

## **House Bill 305 Related Rules**

During the 2016 Legislative Session the legislature passed and the Governor signed into law House Bill 305 (See lines 69 – 72 in the attached copy of the enrolled bill). This bill directed the Board and staff to adopt rules requiring that Certified Operators complete and sign the Utah Water Use Data Forms attesting to the accuracy of the information contained on the submitted form.

In response to this legal directive staff has prepared changes to three rules as follows:

1. Specific changes to the “Annual Report” rule requirement as listed in R309-105-15,
2. Changes to the Operator Certification rules requiring that a Certified Operator sign the form, and
3. An addition to the Improvement Priority System rule assessing points for not completing and submitting the report.

Staff Recommendation: Staff recommends that the Board authorize staff to proceed with the rule making process by filing the indicated changes with the State Division of Administrative Rules.

1                   **WATER RIGHTS AND RESOURCES AMENDMENTS**

2                                   2016 GENERAL SESSION

3                                   STATE OF UTAH

4                                   **Chief Sponsor: Joel K. Briscoe**

5                                   Senate Sponsor: Margaret Dayton

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7 **LONG TITLE**

8 **General Description:**

9                   This bill deals with the accuracy of water use data.

10 **Highlighted Provisions:**

11                   This bill:

12                   ▶ instructs the Drinking Water Board to require a certified water operator of a public  
13 water supplier, or professional engineer performing the duties of an operator, to  
14 verify the accuracy of water use and supply data submitted to the Division of  
15 Drinking Water;

16                   ▶ authorizes the Division of Water Rights to collect and validate water use data; and

17                   ▶ makes technical changes.

18 **Money Appropriated in this Bill:**

19                   None

20 **Other Special Clauses:**

21                   None

22 **Utah Code Sections Affected:**

23 AMENDS:

24                   **19-4-104**, as last amended by Laws of Utah 2012, Chapter 360

25                   **73-5-8**, as last amended by Laws of Utah 2005, Chapter 215

26                   **73-10-18**, as last amended by Laws of Utah 1969, Chapter 198

27                   **73-10-19**, as last amended by Laws of Utah 1983, Chapter 318

28                   **73-10-20**, as last amended by Laws of Utah 1977, Chapter 281

30 *Be it enacted by the Legislature of the state of Utah:*

31 Section 1. Section **19-4-104** is amended to read:

32 **19-4-104. Powers of board.**

33 (1) (a) The board may make rules in accordance with Title 63G, Chapter 3, Utah

34 Administrative Rulemaking Act:

35 (i) establishing standards that prescribe the maximum contaminant levels in any public  
36 water system and provide for monitoring, record-keeping, and reporting of water quality related  
37 matters;

38 (ii) governing design, construction, operation, and maintenance of public water  
39 systems;

40 (iii) granting variances and exemptions to the requirements established under this  
41 chapter that are not less stringent than those allowed under federal law;

42 (iv) protecting watersheds and water sources used for public water systems; and

43 (v) governing capacity development in compliance with Section 1420 of the federal  
44 Safe Drinking Water Act, 42 U.S.C.[A:] Sec. 300f et seq.;

45 (b) The board may:

46 (i) order the director to:

47 (A) issue orders necessary to enforce the provisions of this chapter;

48 (B) enforce the orders by appropriate administrative and judicial proceedings; or

49 (C) institute judicial proceedings to secure compliance with this chapter;

50 (ii) (A) hold a hearing that is not an adjudicative proceeding relating to the

51 administration of this chapter; or

52 (B) appoint hearing officers to conduct a hearing that is not an adjudicative proceeding;

53 or

54 (iii) request and accept financial assistance from other public agencies, private entities,

55 and the federal government to carry out the purposes of this chapter.

