

ALABAMA DEPARTMENT OF ECONOMIC AND COMMUNITY AFFAIRS

**OFFICE OF WATER RESOURCES AND ALABAMA WATER RESOURCES
COMMISSION**

**CHAPTER 305-7-1 ORGANIZATION AND GENERAL OPERATION OF THE
ALABAMA WATER RESOURCES COMMISSION**

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305-7-1-.01 Name Of The Commission. The name of the Commission shall be the Alabama Water Resources Commission "Commission."

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-2, 9-10B-12.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-1-.02 Seal Of The Commission. The Commission may adopt a seal. The Commission Secretary shall have possession of the seal.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-16.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-1-.03 Office Of The Commission. The administrative office of the Commission shall be at the Office of Water Resources in the Alabama Department of Economic and Community Affairs in the City of Montgomery, Montgomery County, State of Alabama. The Commission may have branch offices at such other places as it may from time to time designate.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-16.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-1-.04 Duties Of The Commission. The duties of the Commission are as follows:

Administrative Rules – ADECA Office of Water Resources (Continued)

- (1) To advise the Governor and the presiding officers of the Alabama Senate and Alabama House of Representatives, as necessary or as requested, on all matters relating to the waters of the state as provided in the Act;
- (2) To provide guidance to the Director of the Alabama Department of Economic and Community Affairs and the Division Chief of the Office of Water Resources on all matters within the Commission's scope of authority;
- (3) To advise in the formulation of policies, plans, and programs of the Office of Water Resources in the performance of its functions and duties;
- (4) To establish, adopt, promulgate, modify, repeal, and suspend any rules or regulations authorized pursuant to the Act which may be applicable to the state as a whole, or any of its geographical parts, and to consider the adoption of any rule or regulation recommended by the Division Chief of the Office of Water Resources;
- (5) To advise the Office of Water Resources regarding the implementation of policies, plans, and programs governing the waters of the state;
- (6) To hear and determine appeals of administrative actions of the Office of Water Resources, including the administration of Certificates of Use or the issuance, modification, or repeal of any order, notice of violation or citation issued pursuant to the Act; and
- (7) To implement, perform and carry out all of the responsibilities and obligations of the Commission pursuant to the Act.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-16.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February. 22, 1994.

305-7-1-.05 Prohibited Activities. No member of the Commission, including the Secretary, shall:

- (1) Use their position to obtain direct personal financial gain for their self, or their family, or any business with which they or a member of their family are associated unless such use and gain are specifically authorized by law;
- (2) Solicit or receive any money, other than that received in their official capacity, for advice or assistance on matters concerning the legislature, an executive department, public regulatory board, commission or other body;
- (3) Disclose confidential information gained in the course of, or by reason of, their position or employment that in any way could result in financial gain other than their legal reimbursements as a member of the Commission;

(4) Solicit or accept from any person anything of value, including a promise of future employment, a favor, or service while serving as a member or Secretary of the Commission;

(5) Participate in any proceeding or vote on any matter in which the Commission member, their family, or any business with which the member or their family is associated has a pecuniary interest. After declaring any pecuniary interest to the parties, if the parties do not oppose the member from sitting in proceedings, the record shall note clearly the waiver by the parties. This provision is not to imply that the Commission members can in any way be granted immunity from provisions of the Ethics Act and the requirements set out therein; and

(6) Fail to comply in all ways with the Alabama Code of Ethics (Code of Ala. 1975, §§ 36-25-1, et seq.).

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-12

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-2 ORGANIZATION OF COMMISSION

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305-7-2-.01 Commission Membership. The Commission shall consist of nineteen (19) voting members, who are citizens of Alabama and duly appointed pursuant to the Act.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-12.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-2-.02 Appointment Of Commission Members.

(1) The initial appointments to the Commission shall be made for staggered terms in accordance with the provisions of the Act.

(2) Upon expiration of a Commission member's term, a successor shall be appointed by the appropriate appointing authority using the same basis as the initial appointment except the term shall be for six (6) years.

(3) At the expiration of a term of office, or in the event of a vacancy on the Commission, the appropriate appointing authority shall promptly make an appointment to fill the vacancy for the remainder of the term.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-12, 9-10B-13, 9-10B-14.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-2-.03 Terms Of Commission Members.

(1) No member of the Commission may serve more than two (2), full six (6) year terms.

(2) The term of an incumbent member shall be continued until a successor is appointed.

(3) The term of each successor to a Commission member, including any initial member who is reappointed, shall be deemed to begin on the day following the last day of the previous term, regardless of the time such appointment is made.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-14.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-2-.04 Vacancy On The Commission.

(1) Any Commission member who misses three (3) consecutive meetings of the Commission shall immediately cease to be a member of the Commission and the appropriate appointing authority shall appoint a new member to complete the unexpired remainder of the term.

(2) Commission members are individually named by the appointing authority and no Commission member shall delegate any authority for any reason to any person except as provided herein. Members that are unable to attend any meeting of the Commission may designate an observer to attend such meeting on their behalf. Attendance by an observer shall not constitute attendance by the Commission member. Any person designated as an observer shall not be entitled to vote on any matters coming before the Commission.

(3) Any Commission member may resign from the Commission by giving written notice of such resignation to the Chairperson of the Commission and the appropriate appointing authority.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-14, 9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-2-.05 Expenses Of Commission Members.

(1) Commission members shall receive no salary or compensation, but shall be reimbursed for reasonable expenses of travel, meals, and lodging, while in the performance of their duties, in accordance with the Code of Ala. 1975, §§36-7-20, et seq.

(2) Any Commission member desiring to be reimbursed for reasonable expenses of travel, meals or lodging, other than attendance at meetings of the Commission, shall make written request to the Chairperson and have such travel preapproved by the Chairperson of the Commission prior to the travel being undertaken by such Commission member.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

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305-7-3-.01 Officers. The officers of the Commission shall be a Chairperson, Vice-Chairperson and Secretary. The initial Chairperson of the Commission shall be selected by the Governor for a term of two (2) years from the effective date of the Act. The initial Vice-Chairperson of the Commission shall be elected by a majority vote of the members of the Commission at a regular meeting of the Commission. The Chairperson and the Vice-Chairperson of the Commission, after the expiration of the term of the initial Chairperson as provided by the Act, shall be elected from the membership of the Commission and serve a term of two (2) calendar years; provided, however, that any Chairperson, prior to his election to office, shall have served at least two (2) years on the Commission before assuming the position of the Chairperson. In the event that no member of the Commission has served for more than two (2) years in such capacity, the Commission shall elect a Chairperson from among the members of the Commission. All officers of the Commission shall continue to serve, after their lawful appointment or election, until such time as a successor in office is duly elected by the Commission. The election of the officers of the Commission shall be held at a regular meeting of the Commission.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-15, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-3-.02 Chairperson. The duties of the Chairperson shall be as follows:

Administrative Rules – ADECA Office of Water Resources (Continued)

- (1) Preside at all meetings of the Commission and have the duties normally conferred by parliamentary procedure for such office;
- (2) Execute instruments and documents on behalf of the Commission;
- (3) Submit information and recommendations regarding the business affairs and policies to the Commission; and
- (4) Make appointments to committees authorized by the Commission.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-15, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-3-.03 Vice-Chairperson. The term of office of the Vice-Chairperson shall be concurrent with the term of the Chairperson. The duties of the Vice-Chairperson shall be as follows:

- (1) In the absence or disability of the Chairperson, perform the duties and exercise the powers of the Chairperson;
- (2) Perform other duties as may be delegated or required by the Commission; and
- (3) Succeed to the office of Chairperson in the event of a vacancy created by the previously duly elected or appointed Chairperson of the Commission. In such event, the Vice-Chairperson shall continue to serve as Chairperson of the Commission until such time as a special election to fill the office of Chairperson has been held.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-3-.04 Secretary. The Division Chief of the Office of Water Resources shall be ex-officio Secretary of the Commission and shall not vote on any matters coming before the Commission. The duties of the Secretary shall be as follows:

- (1) Prepare, with the approval of the Chairperson, the agenda for all meetings;
- (2) Keep a record of all proceedings (minutes) of the Commission;
- (3) Perform, or delegate to other members of the Office of Water Resources, the duties of Secretary for any Committee established by the Commission;
- (4) Maintain records and related reports of the Commission and any Committees at the Office of Water Resources, as a permanent record of the Commission;
- (5) Attest to instruments and documents officially acted upon by the Commission;

(6) Submit such recommendations and information as may be considered proper concerning the business affairs and policies of the Commission;

(7) Affix the seal of the Commission and attest by signature, all contracts and instruments as may be required by the Commission or applicable law;

(8) Administer the provisions of the Commission's Rules, orders, and procedures established thereunder;

(9) Be custodian of all property held in the name of the Commission; and

(10) Appoint an "Acting Secretary," when necessary, to carry out the duties of the Secretary during temporary absences of the Secretary. Such Acting Secretary shall be an employee of the Office of Water Resources.

Author: Walter 8. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-3-.05 Vacancies In Offices. If the office of the Chairperson of the Commission is vacant due to death, disability, resignation or for any other reason, the Vice-Chairperson shall immediately assume the responsibilities of the Chairperson and shall continue to serve in such capacity until such time as that vacancy has been filled by a special election held by the Commission. If the office of the Vice-Chairperson is vacant due to death, disability, resignation or for any other reason, that vacancy shall be filled by a special election held by the Commission. If the office of Secretary is vacant due to death, disability, or resignation of the Division Chief of the Office of Water Resources, an Acting Secretary from the Office of Water Resources shall be appointed by the Chairperson to perform the duties of the Secretary until such time as the Division Chief of the Office of Water Resources is duly appointed. The Acting Secretary shall have the authority to carry out all of the functions and duties of the office of Secretary.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

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305-7-4-.01 Open Meetings. All Commission meetings shall be open public meetings as required by the open meetings law (Code of Ala. 1975, §13A-14-2).

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §13A-14-2.

History: Filed: October 20, 1993; Adopted December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.02 Regular Meetings.

(1) Regular meetings of the Commission shall be held at least twice every calendar year at date, time and place designated by the Chairperson. Notification of such meetings shall be transmitted in accordance with these Rules to members of the Commission at least twenty-one (21) days prior to such meetings, which notice shall designate the date, time and place of each meeting of the Commission.

(2) The date, time and place of each meeting of the Commission shall be furnished to any person or entity upon written request to the Secretary and shall be on file at the Office of Water Resources.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.03 Special Meetings. Special meetings may be called at the discretion of the Chairperson, or the Vice-Chairperson if for any reason the Vice-Chairperson is Acting as the Chairperson pursuant to these Rules, upon written request of the Division Chief or upon written request of three (3) duly appointed Commission members. Special meetings of the Commission shall constitute any meeting of the Commission duly called pursuant to the Act and these Rules, where written notice of such meeting is provided to the Commission members in less time than is required by rule 305-7-4-.02 of these Rules. Notice of any special meetings shall be transmitted to each Commission member not less than five (5) days prior to such meeting as permitted by these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.04 Quorum. A quorum shall consist of a majority of the Commission members at any regular or special meetings of the Commission. When a quorum of the Commission is present at

any regular or special meetings of the Commission, the Commission may undertake any action upon an affirmative vote of a majority of the members present, unless otherwise provided for in the Act or these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-18, 9-10B-21.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.05 Voting.

(1) The Secretary of the Commission shall maintain a list of the members entitled to vote on Commission business. The list shall be kept on file at the Commission office. The list shall also be reproduced and kept open for inspection at all Commission meetings. Failure to comply with the requirements of this rule shall not affect the validity of any action taken at any Commission meeting.

(2) Each Commission member present at a Commission meeting, including the Chairperson, but excluding the Secretary of the Commission, shall have one (1) vote on all matters brought before the Commission.

(3) Members may not delegate any authority created by appointment to the Commission pursuant to the Act. Proxy voting shall not be permitted. A Commission member must be present at Commission meetings in order to exercise voting rights.

(4) Matters before the Commission may be decided by voice vote. However, a Commission member may request a recorded roll call vote on any matter before the Commission, which roll call vote shall be duly noted by the Secretary and be recorded in the minutes of the Commission.

(5) No Member of the Commission may vote on any matter prohibited by rule 305-7-1-.05 of these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-12, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.06 Record of Meetings. The Secretary shall keep minutes of all regular and special meetings except in the case of an executive session of the Commission. As soon as practical, but not less than five (5) days prior to the next regular meeting, the Secretary shall mail to each member a draft copy of the proposed minutes of the previous regular meeting in order that the members may review and make corrections to the proposed minutes. Any draft minutes of special meetings held since the last regular meeting shall be forwarded as soon as practical in order that the members may review and make corrections to the proposed minutes. Upon approval by the Commission, the minutes shall be the official record of the Commission's action. The Secretary, at the request of the Chairperson, any Commission member, or at the discretion of the Secretary, may prepare a verbatim transcript of any meeting or portion thereof to preserve the record in its totality.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.07 Permanent Record. The Secretary shall keep a permanent record of Commission actions including minutes, transactions, findings, orders, determinations, resolutions and rules at the administrative office of the Commission. The Secretary, upon request, shall certify photocopies as true and correct copies of the official Commission records.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.08 Notice Of Meetings: Agenda.

