

This document replaces the Proposed Amendments to Georgia’s Rules for Flint River Drought Protection posted on January 4, 2006. The revised document underlines all proposed additions to the rule, adds text in paragraphs 391-3-28-.07(d), and 391-3-28-.08, and retains text in paragraph 391-3-28-.05(b).

**RULES OF
GEORGIA DEPARTMENT OF NATURAL RESOURCES
ENVIRONMENTAL PROTECTION DIVISION**

**CHAPTER 391-3-28
FLINT RIVER DROUGHT PROTECTION**

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• **391-3-28-.01 Purpose.**

The purpose of this rule is to establish the procedures required for the administration and implementation of the “Flint River Drought Protection Act”, O.C.G.A. 12-5-540 et. seq. The use of water resources of the state for agricultural purposes is of vital importance to Georgia and southwest Georgia in particular; and the protection of the Flint River flow is necessary for a healthy riverine ecosystem and a healthy population of aquatic life. The wise use of water, protection of stream flow, and the overall economic well-being of the state will be furthered by proper water management in periods of severe drought. A program providing incentives to ensure that certain irrigated agricultural lands are temporarily not irrigated during times of declared severe drought will promote this wise use of water resources, the associated protection of stream flows, and the economic well-being of the state.

This rule establishes the basis for a drought protection program for the Flint River basin and the coordination which will occur with the Georgia Environmental Facilities Authority to handle those funds. It states how the Director of the Environmental Protection Division of the Department of Natural Resources shall each year predict whether severe drought conditions are considered likely in the Flint River basin. It establishes the procedures for holding an irrigation reduction auction to decrease irrigation acreage in any declared severe drought year and how the auction may be operated. It delineates the process by which certain persons holding agricultural water withdrawal permits may offer to cease irrigating a number of acres in exchange for a certain sum of money and defines how such offers to sell are accepted. If a sufficient amount of acreage reduction is not

acquired during the auction, it defines when and how an order may be issued requiring certain permit holders to cease or reduce irrigation and provides for their compensation to stop irrigating. It outlines the procedures for any investigations and enforcement of these rules.

- **391-3-28-.02 Definitions.**

All terms used in this Chapter shall be interpreted in accordance with the definitions set forth in the Flint River Drought Protection Act, and as otherwise herein defined:

(a) '**Acceptable Flint River stream flow**' means the quantity of stream flows at one or more specific locations on the Flint River which provides for aquatic life protection and other needs as established by the Director based on municipal, agricultural, industrial, and environmental needs.

(b) '**Affected area**' means that portion of the state lying within the Flint River basin and also certain areas adjacent to the Flint River basin where groundwater use from the Floridan aquifer can affect the stream flow in the Flint River or its tributaries, as described in United States Geological Survey Open-File Report 95-321 (1996).

(c) '**Auction certificate**' refers to a certificate issued to the holder of an agricultural water use permit when the permit holder has been certified as eligible to participate in the irrigated acreage reduction auction. A permit holder wishing to offer irrigation lands under multiple agricultural withdrawal permits must have a separate auction certificate for each permit. The auction certificate will include, but not be limited to, the identity of the land owner, the agricultural withdrawal permit covered, and the amount of acres actually irrigated.

(d) '**Auction offer**' for a specific permit, refers to the price-per-acre offered by the farmer as the amount of money required for the farmer to not irrigate land covered by that specific permit during the remainder of the calendar year.

(e) '**Authority**' means the Georgia Environmental Facilities Authority created by Chapter 23 of Title 50.

(f) '**Board**' means the Board of Natural Resources.

(g) '**Candidate seller**' refers to holders of an auction certificate or their representatives whose single auction offer has or multiple auction offers have been tentatively accepted by during preliminary rounds of the irrigated acreage reduction auction.

(h) '**Director**' means the Director of the Environmental Protection Division of the Department of Natural Resources.

(i) **'Division'** means the Environmental Protection Division of the Department of Natural Resources.

(j) **'Drought protection funds'** means the funds held by the Authority as provided in Code Section 12-5-545 for the accomplishment of the purposes of this article.

(k) **'Final seller'** refers to candidate sellers at the end of the final round of the irrigated acreage reduction auction.

(l) **'Fixed irrigation system'** means those non-portable irrigation systems that are permanently installed, anchored, or buried in place, such as center pivots (including towable center pivots), solid-set irrigation sprinklers, or drip irrigation.

~~(m)~~ **'Flint River basin'** means the entire area of land which drains into the Flint River or its major tributaries.

~~(nn)~~ **'Floridan aquifer'** means those rocks and sediments described in United States Geological Survey Open-File Report 95-321 (1996) that are capable of yielding ground water to wells or discharging water into the Flint River or its tributaries.