56 (c) The board shall:

57 (i) require the submission to the director of plans and specifications for construction of,

58 substantial addition to, or alteration of public water systems for review and approval by the  
59 board before that action begins and require any modifications or impose any conditions that  
60 may be necessary to carry out the purposes of this chapter;

61 (ii) advise, consult, cooperate with, provide technical assistance to, and enter into  
62 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,  
63 municipalities, local health departments, educational institutions, and others necessary to carry  
64 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of  
65 local jurisdictions;

66 (iii) develop and implement an emergency plan to protect the public when declining  
67 drinking water quality or quantity creates a serious health risk and issue emergency orders if a  
68 health risk is imminent; [~~and~~]

69 (iv) require a certified operator of a public water supplier to verify by signature and  
70 certification number, or a professional engineer performing the duties of a certified water  
71 operator to verify by signature and stamp, the accuracy of any data on water use and water  
72 supply submitted by the public water supplier to the division; and

73 [~~(iv)~~] (v) meet the requirements of federal law related or pertaining to drinking water.

74 (2) (a) The board may adopt and enforce standards and establish fees for certification  
75 of operators of any public water system.

76 (b) The board may not require certification of operators for a water system serving a  
77 population of 800 or less except:

78 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking  
79 Water Act, 42 U.S.C.[~~A~~] Sec. 300f et seq.; and

80 (ii) for a system that is required to treat its drinking water.

81 (c) The certification program shall be funded from certification and renewal fees.

82 (3) Routine extensions or repairs of existing public water systems that comply with the  
83 rules and do not alter the system's ability to provide an adequate supply of water are exempt  
84 from the provisions of Subsection (1)(c)(i).

85 (4) (a) The board may adopt and enforce standards and establish fees for certification

86 of persons engaged in administering cross connection control programs or backflow prevention  
87 assembly training, repair, and maintenance testing.

88 (b) The certification program shall be funded from certification and renewal fees.

89 (5) A board member may not speak or act for the board unless the board member is  
90 authorized by a majority of a quorum of the board in a vote taken at a meeting of the board.

91 Section 2. Section 73-5-8 is amended to read:

92 **73-5-8. Audits -- Reports by users to engineer.**

93 (1) The Division of Water Rights shall, in accordance with Title 63G, Chapter 3, Utah  
94 Administrative Rulemaking Act, make rules specifying:

95 (a) what water use data a person shall report, pursuant to this section; and

96 (b) how the Division of Water Rights shall validate the data described in Subsection

97 (1)(a).

98 (2) The Division of Water Rights may collect and validate water use data.

99 (3) Every person using water from any river system or water source, when requested by  
100 the state engineer, shall within 30 days after such request report to the state engineer in writing:

101 ~~[(1)]~~ (a) the nature of the use of any such water;

102 ~~[(2)]~~ (b) the area on which used;

103 ~~[(3)]~~ (c) the kind of crops to be grown; ~~and~~

104 ~~[(4)]~~ (d) water elevations on wells or tunnels; and

105 (e) quantity of ~~underground~~ water used.

106 Section 3. Section 73-10-18 is amended to read:

107 **73-10-18. Division of Water Resources -- Creation -- Power and authority.**

108 (1) There is created the Division of Water Resources, which shall be within the  
109 Department of Natural Resources under the administration and general supervision of the  
110 executive director of natural resources and under the policy direction of the Board of Water  
111 Resources.

112 (2) The Division of Water Resources shall:

113 (a) be the water ~~[resource(s)]~~ resource authority for the state ~~[of Utah, shall]; and~~

114 (b) assume all of the functions, powers, duties, rights, and responsibilities of the Utah  
115 water and power board except those which are delegated to the board by this act and is vested  
116 with such other functions, powers, duties, rights and responsibilities as provided in this act and  
117 other law.