(1) The Secretary shall provide Commission members with written notice transmitted at least twenty-one (21) days prior to the meeting date of all regular meetings. The Secretary shall provide Commission members with notice of any special meetings by transmitting such notice to the Commission members at least five (5) days prior to such special meeting in accordance with these Rules.

(2) Notice of any regular or special meetings of the Commission shall be provided by any of the following means:

(a) written notice mailed by first class mail to the member's last known address of record;

(b) telegram directed to the members last known address of record;

(c) facsimile (fax) sent to the members' last known facsimile number as evidenced by written receipt of such transmission; and

(d) telephone as evidenced by a written log maintained at the administrative office of the Commission.

(3) Notice of any regular or special meetings shall be presumed received on the date of the mailing or transmission of such notice as provided by these Rules.

(4) The Secretary shall provide each Commission member with a written agenda for the proposed meeting listing the items to be considered at such meeting in the same manner and within the same time periods as are required for notice of meetings. The agenda of any Commission meeting may be modified at such regular or special meeting of the Commission by a majority vote of the Commission members.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.09 Record Of The Commission. All Commission records shall be public records as provided by the open records act (Code of Ala. 1975, §36-12-40. Records of the Commission may be examined pursuant to the open records act during regular business hours of the Office of Water Resources. Certified copies of the official records of the Commission may be made and certified by the Secretary upon the payment of reasonable costs for copying and/or certification of such records, or as otherwise provided by law (Code of Ala. 1975, §36-12-41). Uncertified copies of the Commission records may be obtained, at cost, from the Office of Water Resources through the Secretary.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-17, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.10 Appearance, Presentation, Or Submission To The Commission

(1) Unless otherwise provided by the Commission's Rules, persons wishing to make an appearance, presentation or submission to the Commission shall notify the Secretary at least ten (10) days prior so the meeting at which the appearance, presentation or submission is to be made. The notice shall contain information so as to convey the essence of the appearance, presentation, or submission.

(2) If the Secretary determines that the appearance, presentation, or submission is of a technical engineering, scientific, or legal nature and will require detailed Commission staff review, then the Secretary, in consultation with the Chairperson, may postpone such appearance, presentation, or submission until the next meeting of the Commission.

(3) If any time frame requirement under this rule creates a significant adverse impact to any person, the Secretary, Chairperson, or Commission may waive the requirement.

(4) This rule shall not apply to any matter that is an administrative adjudication under the "Alabama Administrative Procedure Act" (Code of Ala. 1975, §§41-22-1, et seq.).

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.11 Order Of Business. The suggested order of business at regular meetings is

- (1) Roll call and declaration of quorum;
- (2) Reports of Officers and Committees;
 - (a) disposition of minutes of previous meeting(s);
 - (b) reports of other officers;

Administrative Rules – ADECA Office of Water Resources (Continued)

- (c) committee reports;
- (d) report of the Division Chief, Office of Water Resources;
- (3) Appearance of persons or groups having business with the Commission;
- (4) Old business;
- (5) New business (items may be deferred or referred to Committees or Office of Water Resources staff, as necessary, for study and taken up at the next meeting);
- (6) Presentations to the Commission by staff members of the Office of Water Resources, or by other groups; and
- (7) Adjournment.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.12 Public Hearings For Informational Purposes. The Commission or the Office of Water Resources may conduct public hearings for the purpose of gathering information and public comment on any matters relating to the Act. Notice of any such public hearing shall be published not less than fifteen (15) days prior to the date of any public hearing in a newspaper of general circulation in Montgomery County, Alabama, or the county in which such hearing is to take place. The notice of public hearing shall provide the date, time and place of such public hearing, a statement of the purpose of such public hearing, and notice that any interested party shall be provided an opportunity to make comments, either for or against, the proposals to be considered at the public hearing.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-4-.13 Suspension Of Rules. The Commission may temporarily suspend any of its rules, not required by the Act, by a two-thirds (2/3) vote of the legally appointed members of the Commission. Such temporary suspension shall be effective for the duration of the meeting at which such action is taken.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

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305-7-5-.01 Nominating Committee. The Chairperson shall name a five (5) member Nominating Committee for ratification by the Commission at least thirty (30) days prior to any meeting where Commission officers are to be elected. The Nominating Committee shall report the proposed slate of officers in the same manner and time period as required for notice of meetings.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.02 Other Committees. The Commission shall have the authority to create Committees for such purposes and duration's, as determined by the Commission, to assist and advise the Commission in the accomplishment of its duties. The voting composition of the Committee shall be determined by the Chairperson of the Commission after such Committee is created.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.03 Committee Chairperson. A Committee Chairperson, who is a member of the Commission, shall be named by the Commission Chairperson.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.04 Committee Vice-Chairperson. The Commission Chairperson shall serve as ex-officio Vice-Chairperson to all Committees. The duties of the Committee Vice-Chairperson shall be to expedite Committee business in the absence or disability of the Committee Chairperson.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.05 Committee Secretary. The Division Chief of the Office of Water Resources shall either perform or delegate the duties of Committee Secretary to a staff member of the Office of Water Resources. The Committee Secretary shall be responsible for maintaining the minutes of the Committee proceedings and securing staff resources to support the activities of the Committee.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.06 Committee Ex-officio Members. The Committee may add non-voting members and advisors as deemed necessary to complete its assigned duties.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.07 Committee Quorum. A quorum shall consist of a majority of the voting members of the Committee.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1945, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.08 Committee Voting. Each Commission member appointed by the Commission Chairperson shall be entitled to one vote on any matters brought before the Committee. A majority of the voting members present shall constitute official action by the Committee.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-5-.09 Committee Meetings. Committee meetings shall be called by the Committee Chairperson, or the Vice Chairperson, either of which shall have discretion regarding the date, time, location and notice given.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975 §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-6 GENERAL CONDITIONS

