

TRANSMITTAL SHEET FOR
NOTICE OF INTENDED ACTION

Control No. _____ Department or Agency: **Alabama Department of Economic and
Community Affairs**

Rule No. 305-7-13

Rule Title: Drought Planning and Response

_____ Amendment XX New _____ Repeal _____ Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety? Yes

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

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

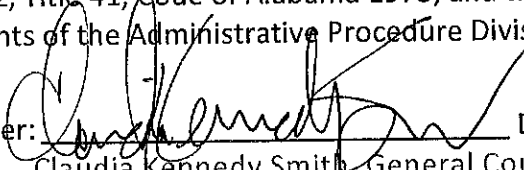
Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public? Yes

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.

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:  Date: 12/11/15

Claudia Kennedy Smith, General Counsel
Alabama Department of Economic and Community Affairs (DATE FILED)
(STAMP)

Alabama Department of Economic and Community Affairs
Alabama Office of Water Resources Division

NOTICE OF INTENDED ACTION

AGENCY NAME: Alabama Department of Economic and Community Affairs (ADECA)

RULE NO. & TITLE: 305-7-13, Drought Planning and Response

INTENDED ACTION: To adopt new rules as Chapter 305-7-13.

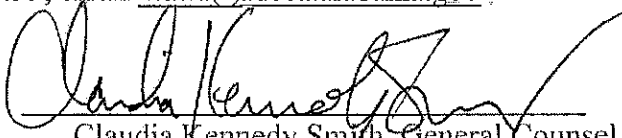
SUBSTANCE OF PROPOSED ACTION: To establish new regulations pursuant to the implementation of the Alabama Drought Planning and Response Act, Act 2014-400, as codified in Section 9-10C-1 et seq., Code of Ala. 1975

TIME, PLACE, MANNER OF PRESENTING VIEWS: Written comments will be accepted at the office of the Alabama Office of Water Resources, Alabama Department of Economic and Community Affairs, 401 Adams Avenue, Suite 434, Montgomery, Alabama, 36104, attention Brian Atkins. Comments may also be mailed to:

J. Brian Atkins, P.E.
Division Chief, Alabama Office of Water Resources
Alabama Department of Economic and Community Affairs
P.O. Box 5690
Montgomery, Alabama 36103-5690

FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE: The Alabama Office of Water Resources will accept comments no later than February 29, 2016 at 4:30 pm.

CONTACT PERSON AT AGENCY: Brian Atkins, Division Chief, Alabama Department of Economic and Community Affairs, P.O. Box 5690, Montgomery, Alabama 36103-5690, telephone (334) 242-5499, email water@adeca.alabama.gov.


Claudia Kennedy Smith, General Counsel
Alabama Department of Economic and
Community Affairs

NEW

**ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS
OFFICE OF WATER RESOURCES**

Chapter 305-7-13

DROUGHT PLANNING AND RESPONSE

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Community Public Water Systems**
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305-7-13.01 Purpose. The purpose of this chapter is to provide procedures for the organization of the Alabama Drought Assessment and Planning Team (ADAPT), the publication of a State Drought Plan, the contents of community public water system drought conservation plans, procedures for reporting voluntary and mandatory restrictions or reductions by community public water systems to OWR, procedures for the issuance of Drought Declarations by OWR, and for rulemaking.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §§9-10C-1 et seq.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.02 Applicability. These regulations are applicable to all community public water systems. They require all community public water systems to develop and provide a drought conservation plan and report required drought response activities as outlined in that plan in accordance with the requirements of this chapter.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §§9-10C-1 et seq.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.03 Definitions.

The words or terms listed below shall be defined as follows.