118 Section 4. Section 73-10-19 is amended to read:

119 **73-10-19. Director's power and authority.**

120 The director shall:

121 (1) be the executive and administrative head of the Division of Water Resources;

122 (2) ~~[and shall be a person]~~ be selected with special reference to ~~[his]~~ training,  
123 experience, and interest in the field of water conservation and development[-];

124 ~~[The director of the Division of Water Resources shall]~~

125 (3) administer the Division of Water Resources ~~[and shall]~~;

126 (4) succeed to all of the powers and duties conferred upon the executive secretary of  
127 the Utah water and power board pursuant to Title 73, Chapter 10, Board of Water Resources -  
128 Division of Water Resources~~[- The director shall]~~; and

129 (5) have the power, within ~~[policies]~~ rules established by the Board of Water  
130 Resources, to:

131 ~~[(+)]~~ (a) make studies, investigations, and plans for the full development and utilization  
132 and promotion of the water and power resources of the state, including preliminary surveys,  
133 stream gauging, examinations, tests, and other estimates either separately or in consultation  
134 with federal, state, and other agencies;

135 ~~[(2)]~~ (b) initiate and conduct water resource investigations, surveys and studies,  
136 prepare plans and estimates, make reports thereon, and perform necessary work to develop an  
137 over-all state water plan;

138 ~~[(3)]~~ (c) file applications in the name of the division for the appropriation of water[-  
139 All pending water applications heretofore filed in behalf of the state or any agency thereof for  
140 the use and benefit of the state are transferred to the board, and it is authorized to take such  
141 action thereon as it may deem proper];

142            [~~(4)~~] (d) take all action necessary to acquire or perfect water rights for projects  
143 sponsored by the board; and

144            [~~(5)~~] (e) accept, execute, and deliver deeds and all other conveyances.

145            Section 5. Section **73-10-20** is amended to read:

146            **73-10-20. Loans for water systems -- Legislative declaration -- Authority of**  
147 **Division of Water Resources to audit water data.**

148            The Legislature recognizes and declares that:

149            (1) the development, protection, and maintenance of adequate and safe water supplies  
150 for human consumption is vital to public health, safety, and welfare;

151            (2) [~~that~~] there exists within the state a need to assist cities, towns, improvement  
152 districts, and special service districts in providing an adequate and safe water supply for those  
153 users from municipal and district systems; and

154            (3) [~~that~~] the acquisition or construction of systems and the improvement and extension  
155 of existing systems, based on proper planning and sound engineering, will not only provide  
156 safer water supplies, but will also serve to ensure that the water resources of the state are used  
157 in an efficient manner and will avoid wasteful practices.

**R309-105-15. Annual Reports.**

- (1) All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided shall include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.
- (2) All community and non-transient non-community water systems shall be required to complete the annual "Utah Water Use Data Form" furnished by the Utah Division of Water Rights in accordance with rules R309-400-12, and R309-300-5.

### **R309-300-5. General Policies.**

1. In order to become a certified water operator or specialist, an individual shall pass an examination administered by the Division of Drinking Water or qualify for the grandparent provisions outlined in R309-300-13.
2. Any properly qualified operator (see Minimum Required Qualifications for Utah Waterworks Operators Table 5) may apply for unrestricted certification.
3. Any properly qualified person (see Minimum Required Qualifications for Water System Specialists Table 6) may apply for Specialist certification. A Specialist, regardless of discipline or grade, shall not act as a direct responsible charge operator, or be in direct operation or supervise the direct operation of, any public drinking water system.
4. An individual who holds a current Specialist Certificate may apply for an Operator Certificate of the same discipline and grade upon verification of direct employment with a public drinking water system. An individual who holds a current Operator Certificate (Restricted and Unrestricted) may apply for a Specialist Certificate of the same discipline and grade if that operator leaves the direct employment of a drinking water system.
5. All direct responsible charge operators shall be certified at a minimum of the grade level of the water system with an appropriate certificate. Where 24-hour shift operation is used or required, one operator per shift must be certified at the classification of the system operated.
6. The Director, upon recommendation from the Commission, may waive examination of applicants holding a valid certificate or license issued in compliance with other state certification plans having equivalent standards, and grant reciprocity.
7. A grandparent certificate will require normal renewal as with other certificates and will be restricted to the existing position, person, and system for which it was issued. No further examination will be required unless the grade of the drinking water system increases or the operator seeks to change the certificate discipline or grade. At that time, all normal certification requirements must be met.
8. Every community and non-transient non-community drinking water system and all public systems that utilize treatment/filtration of the drinking water shall have at least one operator certified at the classified grade of the water system. Certification must be appropriate for the type of system operated (treatment and/or distribution).
9. An individual who is issued an Operator Certificate shall be employed by, or an appointed volunteer for, a public drinking water supply located in Utah.
10. If the Distribution Manager, Treatment Plant Manager, or Direct Responsible Charge Operator is changed or leaves a particular water system, the water system management must notify the Secretary to the Operator Certification Commission within ten days by contacting