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305-7-6-.01 Amendment. These Rules may be altered, amended, or repealed by a majority vote of the legally appointed members of the Commission and in accordance with the "Alabama Administrative Procedure Act"; provided, however, that notice of the proposed action shall have been given to all members in accordance with rule 305-7-4-.08 of these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-16.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-6-.02 Rules Of Order. Unless as otherwise provided herein, Robert's Rules of Order, 1990 (9th Edition), shall govern the transaction of business at all meetings of the Commission. A copy of Robert's Rules of Order shall be maintained by the Secretary at the administrative office of the Commission.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-6-.03 Severability. If any provision(s) of these Rules, or the application thereof, to any person or circumstance is held invalid, such invalidity shall not effect other provisions or applications of these Rules which can be given effect without the invalid provisions or applications; unto this end, the provisions of the Commission's Rules, including all Chapters and rules are severable.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-7 ADMINISTRATIVE HEARINGS AND APPEALS INVOLVING THE ALABAMA WATER RESOURCES COMMISSION AND THE OFFICE OF WATER RESOURCES

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305-7-7-.01 Application. Pursuant to the Act, the Commission hereby prescribes the following rules governing administrative hearings and appeals involving the Commission and the Office of Water Resources. These Rules are supplemental to the "Alabama Administrative Procedure Act" and should be read in conjunction therewith.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-18, 9-10B-30.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.02 Definitions. The definitions set out in the Alabama Water Resources Act (Act) are incorporated by reference as a part of this Chapter. For purposes of this Chapter, the following words and phrases, unless a different meaning is plainly required by the context or the Act, shall have the following meanings:

- (1) "Act" is defined as the Alabama Water Resources Act, Code of Ala. 1975, §§9-10B-1 through 30.
- (2) "Administrative action" is defined as the issuance, modification, repeal, or denial of any certificate, citation, declaration, license, notice of violation, order, policy, regulation, rule, or standard by the Office of Water Resources or the Commission relating to the Act.
- (3) "Aggrieved" is defined as having suffered a threatened or actual injury in fact.
- (4) "Commission" is defined as the Alabama Water Resources Commission or its designated Hearing Officer.

(5) "Office of Water Resources" is defined as the Office of Water Resources as established by the Alabama Water Resources Act, Code of Alabama 1975, §§9-10B-1 through 30.

(6) "Person" is defined as any and all persons, natural or artificial, including any individual, firm, association, organization, partnership, business, trust, corporation, company, any federal agency, authority, or corporation created by the United States of America, and the state and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.03 Right To Hearing. Upon a proper request made and filed in accordance with rule 305-7-7-.04 of these Rules, any person aggrieved by any administrative action shall be entitled to a hearing before the Commission.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.04 Request for Hearing.

(1) Any person aggrieved by an administrative action, other than the issuance of an emergency order, may file with the Commission a request for a hearing to contest such action within fifteen (15) days after notice to the aggrieved person of such action, or if no notice to the aggrieved person is given or required by the Act, within thirty (30) days of such action.

(2) Any person aggrieved by the issuance of an emergency order may file with the Commission a request for an expedited hearing to contest such action.

(3) A request for a hearing to contest an administrative action shall be made in writing and shall contain:

(a) the name, mailing address, and telephone number of the person making the request;

(b) a concise statement identifying the administrative action being contested;

(c) a concise statement of the threatened or actual injury suffered by the person as a result of the administrative action;

(d) a concise statement of the terms and conditions which the person proposes that the Commission should include in an order modifying or disapproving the administrative action; and

(e) the name, mailing address, and telephone number of the person's attorney, if represented by an attorney.

(4) A request for a hearing to contest an administrative action shall be filed with the Commission by delivering the same, either personally or by United States Postal Service to:

Secretary, Alabama Water Resources Commission c/o Office of Water Resources Alabama
Center for Commerce 401 Adams Avenue, Suite 360 Montgomery, Alabama 36104

by certified mail, return receipt requested, with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.05 Notice Of Filing Of Request For Hearing. Within fifteen (15) days after the filing of a request for a hearing by any person to contest an administrative action, the Secretary shall serve a copy of such request upon the Office of Water Resources, Commission members, and such other persons as the Secretary deems appropriate.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.06 Parties.

(1) In any hearing to contest an administrative action, the person making and filing a request for a hearing in accordance with rule 305-7-7-.04 of these Rules, shall be a party.

(2) The Office of Water Resources shall be a party in any hearing to contest an administrative action.

(3) In any hearing to contest an administrative action, any person whose application to intervene is granted by the Commission shall be a party.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.07 Intervention.

(1) Upon timely application filed with the Commission, any person shall be permitted to intervene in any hearing to contest an administrative action when a statute confers an unconditional right to intervene, or when the applicant has an individual interest in the outcome of the hearing as distinguished from a public interest and the representation of the interest of the applicant by persons already made parties is inadequate.

(2) An application to intervene shall contain:

- (a) the name, mailing address, and telephone number of the applicant;
 - (b) a concise statement identifying the administrative action being contested and, if possible, the name of the person who filed the request for a hearing to contest such action;
 - (c) a concise statement of the grounds for the application, including reference to any statute which confers an unconditional right to intervene or a statement of the individual interest of the applicant in the outcome of the hearing, and a statement as to why the representation of the interest of the applicant by persons already parties in the hearing is inadequate; and
 - (d) the name, mailing address, and telephone number of the applicant's attorney, if represented by an attorney.
- (3) Within fifteen (15) days after the filing of an application to intervene in any hearing to contest an administrative action, the Secretary of the Commission shall serve a copy of such application upon each of the parties.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.08 Consolidation And Severance.

- (1) The Commission may order consolidation, in whole or in part, of two or more hearings to contest an administrative action whenever it appears that such consolidation would expedite or simplify consideration of the issues and no party would be prejudiced thereby.
- (2) The Commission may order severance, in whole or in part, of any hearings consolidated in accordance with paragraph (1) of this Rule whenever it appears that continued consolidation will not expedite or simplify consideration of the issues or will prejudice any party.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.09 Prehearing Procedure.

- (1) The Commission may, on its own initiative or on the motion of any party, direct the parties to appear at a specified date, time and place for one or more conferences, prior to or during a hearing, to consider:
 - (a) settlement of the contested matters;
 - (b) identification, clarification, simplification, or limitation of the issues,

- (c) possibility of obtaining admissions of fact and of the genuineness of documents which will avoid unnecessary proof,
- (d) identification of facts, and the source thereof, of which official notice is proposed to be taken;
- (e) identification of persons with knowledge of any relevant matter;
- (f) identification of any expert witnesses expected to be called by any party to testify at the hearing and the substance of the facts and opinions to which the expert witnesses may be expected to testify and a summary of the grounds for each opinion;
- (g) possibility of submitting any evidence in verified form when the hearing will be expedited and the interests of the parties will not be prejudiced thereby, provided that the right of cross-examination of any witness shall not be denied; and
- (h) such other matters as may aid in the disposition of the contested actions.