- (1) Act shall mean the Alabama Drought Planning and Response Act as codified in Section 9-10C-1 et seq., Code of Ala. 1975.
- (2) ADAPT shall mean the Alabama Drought Assessment and Planning Team.
- (3) ADECA shall mean the Alabama Department of Economic and Community Affairs.
- (4) Alabama Water Resources Commission shall mean the Alabama Water Resources Commission as established by the Alabama Water Resources Act (Section 9-10B-1 et seq., Code of Ala. 1975)
- (5) Choctawhatchee Pea River Watershed Authority shall mean the Choctawhatchee, Pea and Yellow Rivers Watershed Management Authority as created pursuant to Section 9-10A-1, Code of Ala. 1975.
- (6) Community Public Water System, for the purposes of this Act, shall mean a public water system which serves at least fifteen (15) service connections used by year-round residents or regularly serves at least twenty-five (25) year-round residents. A community public water system may maintain and use its own source of either surface water or ground water or obtain water from another source. It excludes water systems that only serve specific organizations or locations such as schools, hospitals, campgrounds, rest areas, etc. and are classified as either a non-transient non-community water system or a transient non-community water system by the Alabama Safe Drinking Water Act (Section 22-23-31 et seq., Code of Ala. 1975).
- (7) Drought Conservation Plan shall mean a written plan by a community public water system that addresses graduated drought response procedures with implementation of specific measures based on drought severity. The drought conservation plan may be a separate plan or a component of a broader emergency response plan.
- (8) Drought Declaration shall mean a written summary, issued by OWR, describing drought conditions throughout the state that includes local and regional assessments of conditions, impacts, and forward-looking forecasts.
- (9) Drought Monitor shall mean the assessment of drought conditions throughout the United States published weekly by the National Integrated Drought Information System (NIDIS) on the "drought.gov" domain or its successor.
- (10) Emergency Action Plan shall mean a written emergency response plan.
- (11) Executive Director of the Alabama Soil & Water Conservation Committee shall mean the chief administrative officer employed by the Alabama Soil and Water Conservation Committee created pursuant to Section 9-8-22(c), Code of Ala. 1975.
- (12) MIG shall mean the Monitoring and Impact Group Subcommittee of ADAPT.
- (13) MIG Chair shall mean the Chair of the Monitoring and Impact Group Subcommittee.
- (14) Office of Water Resources or OWR shall mean the Alabama Office of Water Resources, a division of the Alabama Department of Economic and Community Affairs.

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- (15) Office of Water Resources Division Chief shall mean the Division Chief or Division Director of the Office of Water Resources.
- (16) State Climatologist shall mean the State Climatologist of Alabama as appointed by the Governor and qualified to meet the roles and standards established by the American Association of State Climatologists as a Recognized State Climate Office.
- (17) State Conservationist of the Alabama Natural Resource Conservation Service shall mean the Chief Executive Officer of the Alabama Office of the Natural Resource Conservation Service, a division of the U.S. Department of Agriculture.
- (18) State Drought Plan shall mean the state drought management plan developed by the Office of Water Resources outlining state-level drought planning and response activities and procedures.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §9-10C-2; §9-10C-10.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.04 State Drought Plan. OWR shall publish a State Drought Plan containing at least the minimum requirements found in the Act and update it periodically but no less than every five years in accordance with Section 9-10C-3 of the Act. Prior to the establishment, revision, or update of the State Drought Plan, OWR shall consult with the ADAPT and the MIG as well as the Alabama Water Resources Commission.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §9-10C-3.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.05 Organization and Operation of ADAPT.

- (1) ADAPT shall be composed of the membership established by Section 9-10C-4(a) of the Act. Additional voting members may be appointed by the Governor of Alabama. The Office of Water Resources Division Chief may appoint additional members from a federal or county governmental agency but any such members will serve in an ex officio capacity only and will not be able to vote and will not count towards any meeting quorum. No member of ADAPT or their designee may represent more than one ADAPT entity at a meeting.
- (2) The Office of Water Resources Division Chief, or his designated representative, shall serve as the Chair of the ADAPT and call, preside and conduct all meetings of ADAPT. The Chair of ADAPT shall have the following additional powers and duties:
 - (a) The Chair of ADAPT shall call at least two meetings of ADAPT annually.
 - (b) The Chair of ADAPT shall appoint the MIG Chair.
 - (c) The Chair of ADAPT shall appoint members to the MIG who are well qualified and experienced in drought planning or drought response. Members of the MIG may or may not be members of the ADAPT.