~~(oo)~~ **'Irrigated land'** means farm land which is irrigated by ground water or surface water pursuant to a water withdrawal permit issued by the Director pursuant to Code Section 12-5-31 or 12-5-96.

~~(pp)~~ **'Irrigation reduction auction'** means the procedure established by subsection (b) of Code Section 12-5-546 pursuant to which Permittees submit offers to cease irrigation of a specified number of acres in exchange for a certain sum of money.

~~(qq)~~ **'Major tributaries'** of the Flint River means those flowing rivers and streams which flow into the Flint River.

~~(rr)~~ **'Perennial Stream'** means a stream which normally flows throughout the whole year. One way, but not necessarily the only way, of identifying perennial streams is to determine if they are shown as an unbroken blue line on the United States Geological Survey quadrangle map.

~~(ss)~~ **'Permit'** means a valid irrigation certificate of farm use has been approved and issued by the Division, used for agricultural withdrawals from either surface water or groundwater.

~~(st)~~ **'Permittee'** means a person holding a valid agricultural withdrawal permit issued before December 1, 2000, pursuant to Code Section 12-5-31 or 12-5-96.

(~~tu~~) '**Severe drought conditions**' means any forecast condition which may result in a stream flow that is lower than the acceptable Flint River stream flow. The prediction or declaration of when severe drought conditions exist or are expected to exist during a given year shall be based on historical, mathematical, meteorological, or other scientific considerations which may be published by the director and which may be developed in consultation with the state climatologist, the state geologist, or other appropriate experts.

(~~tv~~) '**Stream flow**' means the quantity of water passing a given location of any stream over a given time period, usually expressed in cubic feet per second (cfs).

(~~w~~) '**Watershed**' means a smaller drainage basin associated with one of the tributaries of the Flint River, and assigned an 8-digit Hydrologic Unit Code by the United States Geological Survey

~~391-3-28-.03 Geographic Area of Concern.~~

~~The geographic area of concern for these regulations is defined as the entire Flint River Basin for surface water users, while for any potential groundwater users the geographical areas included are those areas in and adjacent to the lower Flint River basin where studies indicate that groundwater use from the Floridan aquifer may affect streamflow in the Flint River or its tributaries. This delineated area is known as the 'affected area'.~~

• ~~391-3-28-.03~~**34 Drought Fund Establishment and Operation.**

The expenditure of these funds is to be considered an incentive to agricultural permittees not to irrigate lands after a severe drought declaration and is therefore deemed by the legislature a valid use of state moneys to promote valid land and water use practices which result in the protection of the riverine environment by ensuring that such lands not be irrigated for specified periods of time. No expenditure of funds under this article shall be considered a lease or repurchase of any irrigation permit issued by the Director, nor shall it be considered an acknowledgment by the State of Georgia of a property right in any permit issued by the Director.

• ~~391-3-28-.04~~**45 Severe Drought Declaration.**

Within the affected area, the Division shall predict or declare when severe drought conditions exist or are expected to exist during a given year, based on historical, mathematical, meteorological indicators, or other scientific considerations. The severe drought predictions shall be developed in consultation with the state climatologist, the state geologist, or other appropriate experts.

(a) On or before March 1 of each year, the Division shall issue a prediction as to whether severe drought conditions are expected during that calendar year.

(1) If the historical, mathematical, meteorological indicators or other scientific considerations do not predict a severe drought for that specific year, there shall be no implementation of the rules related to the Flint River Drought Protection Act. The Director shall publicly issue the no-drought prediction. Irrigation by all agricultural permit holders may then proceed through that calendar year without additional limits or new permit qualifications put in place, beyond the existing permit conditions.

(2) If the historical, mathematical, meteorological indicators or other scientific considerations do not predict a severe drought for that specific year, and the Director publicly issued the no-drought prediction, then no further consideration of the implementation of provisions of these rules shall occur for that year, even if severe drought conditions begin after March 1 of the year.

(3) If the historical, mathematical, meteorological indicators or other scientific considerations predict a severe drought for that specific year, and an announcement is made on or before March 1 stating that severe drought conditions are in effect, then these rules shall be implemented.

(b) The Director shall establish acceptable Flint River stream flow measures (in cubic feet per second), at one or more defined locations.

- **391-3-28-.056 Eligibility.**

To be eligible for consideration to receive money from the drought protection fund, the agricultural permit holder must possess an auction certificate from the Division. To acquire this auction certificate, the agricultural permit holder shall submit to the Division, before any further consideration, documentary evidence including, but not necessarily limited to, the following information:

(a) Location within the affected area. The geographic area for eligible permits is defined as follows:

(1). Surface-water permits

(i) Watersheds within the Flint River Basin as designated by the Director at the time of drought declaration

(2). Ground-water permits

(i) Areas designated by the Director at the time of drought declaration. Such areas shall be in or within 3 miles adjacent to the Flint River or its tributaries where geologic studies indicate that Floridan aquifer ground-water withdrawals in such areas may directly decrease stream flow in the Flint River or its tributaries.