(2) The Commission shall issue a written prehearing order reciting the action taken at the conference and the agreements made by the parties as to any of the matters considered. The order shall limit the issues for consideration at the hearing to those not disposed of by admissions or agreements of the parties. Such order, when entered, shall control the subsequent course of the hearing unless modified.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993, **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.10 Notice Of Hearing

(1) At least fifteen (15) days prior to the commencement of any hearing to contest an administrative action, other than the issuance of an emergency order, the Commission shall give written notice of the date, time, place, and nature of such hearing to the person requesting such hearing, to the Office of Water Resources, and to any others named or necessary parties. Such notice shall include a citation of the legal authority and jurisdiction under which the hearing is to be held, reference to the particular sections of the statutes and Rules involved, and a concise statement of the matters asserted by the person requesting such hearing.

(2) Within such time as may be reasonable under the circumstances, the Commission shall give notice of the date, time, place, and nature of any hearing to contest the issuance of an emergency order to the person requesting such hearing and such other persons as the Commission deems appropriate.

(3) Any notice required by this Chapter to be given to any party shall be delivered to such party either personally, by registered mail, or certified mail return receipt requested.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.11 Hearing Procedure.

(1) A hearing to contest an administrative action shall be commenced when a reasonable time, not to exceed ninety (90) days, after the making and filing of a proper request for such hearing in accordance with rule 305-7-7-.04 of these Rules.

(2) The testimony of all parties and witnesses shall be made under oath administered by the Commission.

(3) All testimony or comments given in any hearing before the Commission shall be electronically or stenographically recorded, but need not be transcribed unless requested by any party who shall pay the cost of transcription, or as otherwise provided by this Chapter or the Act.

(4) The parties shall be bound by the rules of evidence prevailing in nonjury civil cases in the Circuit Court of the State of Alabama.

(5) Each party shall be entitled to respond and present evidence and arguments on all material issues involved in the hearing. The burden of going forward with the evidence shall be on the party requesting the hearing. Each party shall be entitled to present oral or written opening statements and closing arguments.

(6) A party may conduct cross-examinations as required for a full and true disclosure of facts, except as may be otherwise limited by law or the Alabama Rules of Civil Procedure.

(7) Each party shall be afforded an opportunity to contest facts proposed to be officially noticed.

(8) At any time after the commencement of a hearing to contest an administrative action the Commission may, on its own initiative or on the action of any party, adjourn the hearing to a later date, time and/or different location.

(9) A hearing to contest an administrative action is concluded on the date when all opening statements, evidence, other submissions, testimony, comments, and closing arguments have been received or heard by the Commission and all motions have been ruled upon.

(10) All hearings shall be open to the public, unless private hearings are otherwise provided by law.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.12 Default. If a party fails to appear at a hearing after being given notice, the Commission may, if no adjournment is granted, proceed with the hearing and render a decision

or dismiss the proceeding for failure to prosecute the appeal. Dismissal shall constitute a final determination of the contested matter.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.13 Record. The record of a hearing to contest an administrative action shall include:

- (1) The request for a hearing filed in accordance with rule 305-7-7-.04 of these Rules;
- (2) All pleadings, motions, applications and intermediate rulings and orders;
- (3) All evidence received or considered and all other submissions; provided, in the event that evidence in any proceeding contains information which the Office of Water Resources or the Commission has determined to be confidential or otherwise not available to the public under any law, rule, or regulation administered by the Office of Water Resources, the Commission shall take such steps as are necessary to prevent public disclosure of that information;
- (4) A statement of all matters officially noticed;
- (5) All questions and offers of proof, objections, and rulings thereon;
- (6) All proposed findings and exceptions;
- (7) All staff memoranda or data submitted to the Commission in connection with the consideration of the case unless such memoranda or data is protected as confidential or privileged; provided, that if such memoranda or data contain information of a proprietary and confidential nature, it shall be protected from public disclosure by the Commission; and
- (8) Any report of the Hearing Officer.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.14 Disposition Without Hearing.

- (1) Any party who filed a request for a hearing to contest an administrative action before the Commission in accordance with rule 305-7-7-.04 of these Rules, may at any time before the commencement of a hearing, withdraw the request by filing a notice thereof with the Secretary of the Commission, the Commission, or the Hearing Officer if one has been designated by the Commission.

(2) Any party who filed a request for a hearing to contest an administrative action on accordance with rule 305-7-7-.04 of these Rules may, at any time after the commencement of a hearing, file a motion for voluntary dismissal of the contest with the Commission.

(3) The parties to any hearing to contest an administrative action may, at any time after the filing of the request for a hearing, file with the Commission a proposed consent order modifying, approving, or disapproving the administrative action with a motion that the Commission issue an order in accordance therewith.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.15 Stay Of Action Pending Issuance Of Order.

(1) Pending issuance of the Commission's order and upon application therefor made by any party, the Commission may stay the implementation of an administrative action in accordance with such terms and conditions as it may deem proper.

(2) An application for a stay of the implementation of an administrative action shall state the grounds therefor and shall be filed with the Secretary of the Commission as provided for in rule 305-7-7-.04 of these Rules.

(3) No stay of implementation of an administrative action shall be granted without prior notice to each party and an opportunity to be heard before the Commission.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.16 Filing And Service.

(1) Except as otherwise provided in this Chapter, the filing of any request, application, motion, or other writing or paper with the Commission shall be made by delivery of such request, application, motion, or other writing or paper to:

Secretary, Alabama Water Resources Commission, c/o Office of Water Resources, Alabama Center for Commerce, 401 Adams Avenue, Suite 360, Montgomery, Alabama 36104

(2) A copy of every motion or other writing or paper filed with the Commission concerning an administrative action shall be served upon each of the parties. Except as otherwise provided in this Chapter, service upon a party shall be in the same manner and form as provided in the Alabama Rules of Civil Procedure.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.17 Computation Of Time. In computing any period of time prescribed by this Chapter or by the Code of Ala. 1975, 5541-22-1, et seq., the day the administrative action is taken shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. A legal holiday shall be a day recognized as a legal holiday by the State of Alabama and/or as designated by the Governor of the State of Alabama. Whenever a party has the right or is required to do some act or to take some proceedings within a prescribed period after the service of a notice or other paper upon them and the notice or paper is served upon them by mail, three (3) days shall be added to the prescribed period.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.18 Ex Parte Communications.

(1) A party, or their attorney, shall not communicate, or cause another to communicate, with the Commission, a Commission member or Hearing Officer as to any matter which concerns a contested administrative action then pending, except:

- (a) in the course of official proceedings concerning the contested administrative action;
- (b) in writing if they promptly serve a copy on each party; or
- (c) orally upon adequate notice to each party or their attorney.