- (d) The Chair of ADAPT is authorized to create any other subcommittees as he or she deems necessary and appoint the subcommittee chairperson and members.
- (3) The Chair of ADAPT, shall provide any necessary administrative support to ADAPT including, but not limited to:
 - (a) Establishing meeting dates and locations;
 - (b) Preparing meeting agendas and minutes;
 - (c) Complying with the Alabama Open Meetings Act; and
 - (d) Processing appropriate travel approval and travel reimbursement forms as needed.
- (4) Ex officio members of ADAPT shall not be eligible for reimbursement for any travel and other expenses from ADECA.
- (5) ADAPT shall utilize operational procedures established and prescribed in the most recently approved State Drought Plan as the method of conducting its meetings.
- (6) All meetings of ADAPT shall be open to the public as provided under the Alabama Open Meetings Act (Code of Ala. 1975, §§36-25A-1 et seq.).

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §9-10C-4.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.06 Drought Declarations.

- (1) With input from ADAPT and the MIG and based upon an assessment of conditions, OWR shall issue drought declarations in accordance with the State Drought Plan. Each drought declaration shall consider the intensity and impacts of the drought and projected forecasts for the foreseeable future in order to alert and educate water users, water system managers, and stakeholders on conditions throughout the state or portions of the state. Drought declarations are distinguished from the weekly Drought Monitor in that drought declarations are issued by OWR and include local and regional assessments of conditions, impacts and forward-looking forecasts as opposed to the Drought Monitor which is issued by the Federal Government and only represents a national depiction of drought conditions as of a fixed point in time each week without any consideration of how conditions may change in the future.
- (2) When OWR issues a Drought Declaration designating an area of the state as impacted by drought, community public water systems that depend on water from the designated area shall, for the duration of the designation:
 - (a) Monitor water supply conditions;
 - (b) Implement any appropriate provisions of their community public water system drought conservation plan, as determined by the specific indicators established in their plan;
 - (c) Educate customers, employees, and the public on the need to conserve water and how to prepare for potentially more severe drought conditions;

- (d) Inspect water delivery system components and ensure that existing equipment is operating as efficiently as possible;
- (e) Stay informed on drought and water shortage emergency conditions and participate in state/regional coordination for the management of water resources; and
- (f) Evaluate the feasibility of reclaiming, recycling, and/or reusing water to meet water needs.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §§9-10C-1 et seq.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.07 Community Public Water System Drought Conservation Plans.

- (1) An authorized representative (manager, board representative, engineering consultant, etc.) from each community public water system shall submit a local drought conservation plan to OWR no later than 180 days from the effective date of these regulations. A community public water system may be granted additional time, if a request is submitted in writing and approved by OWR in writing.
- (2) The OWR may waive certain requirements of the drought conservation plan if the community water system demonstrates the need for a waiver. A waiver request must be submitted to OWR, in writing, with the justification for such a waiver. Examples of circumstances where OWR might issue such a waiver include but are not limited to:
 - (a) A wholesale community public water system, meaning a community water system that only sells water directly to other community public water systems and has no residential connections, or
 - (b) Other unique circumstances as deemed appropriate by OWR.
- (3) The community public water system drought conservation plan may be a component of a broader, emergency action plan. Either the community public water system drought conservation plan or a broader, emergency action plan shall include or address, at a minimum, the following:
 - (a) A system overview that contains a physical or electronic map of the community public water system's service area, descriptions and locations of water supply sources and any alternative or emergency water supply sources, population served, number of service connections by type, and identifications of any system interconnections with other community public water systems. If available, the plan should also provide water usage estimates by season or month as well as per capita estimates;
 - (b) Identification of drought region(s), as defined in the State Drought Plan, impacted by the community public water system's service area;
 - (c) Tiered levels of voluntary or mandatory response actions to be taken to reduce water use based on the severity of water shortage conditions;

