in the collection system may be certified solely as collection system operators and are not required to be certified as wastewater treatment plant operators. In those cases, the collection system shall be classified as Category I if it transports daily average flows of less than 100,000 gallons per day, and as Category II if it transports daily average flows of 100,000 gallons per day or greater.

(i) Each classified wastewater collection system shall have at least one operator who holds a certification commensurate with that category of system. Each Category I system shall have at least one operator with either a Class I or Class II certificate or treatment plant operator's certificate. Each Category II system shall have at least one operator with a Class II certificate or Class C treatment plant operator's certificate.

(j) A certified collection system operator may perform only those duties relating to the operation and maintenance of collection systems. Experience exclusively in collection system operation and maintenance is not applicable toward certification as a treatment plant operator.

(k) Training used to meet the requirements for obtaining or renewing collection system operator certificates may be granted in areas of training other than those stated in subsection (e) of this

section upon executive director approval of the training material. If the specific course and subject are approved, the executive director will determine the number of hours of credit that will be recognized for the course. The executive director shall review and approve the qualifications for all instructors of the training courses. Two hours of training credit will be recognized for verified attendance at professional or trade association meetings when the meetings include a training session related to wastewater utilities.

§325.410. (Effective beginning September 1, 1991) - Classification of Wastewater Treatment Facilities.

(a) Wastewater treatment facilities shall be classified in accordance with the following criteria: Figure: 30 TAC §325.410(a)

(b) A wastewater treatment facility having a combination of treatment processes which are in different categories shall be assigned the higher category.

(c) The executive director may increase the treatment facility classification indicated in subsection (a) of this section for those facilities which in the judgment of the executive director include unusually complex processes or which present unusual operation or maintenance conditions.

(d) The chief operator or operator in responsible charge of each wastewater treatment facility shall possess a certificate at least as high as that of the category of treatment facility.

(1) Category D facilities shall be operated by a Class D operator or an operator certified at a higher level.

(2) Category C facilities shall be operated by a Class C operator or an operator certified at a higher level.

(3) Category B facilities shall be operated by a Class B operator or an operator certified at a higher level.

(4) Category A facilities shall be operated by a Class A operator.

(e) Where shift operation of the wastewater treatment facility is necessary, each shift which does not have the on-site supervision of the chief operator must be supervised by an operator who is certified at not less than one level below the category of the plant.

(f) When a permittee's chief operator or operator in responsible charge leaves the employment of the permittee, the permittee will take prompt and diligent action to either upgrade the level of certification of existing operators or employ a qualified and properly certified operator.

§325.412. Applications and Fees.

(a) Applications for certificates of competency for wastewater treatment plant and collection system operators shall be made to the executive director, who is authorized by the commission to issue the certificates of competency for the commission. Applications shall be completed in full, and the applicant shall be mailed notification of any deficiencies by the executive director. All deficiencies shall be corrected within 60 days of notification, or the examination will be considered invalid and must be repeated.

(b) No certificates of competency will be issued by the executive director until all requirements have been met.

(c) Effective September 1, 1994, applications for new, renewed, or upgraded certificates shall be accompanied by a fee in the form of a personal check, cashier's check, or money order. Cash cannot be accepted for payment of fees. All fees shall be made payable to the Texas Natural Resource Conservation Commission and are nonrefundable.

(d) Fees are $20 annually, and the fee for the entire term of the certificate must be paid prior to issuance. A two-year certificate requires a fee of $40, a three-year certificate requires a fee of $60, a five-year certificate requires a fee of $100, and an eight-year certificate requires a fee of $160.

(e) Applications for new and upgraded certificates are valid for a period of one year from their date of receipt at the commission. After an initial failure, examinations may be repeated two times without payment of another fee. Another application and fee must be submitted after a third failure or after one year of submission of the application, whichever occurs first.

§325.414. Renewal of Operator Certificates.

(a) Unless revoked under §325.424 of this title (relating to Sanctions), or replaced by a higher class of certificate, certificates may be renewed by payment of the applicable fee and either by taking and passing a renewal examination or by receiving a specified number of hours of approved additional training. Prior to the expiration date of the certificate, an application for renewal will be mailed to the most recent address provided by the operator showing the expiration date, the requirements for renewal, and the fee to be paid. It is the responsibility of the operator that the completed application for renewal and appropriate payment be submitted in a timely manner. When renewing by training hours, applications for renewal and appropriate fees must be received by the executive director no later than 30 days after the date of expiration of the certificate, or the certificate will be renewable only by reexamination.

(b) To renew a certificate on the basis of training hours under subsection (a) of this section, the operator must earn the following number of credit hours for the applicable class of certificate: Class A -80 hours; Class B-50 hours; Class C-30 hours; Class D-20 hours (if high school graduate or equivalent) or 40 hours (if less than a high school graduate); Class II-30 hours; and Class I-20 hours (if

high school graduate or equivalent) or 40 hours (if less than a high school graduate). The training hours to be counted toward certificate renewals are those which were received from the date the certificate was first issued (if it is the first renewal) or from the date of the certificate's latest renewal.