(2) No Commission member or Hearing Officer shall initiate, entertain, or consider any communication with any party, or their attorney, concerning a contested administrative action then pending unless such communication is permitted as provided in this rule.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.19 Hearing Officers.

(1) The Commission may hire or employ one or more Hearing Officers to conduct hearings of contested administrative actions. Such Hearing Officers shall be attorneys licensed to practice in the State of Alabama and shall be paid an amount prescribed by the Commission from Office of Water Resources funds, but shall not be subject to the authority, direction, or discretion of the Division Chief of the Office of Water Resources or any other person subject to the authority, direction, or discretion of the Division Chief of the Office of Water Resources.

(2) The Commission may delegate to a Hearing Officer, the power to conduct hearings of contested administrative actions of the Office of Water Resources and the Commission and all proceedings related thereto, in the same manner as provided in this Chapter for the conduct of such hearings and proceedings before the Commission. The power to conduct hearings of contested administrative actions shall include the power to do all things which the Commission might do under this Chapter, except to issue an order modifying, approving, or disapproving an administrative action.

(3) The Hearing Officer shall prepare and submit to the Commission, within sixty (60) days after the conclusion of any hearing, a report containing findings of fact, conclusions of law, recommendations, and the record, including a transcript of all testimony or comments given in such hearing, for the consideration of the Commission. The report of the Hearing Officer shall also state the date on which the hearing was concluded.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.20 Order.

(1) Within sixty (60) days after the conclusion of a hearing conducted by the Commission contesting an administrative action, or within sixty (60) days of the receipt by the Commission of a Hearing Officer's report, the Commission shall issue an appropriate order modifying, approving, or disapproving the contested administrative action.

(2) Any order of the Commission modifying, approving, or disapproving an administrative action shall be in writing and shall include findings of fact and conclusions of law,

(3) A copy of the order of the Commission shall be served upon each of the parties either personally, by registered mail, or by certified mail return receipt requested or by facsimile (fax) and shall be presumed received three (3) days after the date of mailing or in other cases the date of transmission of such order.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.21 Majority Of Quorum Needed To Issue Order. The Commission may not issue an order modifying, approving, or disapproving an administrative action without the concurrence of a majority of a quorum present at a regular or special meeting of the Commission, except that a determination made pursuant to §§9-10B-21 and 9-10B-22 of the Act shall require a favorable vote of at least 13 members of the Commission. A quorum shall be a majority of the Commission. Recusal of a member of the Commission shall not affect the quorum.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.22 Mandatory Recusal.

(1) Any Commission member who was not present at a hearing to contest an administrative action or who has not read the record, including a transcript of all testimony or comments given in a hearing and contained in the Hearing Officer's report, shall recuse themselves from voting to issue any order modifying, approving, or disapproving such administrative action and from participating in any discussions with other Commission members concerning the issuance of any such order.

(2) Any party to a hearing contesting an administrative action may file a timely motion to compel the recusal of any Commission member from voting to issue an order modifying, approving, or disapproving such administrative action, or to disqualify a Hearing Officer from conducting a hearing contesting such administrative action. Such motion shall be supported by a sufficient affidavit, made on personal knowledge, asserting conflict of interest, personal bias, or other matters contained in these Rules. The Commission shall determine the matter as part of the record of the hearing; however, the Commission member against whom conflict of interest, personal bias, or disqualification is asserted, shall recuse themselves from such determination.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-7-.23 Permissive Recusal. Any Commission member may recuse themselves from voting to issue any order modifying, approving, or disapproving an administrative action, or from participating in any discussions with other members of the Commission concerning the issuance of any such order, if they believe themselves to have a conflict of interest or personal bias such as would prevent their fair and impartial consideration of the merits of the contest.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

**CHAPTER 305-7-8 PETITIONS FOR ADOPTION, AMENDMENT OR REPEAL OF
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305-7-8-.01 Application. This Chapter prescribes the procedures for the submission, consideration and disposition of petitions for rulemaking and is to be read in conjunction with the "Alabama Administrative Procedure Act."

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18, 9-10B-30.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-8-.02 Right To Petition. Any person may petition the Commission to adopt, amend or repeal a rule by making and filing a written petition in accordance with rule 305-7-8-.03 of these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-16, 9-10B-18

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-8-.03 Petition Content and Submission.

- (1) A petition to adopt, amend or repeal a rule shall contain the following information:
- (a) the name, mailing address and telephone number of the person making the petition;
 - (b) a statement of the interest of the person making the petition;
 - (c) specific language proposed to be adopted, amended, or repealed;
 - (d) all evidence, data and information on which the person relies in support of the petition; and
 - (e) a statement of the persons position on the considerations described in rule 305-7-8-.04 of these Rules.
- (2) A petition for rulemaking shall be filed with the Commission by delivering the same, either personally or by mail to:

Secretary, Alabama Water Resources Commission, c/o Office of Water Resources Alabama Center for Commerce, 401 Adams Avenue, Suite 360, Montgomery, Alabama 36104

by the United States Postal Service as certified mail, return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-8-.04 Consideration Of Petition. The Commission shall give fair consideration to any petition for rulemaking filed in accordance with rule 305-7-8-.02 of these Rules. The Commission may consider:

- (1) The views of the Division Chief of the Office of Water Resources;
- (2) Whether the proposed adoption, amendment, or repeal of a rule is constitutional and within the statutory authority of the Office of Water Resources and/or the Commission to adopt;
- (3) Whether the proposed adoption, amendment, or repeal of a rule would promote the legislative intent and purposes of the statutes which the Office of Water resources and/or the Commission administers;
- (4) Whether the petition is supported by substantive, credible and relevant evidence, data and information as would reasonably support the proposed adoption, amendment, or repeal of a rule in the absence of contradictory evidence, data or information or other relevant factors which the Commission might consider pursuant to the Act;
- (5) Whether the person has had a prior opportunity to present relevant evidence, data and information on the subject matter of the petition or the person unjustifiably failed to present such evidence, data or information;
- (6) Whether alternative means of obtaining the same or similar relief are presently available to the person or have been made available in the recent past;
- (7) The manner in which the proposed adoption, amendment, or repeal of a rule would impact the overall regulatory scheme of the Act and whether the proposed adoption, amendment, or repeal of a rule would promote the basic underlying public policies of the Act; and
- (8) Any other relevant factors, evidence, data or information.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-8-.05 Disposition Of Petition. Within sixty (60) days after submission of a petition for rulemaking the Commission shall either deny the petition on its merits and state the reasons for the denial in writing, or initiate rulemaking procedures in accordance with the "Alabama Administrative Procedure Act." However, the Commission may extend the sixty (60)day period, by not more than thirty (30) days, if the Commission's next regularly scheduled meeting is not within the sixty (60) day period. Written notification of such extension shall be provided to the petitioner by the Secretary. During such period the Commission shall either deny the petition or initiate rulemaking proceedings.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-16, 9-10B-18, 9-10B-30.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-9 GENERAL PROVISIONS OF THE ALABAMA WATER USE REPORTING PROGRAM

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305-7-9-.01 Application. The Act mandates that the Commission adopt rules and regulations governing Declarations of Beneficial Use and Certificates of Use. The Act makes water use reporting a condition of maintaining Certificates of Use. Chapters 305-7-9 through 305-7-12 of these Rules prescribe the rules, regulations and procedures for Declarations of Beneficial Use, Certificates of Use, and water use reporting and shall hereafter be known as the "Water Use Reporting Program."

