

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management

Rule No. 335-2-3-.05

Rule Title: Agenda and Public Participation

         New     X     Amend          Repeal          Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?         No        

Is there a reasonable relationship between the state's police power and the protection of the public health, safety, or welfare?         N/A        

Is there another, less restrictive method of regulation available that could adequately protect the public?         No        

Does the proposed rule have the effect of directly or indirectly increasing the costs of any goods or services involved and, if so, to what degree?         No        

Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the proposed rule?         No        

Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?         Yes        

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Does the proposed rule have an economic impact?         No        

If the proposed rule has an economic impact, the proposed rule is required to be accompanied by a fiscal note prepared in accordance with subsection (f) of Section 41-22-23, Code of Alabama 1975.

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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full compliance with the requirements of Chapter 22, Title 41, Code of Alabama 1975, and that it conforms to all applicable filing requirements of the Administrative Procedure Division of the Legislative Reference Service.

Signature of certifying officer     H. Lanier Brown, II.    

Date     4/20/16    

(DATE FILED)  
(STAMP)

ALABAMA ENVIRONMENTAL MANAGEMENT COMMISSION OF THE  
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Environmental Management Commission of  
the Alabama Department of Environmental Management

RULE NO. & TITLE: 335-2-3-.05 Agenda and Public Participation  
(Amend)

INTENDED ACTION: The Alabama Environmental Management Commission proposes to amend rule 335-2-3-.05 of the Alabama Department of Environmental Management Administrative Code (Environmental Management Commission).

SUBSTANCE OF PROPOSED ACTION:

The current rule 335-2-3-.05 name will be changed to Agenda and Public Participation. Rule 335-2-3-.05(1) deletes the last sentence in that paragraph which states that requests from members of the public to appear before the Commission shall be attached to the agenda. Rule 335-2-3-.05(2) addresses the request members of the public must submit to make presentations at regularly scheduled Commission meetings, what the request should include, and adds email as a new method by which the request can be delivered to the Commission Office. Removed from this section is the provision that the Chair of the Commission, or designee, shall notify persons requesting to address the Commission in writing as to the proposed disposition of their request. Added in this section is the provision that the Commission may, at its discretion, approve, deny, and/or table presentation requests. This section provides that the Chair of the Commission shall have the final agenda published along with the list of persons requesting to make presentations and the subjects to be addressed on the Department website and at the Commission Office at least 7 days before the Commission meeting. Rule 335-2-3-.05(3) amendment expands the provision in the rule regarding discouraging the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission to include matters involving the Commission or Department that are the subject of any ongoing case or legal proceeding. Rule 335-2-3-.05(4) adds a new section that references the Commission's "Guidelines for Public Comment" applicable to Rule 335-2-3-.05 and encourages the public wishing to appear before the Commission to observe these Guidelines to facilitate the exchange of information between the Commission and the public to enable the Commission to better serve the people of this state and their environment. This section also provides that the

Guidelines shall be available on the Department's website and at the Commission Office. The current rule 335-2-3-.05(4) will be changed to paragraph (5).

TIME, PLACE, MANNER OF PRESENTING VIEWS: Comments may be submitted in writing or orally at a public hearing to be held at 1:00 p.m., June 16, 2016, in the ADEM Hearing Room, 1400 Coliseum Boulevard, Montgomery, Alabama.

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: June 16, 2016

CONTACT PERSON AT AGENCY: Debra Thomas

H. Lanier Brown, II, dot

H. Lanier Brown, II, Chair  
Alabama Environmental Management  
Commission

### **335-2-3-01 Agenda and Public Participation.**

(1) For any regularly scheduled meeting, the Chair of the Commission shall cause to be published a draft agenda on the Department website and forward it to the other Commission members at least 30 (thirty) days prior to the Commission meeting. Included in the agenda shall be the consideration of the previous meeting's minutes, a report from the Director, committee reports, any pending recommendation from a hearing officer and other matters within the jurisdiction of the Commission. ~~Requests from members of the public to appear before the Commission shall be attached to the agenda.~~

(2) In order for the Commission to be better prepared on the subjects to be discussed, members of the public wishing to make presentations speak at regularly scheduled Commission meetings must first submit to the Commission Office a written request along with a description of their presentation matter they wish to raise before the Commission. Written requests must include the name, address, telephone number and, if applicable, the email address of any and all persons who wish to deliver presentations before address the Commission as well as a description of the matter to be presented discussed. Written requests from members of the public wishing to make presentations appear before the Commission must be received by the Commission Office not later than 14 (fourteen) days prior to the next regularly scheduled meeting of the Commission. Such submissions shall be in writing and delivered by hand, U.S. Mail, facsimile, email or private express delivery service. ~~The Chair of the Commission, or designee, shall notify those persons requesting an opportunity to address the Commission in writing as to the proposed disposition of their request. The Commission may, at its discretion, approve, deny, and/or table presentation requests.~~ The Chair of the Commission shall have the final agenda published along with the list of persons requesting to make presentations who will appear and the subjects to be they will address on the Department website and at the Commission office at least 7 (seven) days before the Commission meeting. The Commission shall set reasonable time limitations on public appearances before the Commission.

(3) After consideration of agenda items the Commission may consider comments from the members of the public. While the Commission encourages public participation at its meetings, for reasons of fairness and due process to the parties in administrative and legal proceedings involving the Commission, it specifically discourages the members of the Commission from engaging in the non-deliberative discussion of any case or legal proceeding pending before the Commission, or of any decision by the Commission or matter involving the Commission or Department that is the subject of in any ongoing case or legal proceeding pending appeal before the Courts of this State. Parties to such proceedings and members of the general public shall not be permitted to use the public participation opportunities herein provided by the Commission to circumvent administrative or judicial procedures which specify the time and manner of presenting testimony, evidence, or comment to the Commission in a formal manner designed to provide due process to all parties.

(4) Members of the public wishing to appear before the Commission are encouraged to carefully observe the Commission's "Guidelines for Public Comment" applicable to this Rule. This is in order to facilitate the exchange of information between the Commission and the public in a manner that will enable the Commission to better serve the people of this state and their environment. The "Guidelines for Public Comment" shall be available on the Department's website and at the Commission Office.

(5)(4) With the exception of a request for a stay of administrative action pending hearing, no item shall be added to the agenda that has not been submitted to the Commission's Executive Assistant at least 7 (seven) days prior to the Commission meeting.

**Authors:** Olivia H. Jenkins; Rulemaking Petition Subcommittee; Alabama Environmental Management Commission; Alabama Environmental Management Commission.

**Statutory Authority:** Code of Alabama 1975, § 22-22A-6.

**History:** May 22, 1998.

**Amended:** July 25, 2003; January 28, 2004; April 4, 2006; XXXXX, 2016.