the Division of Drinking Water in writing. Within one year, the person replacing the Distribution Manager, Treatment Plant Manager or Director Responsible Charge Operator must have passed an examination of the appropriate grade and discipline. Direct responsible charge experience may be gained later, together with unrestricted certification as experience is gained.

11. The Secretary to the Commission may suspend or revoke a certificate after due notice and opportunity for a hearing. See Section R309-300-9 for further details.

12. An operator may have the opportunity to take any grade of examination higher than the rating of the system which he operates. If passed, the operator shall be issued a restricted certificate at that higher grade. This certificate can be used to demonstrate that the operator has successfully passed all knowledge requirements for that discipline and grade, but that experience is lacking. This restricted certificate will become unrestricted when the experience requirements are met with written verification for the appropriate discipline and grade, provided it is renewed at the required intervals.

13. The Commission will review on a periodic basis each system's compliance with these rules and will refer those systems in violation to the Director for appropriate action. Any requirement can be appealed as provided in R305-7.

14. An operator who is acting as the direct responsible charge operator for more than one drinking water system (regional operator) shall not be a grandparent certified operator.

15. The regional operator must have an unrestricted certificate equal to or higher than the grade and discipline of the rating applied to each system he is operating.

16. If the regional operator is operating any system(s) that have both disciplines involved in their rating, the operator must have unrestricted certificates in both disciplines and at the highest grade of the most complex system he is working with.

17. A regional operator shall be within a one hour travel time, under normal work and home conditions, of each drinking water system for which he is considered in direct responsible charge unless a longer travel time is approved by the Director based on availability of certified operators and the distance between community water systems in the area.

18. If the drinking water system has only one certified operator, with the exception of a drinking water system employing a regional operator, the operator must have a back up operator certified in the required discipline(s). The back up certified operator must be within one hour travel time of the drinking water system.

19. At no time will an uncertified operator be allowed to operate a drinking water system covered by these rules unless the operator is within the one year grace period specified in R309-300-5.10.

20. A certified operator or a licensed professional engineer shall sign the annual Utah Water Use Data Form distributed by the State Division of Water Rights attesting to the accuracy of the data reported on the form. Further the Certified Operator will list his certification number on the form.

## **R309-400-12. Reporting and Record Maintenance Issues.**

Points may be assessed for failure to provide required reports to the Director by the reporting deadline. The points shall be assigned as the failure occurs and shall remain on record for a period of one year.

### **(1) Monthly Reports:**

- (a) For each failure to report the monthly water treatment plant report, 100 points shall be assessed.

### **(2) Quarterly Reports:**

- (a) For each failure to report the quarterly disinfection report, 50 points shall be assessed.

### **(3) Annual Reports:**

- (a) For failure to provide the annual report, 2 points shall be assessed.
- (b) Community water systems that fail to send a certification to the Division stating how the consumer confidence report was distributed to its customers as required in R309-225-7(3), 10 points shall be assessed.
- (c) Community water systems that fail to mail a copy of the consumer confidence report to the Division as required in R309-225-7(3), 10 points shall be assessed.
- (d) Community and non-transient non community water systems that fail to mail or submit electronically the “Utah Water Use Data Form” to the Utah Division of Water Rights as required in R309-105-15 and R309-300-5, 50 points shall be assessed.