(c) The basic wastewater course may not be used to renew Class A or B certificates.

(d) Class D certificates are not renewable at any activated sludge type facilities, or trickling filter or RBC facilities with a permitted daily average flow of 100,000 gallons per day or greater.

(e) If the applicant fails to pass the renewal examination with a grade of at least 70%, the applicant must wait a minimum of three months before retaking any renewal examination. To renew a certificate that has been expired for a period of one year or more, the applicant must satisfy the current requirements for training, education, experience, and fees, in addition to taking and passing a renewal examination.

(f) Holders of a certificate of competency must notify the executive director of any change in address or employment within ten days from the date the change occurs.

(g) Fees for renewal of certificates must be paid prior to renewal of the certificate. Fees are $20 annually and the fee for the entire term of the certificate must be paid prior to renewal. A two-year certificate requires a fee of $40, a three-year certificate requires a fee of $60, a five-year certificate requires a fee of $100, and an eight-year certificate requires a fee of $160.

(h) When the certificate of an operator expires while he or she is in full-time active military service, the certificate may be renewed without examination upon:

(1) proof of military service;

(2) proof of the previously held certificate; and

(3) payment of the appropriate fee.

§325.416. Certificates for Wastewater Treatment Facility Operations Companies.

Every wastewater treatment facility operations company must hold a valid certificate of competency issued under the direction of the commission. No wastewater treatment facility operations company may operate a wastewater treatment facility without a certificate of competency. Any operator employed by a wastewater treatment facility operations company must hold a valid certificate of competency issued under this chapter. Upon revocation or suspension of a certificate under §325.424 of this title (relating to Sanctions), the wastewater treatment facility operations company shall no longer operate or assist in operation of any wastewater treatment plant, unless specifically authorized to do so by the commission, or unless the certificate has been reinstated. Prior to issuance or renewal of an operations company's certificate, a fee shall be paid as follows based on the number of facilities served.

Figure: 30 TAC §325.416

§325.418. Terms of Certificates for Wastewater Treatment Facility Operations Companies.

Certificates of competency for wastewater treatment facility operations companies shall be valid for a term of two years.

§325.420. Reports, Applications, and Renewals for Wastewater Treatment Facility Operations Companies.

(a) Every wastewater treatment facility operations company must submit a report to the executive director within one year and 30 days after issuance or renewal of its certificate, listing every wastewater treatment facility operated by the company during the preceding calendar year as well as the present year. The report shall include, at a minimum, the name and location of the treatment facility, the permittee's name and address, the commission permit number for the facility, and the dates that the facility was operated by the company during the reporting year (e.g., January 1-December 31). The report must also include, at a minimum, a roster of all certified operators employed by the operations company listing the employees' names, home addresses, classes of certificates, and certificate numbers, at which treatment facilities (by commission permit number) each employee works or has worked, and which employees are head operators or supervisors and for which treatment facilities (by commission permit number). The executive director may specify additional information to be included in the report.

(b) The information required in subsection (a) of this section also must be submitted with any application for a new certificate. An application for renewal of a certificate must be accompanied by an updated report.

(c) If an operations company ceases its operations, or if it is sold or reorganized such that control of the operations of the company is transferred from one person to another, the operations company certificate shall be automatically revoked. In the latter case, the newly organized company shall apply for a new certificate. Operations company certificates are not transferable.

§325.422. Public Hearing on Applications for Renewal of Certificates for Wastewater Treatment Facility Operations Companies.

(a) Requests for public hearing may be made by any person to protest the renewal of the certificate of competency of a wastewater treatment facility operations company. Grounds for the request must be based on alleged incompetence of the company or any of its treatment plant operator-employees, or allegations that the company is responsible for causing, allowing, or permitting substantial noncompliance with a wastewater disposal permit, or allegations that the company has falsified reports regarding the operation of a facility, falsified laboratory test results, or falsified any documents submitted under this chapter, or for similar good cause. All requests for hearing shall be accompanied by a detailed statement of the reason(s) for the request, and shall include a formal request that a hearing be convened.

(b) Requests for a hearing shall be made to the executive director. After the executive director has determined that the requirements of subsection (a) of this section have been met, he will investigate the reason(s) for the request and will inform the requesting party of the conclusions of that investigation. If the executive director determines that there is merit to the protest, he shall present the request to the commission which shall determine whether to schedule a hearing, and if so, whether the hearing will be before a hearings examiner or the commission.

(c) Any person who wishes to contest an executive director's determination under subsection (b) of this section that the reason(s) for requesting a hearing is without merit may file his or her request with the commission accompanied by notice to the executive director and the public interest advocate.

§325.424. Sanctions.

(a) If the executive director believes that good cause exists to bring enforcement action against an operator or wastewater treatment facility operations company, he may initiate any of the following corrective measures.