- (d) Specific monitoring and measurements of available water supply, water demand, and system conditions that will be used to determine the severity of water shortage conditions and to describe water use reduction measures within the various "tiered" levels;
 - (e) A means of implementation and enforcement which shall be evidenced by:
 - 1. A copy of an ordinance or resolution indicating official adoption of the drought conservation plan (or emergency action plan);
 - 2. An interagency or interdepartmental agreement; or
 - 3. Other documentation as approved by OWR.
 - (f) Procedures that will be used to regulate compliance with the provisions of the drought conservation plan;
 - (g) Procedures to receive and review applications for variances from specific requirements of the drought conservation plan and the criteria that will be considered in the determination of whether to issue a variance;
 - (h) Notification procedures that will be used to inform customers and the public about the implementation of the drought conservation plan and required water conservation response measures;
 - (i) Identification of any programs designed to educate customers on voluntary water efficiency measures;
 - (j) The designation of a staff position or organizational unit responsible for the implementation of the community public water system drought conservation activities and plans; and
 - (k) The designation and contact information of staff that will be responsible for notifying OWR of any voluntary or mandatory restrictions enacted by the system.
- (4) Community public water systems that depend on water stored in a private or public impoundment they operate under a contract for the withdrawal of water shall include provisions for responding to water shortages that are consistent with the provisions of the contract and comply with any drought plan provisions established by the owner of the impoundment.
- (5) Community public water systems that depend on the water that is purchased from another community public water system shall include provisions for responding to water shortages or restrictions from that community public water system.
- (6) The drought conservation plan should provide for water users who have made improvements to maximize water use efficiency in their daily operations and may face disproportionate hardships when making further water use reductions. The drought conservation plan should avoid restricting efficient water users in ways that would undermine incentives for water users to seek continued improvements in water use.
- (7) Community public water systems shall review their drought conservation plan at least every five years or upon change in the key staff position(s) designated to manage drought response

actions and provide written verification of that review to OWR, even if no changes are made to the plan, within 30 days of the review's completion. Any community public water system that modifies or revises their drought conservation plan shall notify OWR and provide a copy within 30 days of the adoption of the revised drought conservation plan.

- (8) Any new community public water system shall prepare and adopt a drought conservation plan within 180 days of commencement of operation.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §9-10C-6.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.08 Reporting of Voluntary or Mandatory Restrictions or Reductions by Community Public Water Systems.

- (1) Any community public water system which implements any voluntary or mandatory water use restrictions or reductions shall report to OWR those reductions or restrictions, in paper or electronic format or by such other means approved by OWR in a manner specified by OWR, within seven (7) days of the issuance of such restriction or reduction.
- (2) Any report submitted pursuant to paragraph (a) above shall describe, at a minimum, the restrictions or reductions or other measures implemented, the effective date, the expiration date or length of time they are estimated to remain in place, and the name of the system official that authorized the water use restriction.
- (3) Within seven (7) days after modifying or lifting restrictions, reductions or other measures utilized to protect water supplies during a drought, the community public water system shall notify OWR, in paper or electronic format or by such other means approved by OWR in a manner specified by OWR, of the modification or lifting of restrictions, reductions or other drought response measures and the effective date of such action.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §9-10C-7.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.

305-7-13.09 Rulemaking Authority. Section 9-10C-10 of the Act authorizes the Office of Water Resources to adopt rules consistent with the objectives of the Act. In adopting rules pursuant to the Act, OWR will utilize those procedures outlined in the Alabama Administrative Procedures Act Sections 41-21-1 et seq., Code of Ala. 1975, and the Alabama Water Resources Act, Sections 9-10B-1 et seq., Code of Ala. 1975.

Author: Tom Littlepage.

Statutory Authority: Code of Ala. 1975, §§9-10C-1 et seq.

History: New Rule: Filed: December 14, 2015; **Effective Date:** xxx xx, 2016.