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-2, 9-10B-16, 9-10B-19.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-9-.02 Definitions. The definitions set out in the Act are incorporated by reference as a part of the Water Use Reporting Program. The following words and phrases, unless a different meaning is plainly required by the context of these Rules or the Act, shall have the following meanings:

(1) "Applicant" is defined as any person, who is required by the Act to file, or any person filing, a Declaration of Beneficial Use to withdraw or divert waters of the state.

(2) "Divert" or "Diversion" is defined as the capacity to withdraw, use or consume waters of the state.

(3) "Withdrawal facility" is defined as any individual or series of pipes, devices or means at a location which diverts waters of the state from a source.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10-19.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-9-.03 Review Of Forms. The Division Chief of the Office of Water Resources shall prescribe and the Commission approve the forms necessary to obtain the information required by the Water Use Reporting Program and shall alter or amend such forms as necessary.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-8, 9-10B-19.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-9-.04 Right of Entry. Authorized agents, representatives, or designees of the Office of Water Resources, may enter upon any private or public property after giving notice to the owner, occupant, custodian or agent of said property, for the purpose of determining compliance with the Act or these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-5, 9-10B-19.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-9-.05 Penalties. Any person violating any provision of the Act or these Rules shall be subject to penalties as provided by the Act. Penalties provided by the Act shall be in addition to other penalties or equitable relief which may be granted by any court of competent Jurisdiction.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-5, 9-10B-19.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-9-.06 Appeals. Any person aggrieved by any administrative action by the Office of Water Resources or the Division Chief may appeal such action pursuant to Chapter 305-7-7 of these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-18.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-10 DECLARATIONS OF BENEFICIAL USE

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305-7-10-.01 Filing Of Declaration Of Beneficial Use.

(1) Any person diverting waters of the state shall file a Declaration of Beneficial Use with the Office of Water Resources as required by the Act.

(2) A Declaration of Beneficial Use must be filed for each withdrawal facility.

(3) A Declaration of Beneficial Use shall be filed by mail or in person to:

(a) for mail delivery:

Office of Water Resources Alabama Center for Commerce

401 Adams Avenue, Suite 360

Post Office Box 5690

Montgomery, Alabama 36103-5690

(b) for hand delivery:

Office of Water Resources Alabama Center for Commerce

401 Adams Avenue, Suite 360

Montgomery, Alabama 36104

(c) other places designated by the Office of Water Resources.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-10-.02 Content Of Declaration Of Beneficial Use.

(1) Each Declaration of Beneficial Use shall be filed on forms prescribed by the Division Chief of the Office of Water Resources and include information for each withdrawal facility such as, but not necessarily limited to, the:

(a) water source;

(b) primary uses of the water;

(c) geographic location of the points of diversion and points of return of water;

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(d) estimated or actual quantity of water, in gallons, diverted and estimated or actual quantity of water, in gallons, to be returned;

(e) estimated maximum potential quantity of water, in gallons, which could be diverted and estimated potential quantity of water, in gallons, which would be returned;

(f) method or means of measuring, estimating, or controlling the water diverted.

(g) statement regarding the navigability of the water source; and

(h) basis of legal right to use the water to be diverted.

(2) Each Declaration of Beneficial Use:

(a) shall describe the geographic location and proximity to the water source of property using the diverted water and shall list and document, with appropriate attachments, the current basis for the legal use of such water. Such attachments may include, among other things, opinions of counsel, deeds, court decrees, lease agreements, permits, licenses, certificates and contracts; and

(b) shall certify that the diversion is consistent with the objectives of the Act. Consistency with the objectives of the Act shall be interpreted as meaning that the applicant must establish and declare that the use of water is:

1. a lawful, reasonable and beneficial use of water;
2. consistent with the public interest;
3. does not interfere with any legal use of water existing at the time of the application; and
4. complies with the provisions of the Act and these Rules.

(3) Each Declaration of Beneficial Use shall contain a statement, signed and certified to by the person required to file the Declaration of Beneficial Use, or by some other person duly authorized to sign in the person's behalf, that to the best of the person's knowledge and belief the information provided in the Declaration of Beneficial Use is true, accurate and complete.

Authors: Walter B. Stevenson, Jr.; Onis Trey Glenn, III

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

Amended: Filed January 18, 2002; **Effective:** February 22, 2002.

305-7-10-.03 Voluntary Filing Of Declaration Of Beneficial Use. Nothing in these Rules shall be interpreted or construed as prohibiting any person from voluntarily filing a Declaration of Beneficial Use in accordance with the provisions of these Rules. Any person voluntarily filing a Declaration of Beneficial Use, although not required to file such, shall fully comply with the

provisions of these Rules and such terms or conditions as are contained in the Certificate of Use issued by the Office of Water Resources.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-19.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-10-.04 Amendment To Declaration Of Beneficial Use. If any information in a Declaration of Beneficial Use is no longer true, accurate and complete, the applicant shall, within ninety (90) days of such change, file an amendment which shall correct and update the Declaration of Beneficial Use.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-19.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-10-.05 Review Of Declaration Of Beneficial Use.

(1) The Office of Water Resources shall review the Declaration of Beneficial Use to determine that it is complete.

(2) If the Declaration of Beneficial Use is determined to be incomplete, the applicant will be so advised within thirty (30) days of the receipt of the Declaration. The notice to the applicant will identify the deficiencies in the Declaration of Beneficial Use.

(3) If a Declaration of Beneficial Use has been filed in accordance with these Rules, and upon review it is determined that the Declaration is complete and in conformance with the provisions of the Act and these Rules, the Office of Water Resources shall issue, or cause to be issued, a Certificate of Use. A Certificate of Use shall be issued for each withdrawal facility.