(1) Reprimand. If after a thorough investigation of the circumstances surrounding the violations, the executive director finds that the operator or wastewater treatment facility operations company was responsible for contributing to the severity of the violations, but that formal suspension or revocation proceedings are not warranted, he may reprimand the operator or company in writing by

certified mail. The operator or company has an opportunity to consult with the executive director and his staff and present evidence which might refute the allegations.

(2) Probation. Alternatively, the executive director may place the operator or company on probation for a period of time not longer than one year, if after investigation, he finds that the operator or company committed an offense that does not warrant suspension or revocation of the certificate, but was more serious in nature than an offense deserving of a reprimand. Such probationary status shall serve as a warning to the operator or company and any further violations or offenses shall warrant suspension or revocation proceedings. Notification and rebuttal procedures shall be the same as for suspension or revocation, but the commission shall not be required to hold a formal hearing.

(3) Suspension or revolcation. The commission may suspend or revoke the certificate of competency if the commission finds that the holder of the certificate was responsible for causing, allowing, or permitting a substantial violation of any disposal permit for a wastewater treatment facility, or for falsifying reports or laboratory test results, or for falsifying any information in documents submitted under this chapter, or for other good cause.

(b) The holder of a certificate of competency is not subject to revocation or suspension of the certificate of competency under subsection (a) of this section if:

(1) the holder of the certificate is unable to properly operate the wastewater treatment facility due to the refusal of the permittee to authorize necessary expenditures to operate the wastewater treatment facility properly; or

(2) failure of the wastewater treatment facility to comply with its disposal permit results from faulty design of the wastewater treatment facility.

(c) A certificate of competency shall be suspended for a period of one year; however, depending upon the seriousness of the offense(s), the time of suspension may be decreased or increased. Suspension means that the certificate is no longer valid and that the operator is no longer authorized to operate any treatment or collection facilities until the period of suspension is complete. No re-testing is required. A certificate is revoked automatically upon a second suspension. At the request of the certificate holder, or for good cause shown, the certificate may be suspended indefinitely by the commission.

(d) The holder of a certificate of competency which has been revoked may reapply for a certificate of competency under this chapter as if applying for the first time, after a period of at least one year from the date of revocation. If a certificate is revoked a second time, the revocation will be permanent. Re-testing is required in order to become recertified after revocation.

(e) Operators are responsible for performing adequate process control of wastewater treatment facilities as described in commission-approved operator training manuals and according to commission

guidance documents. Operator performance that results in permit violations may subject the operator to administrative penalties or other sanctions as described in this section.

§325.426. Notice of Hearings.

(a) Notice for any hearing required by this chapter shall be issued not less than 20 days prior to the hearing.

(b) Transmittal of the notice will be by certified mail, return receipt requested. Such notice shall be sufficient if mailed to the last known address supplied to the commission by the operator or company.

(c) Persons to be notified include, but are not limited to, the following: the applicant or certificate holder, the public interest counsel of the commission, the complainants (if any), and the permit holders of the wastewater treatment facilities at or for which the operator or company works or is employed.

§325.428. Enforcement Hearings.

During any enforcement hearing conducted by the commission or a hearings examiner for substantial noncompliance, as defined in Chapter 337 of this title (relating to Enforcement), of a wastewater disposal permit for a wastewater treatment facility, any party may introduce evidence

showing whether the violations were caused, in whole or in part, by the incompetence or negligence of any of the facility's treatment plant operators and/or by a wastewater treatment facility operations company. The commission may then determine whether to conduct a hearing under this chapter for revocation or suspension of the certificate(s) of competency involved.

§325.430. Reciprocity.

The executive director may issue certificates of competency without requiring the examination specified in §325.406 of this title (relating to Certificates for Wastewater Treatment Plant Operators) to applicants who hold a valid certificate of competency lawfully issued by any other authorized state, country, or territory upon payment of the applicable fee provided that the requirements for that other certificate are equal to, or more stringent than the requirements of this chapter, and provided that the other state, country, or territory recognizes and honors the commission's certificates of competency.

§325.432. Perpetual Certificates of Competency.

Perpetual certificates of competency issued by the Texas Department of Health prior to September 1, 1985 will be exempt from the certification renewal requirements of this chapter, unless revoked under §325.424 of this title (relating to Sanctions). Upon application by an operator and verification of records, an operator who has maintained a valid certificate of competency for 30 years shall retain the certificate in perpetuity.

§325.434. Nonrenewal of Certificate of Competency Due to Loan Default.

(a) (Effective beginning September 1, 1991) The commission shall not renew the certificate of a person whose name is on the list of persons in default on loans guaranteed by the Texas Guaranteed Student Loan Corporation unless:

(1) the renewal is the first renewal following the commission's receipt of the list including the licensee's name among those in default; or

(2) the licensee presents to the commission a certificate issued by the corporation certifying that:

(A) the licensee has entered a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on a loan guaranteed by the corporation.

(b) Defaulting on a repayment agreement may also be grounds for nonrenewal of a certificate of competency.

(c) The commission shall provide an opportunity for a hearing to the licensee before the commission takes action concerning the nonrenewal of the certificate of competency.