(4) In the event a new or revised Certificate of Use has not been issued by the Office of Water Resources within ninety (90) days of a person's submission of a Declaration of Beneficial Use the person submitting such Declaration may continue to divert, withdraw, or consume the waters of the state in compliance with the provisions of the Act and these Rules and shall not be subject to any civil action or order issued by the Office of Water Resources for failing to submit a Declaration of Beneficial Use.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-10-.06 Emergency Diversion. A Declaration of Beneficial Use, as otherwise required by the Act, shall not be required to be filed if the diversion lasts for less than thirty (30) days (hereafter referred to as an "Emergency Diversion"). An emergency diversion includes the taking of water for purposes such as fire fighting, hazardous waste spill response or other emergencies as may be determined by the Office of Water Resources. The person responsible for the

emergency diversion shall, within thirty (30) days of the diversion, notify the Office of Water Resources of the name, address and telephone number of the person diverting water, the purpose(s) of the diversion, the source of diversion, the location of the diversion, the initial date of the diversion, the daily amount of water diverted, and the anticipated duration of the diversion. If it is determined that the emergency diversion is expected to continue for more than thirty (30) days the Division Chief shall determine whether to grant a waiver for the emergency diversion or to require the filing of a Declaration of Beneficial Use.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-19.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-10-.07 Failure To File A Declaration Of Beneficial Use Failure to file a Declaration of Beneficial Use and the continued use of the waters of the state will be considered a violation of the Act and these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-19.

History: Filed October 20, 1993. **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

CHAPTER 305-7-11 CERTIFICATES OF USE

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305-7-11-.01 Content Of Certificates Of Use.

(1) Certificates of Use shall acknowledge the:

(a) estimated amount, in gallons, of waters of the state that is used on an average daily basis;

(b) estimated maximum capacity, in gallons, of waters of the state that could potentially be withdrawn or diverted within any single day;

(c) duration of the Certificate of Use; and

(d) frequency of water use reporting.

(2) Each Certificate of Use shall contain the following statement:

"THIS CERTIFICATE OF USE SHALL NOT CONFER OR MODIFY ANY PERMANENT INTERESTS OR RIGHTS IN THE HOLDER THEREOF TO THE CONTINUED USE OF THE WATERS OF THE STATE OF ALABAMA."

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-11-.02 Duration Of Certificates Of Use. Certificates of Use shall be issued for a period of not less than five (5) years and not more than ten (10) years at the discretion of the Division Chief of the Office of Water Resources or as otherwise provided by the Act.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-11-.03 Modification Of Certificates Of Use.

(1) Any holder of a Certificate of Use may apply to the Office of Water Resources, on forms prescribed by the Division Chief of the Office of Water Resources, to modify, transfer, consign, convey, or terminate, a Certificate of Use.

(2) Upon noticing discrepancies either between the Declaration of Beneficial Use or Certificate of Use and subsequent water use reports, the Office of Water Resources may order a modification to the Declaration of Beneficial Use. Prior to any such order, the Office of Water Resources shall notify the holder of the Certificate of Use of the discrepancy and the need to modify the Declaration of Beneficial Use and offer the holder a meeting with the Division Chief.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-11-.04 Renewal Of Certificates Of Use. Applications to renew an existing Certificate of Use shall be filed on forms prescribed by the Division Chief of the Office of Water Resources at any time not more than one hundred eighty (180) days nor less than ninety (90) days prior to the expiration of the existing Certificate of Use. All renewals will be processed, as provided by these Rules, in the same manner as the original Declaration of Beneficial Use. Notice of the expiration of a Certificate of Use shall be provided by the Office of Water Resources to a holder of a Certificate of Use not less than one hundred eighty (180) days prior to the expiration of the Certificate. Notice shall be sent to the last known address provided by the holder of the Certificate.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-11-.05 Termination Of Certificates Of Use. Violations of the provisions of the Act, or as hereafter amended, these Rules, or as hereafter amended, or the terms and conditions as set forth in the Certificate of Use, shall be a basis for determining suspension, revocation, termination or modification of any Certificate of Use by the Office of Water Resources. No suspension, revocation, termination or modification of a Certificate of Use will be effective until the holder of the Certificate of Use has been offered a meeting with the Division Chief to discuss the proposed suspension, revocation, termination or modification. The suspension, revocation, termination or modification of any Certificate of Use shall be deemed an administrative action of the Office of Water Resources and shall entitle the holder to an appeal of such administrative action as provided by Chapter 305-7-7 of these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-5, 9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

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305-7-12-.01 Water Use Revolt Filing Requirement.

(1) A person holding a Certificate of Use shall be responsible for the filing and accuracy of water use reports as required by the Act and Certificate of Use.

(2) Water use reports may be filed by the holder of the Certificate of Use or by their authorized agent, representative, or designee.

(3) Water use reports may be filed:

(a) using the forms prescribed by the Division Chief of the Office of Water Resources; or

(b) after receipt of a written request from the holder of a Certificate of Use, the Division Chief may approve and accept copies of reports submitted pursuant to rules and regulations of the federal government or an authorized agency of the State of Alabama provided the report contains the information necessary to fully comply with the provisions of the Act and these Rules.

(4) Water use reports and required information shall be delivered to the Office of Water Resources as follows:

(a) for mail delivery:

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Office of Water Resources
Alabama Center for Commerce
401 Adams Avenue, Suite 360
Post Office Box 5690
Montgomery, Alabama 36103-5690

(b) for hand delivery:

Office of Water Resources
Alabama Center for Commerce
401 Adams Avenue, Suite 360
Montgomery, Alabama 36104

(c) other places designated by the Office of Water Resources.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-5, 9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-12-.02 Content Of Water Use Report. A water use report shall include the following:

(1) The estimated amount of water withdrawn, diverted, or consumed, in gallons, and tabulated for average daily use per month and peak day use per month; and

(2) Each water use report shall be signed and certified that, to the best of the person's knowledge and belief, the information provided in each report is true, accurate and complete.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.

305-7-12-.03 Failure To File Water Use Report. Failure to file a water user report with the Office of Water Resources, by any holder of a Certificate of Use, shall constitute:

(1) A basis for determining suspension, revocation, or termination of the Certificate of Use; and

(2) A violation of the Act and these Rules.

Author: Walter B. Stevenson, Jr.

Statutory Authority: Code of Ala. 1975, §§9-10B-5, 9-10B-19, 9-10B-20.

History: Filed: October 20, 1993; **Adopted:** December 9, 1993; **Effective:** February 22, 1994.