(b) The Agricultural Permit or the Permit Number;

A copy of the agricultural ground water or surface water permit or its associated permit number must be provided to the Division. The agricultural Permittee must have previously applied to the Division for a surface-water or groundwater withdrawal permit prior to December 1, 1999, and must have already received a surface-water or groundwater withdrawal permit from the Division prior to December 1, 2000.

- (1) If the Director fails to act on a permit application by December 1, 2000, which was received by the Division prior to December 1, 1999, the time for receipt of a permit shall be extended until such time as the Director makes a decision on that application.
- (2) If the Director's decision is to deny the permit and that decision is reversed on appeal, the date of receipt of a permit shall be deemed to be the date of the Director's decision.

(c) The latitude-longitude location of the permitted surface water or groundwater point of withdrawal;

The existence of the withdrawal location must be validated by a representative of the Division using Global Positioning System (GPS) or equivalent technology capable of determining latitude / longitude to within 5 meter accuracy. Such validation shall occur when the Division representative;

- (1) visits the physical location of the point of water withdrawal,
- (2) verifies that the specific water withdrawal actually exists,
- (3) takes GPS or equivalent readings of the geographic location of the point of withdrawal, and,
- (4) establishes the connection between that specific validated withdrawal location and a particular agricultural permit number.

(d) The irrigated acreage associated with that specific point of agricultural water withdrawal, and;

Division representatives, in conjunction with the permit holder, shall determine the amount of irrigated acreage irrigated by a fixed irrigation system and associated with that particular

permitted groundwater or surface water point of water withdrawal. Sufficient documentation for the calculation of irrigated field acreage may include, but is not limited to, aerial photos, digital delineation or any other additional process. If a single well or surface-water pump supplies multiple irrigation systems, the acreage irrigated by individual fixed irrigation systems may be removed from irrigation in accordance with 391-3-28-.07.

(ed) Previous Irrigation Usage.

The agricultural Permittee shall have installed an approved flow meter consistent with the provisions of the Water Quality Act O.C.G.A. 12-5-20 et seq. and the Groundwater Use Act O.C.G.A. 12-5-90 et seq. and demonstrate previous usage within the previous three years of the irrigation system delineated above, on the same acres of land that the Permittee agrees not to irrigate in that given year. Evidence of previous irrigation may include, but not be limited to, the following:

- (1) Farm receipts dating the installation of the irrigation system,
- (2) Existence of center pivot signature on past aerial photos, ~~or~~
- (3) Flow-meter data, or
- ~~(43)~~ Other methods acceptable to the Division.

Holders of permitted surface-water and ground-water withdrawals within the geographic area for eligible permits, and who can provide the documentary evidence listed above for those withdrawals, shall be issued an auction certificate.

- **391-3-28-.067 Irrigated Acreage Determination.**

If severe drought conditions are declared on or before March 1 of the year, in accordance with 391-3-28-.05, the Division will determine:

- (a) the total number of acres of irrigated agricultural land serviced by irrigation systems located within the affected area,
- (b) the maximum amount of agricultural acreage which may be safely irrigated that year within the affected area, and,
- (c) the corresponding amount of ground-water-irrigated acreage and surface-water-irrigated acreage which should not be irrigated that year in order to maintain an acceptable Flint River stream_flow. These acceptable stream_flow levels shall be determined by the Director.

This acreage determination may be done by the following process:

- (a) Calculated level of unreasonable impact.
The Division shall conduct computer modeling or other methods of evaluating the surface water-groundwater interactions using cumulative irrigation acreage, which is the total

amount of acreage actually irrigated or proposed to be irrigated (TA). The Division shall also determine the amount of proposed irrigation acreage where the models or other methods first indicate that unreasonable flow reductions below acceptable stream flow levels on the Flint River or its tributaries may occur. This defines the maximum amount of acreage which may be irrigated (MA) during that year.

(b) If the total amount of actual irrigation acreage (TA) is found to be less than the calculated level of unreasonable impact acreage (MA), then no reduction of agricultural irrigation usage by limiting irrigation acreage is required during that declared severe drought year.

(c) If the total amount of actual irrigation acreage (TA) is found to be greater than the calculated level of unreasonable impact acreage (MA), then a situation exists where reductions in irrigation acreage should be implemented to avoid unreasonable impacts on river flows. The total amount of acreage reduction (RA) shall be found by subtracting the calculated amount of unreasonable impact acreage from total irrigation acreage amount. The resulting acreage amount shall be the total number of acres of irrigated land which should be taken out of irrigation during that declared severe drought year.

- **391-3-28-.078 Irrigated Acreage Reduction Auction.**

(a) Upon determination of 391-3-28-.07(c) above, the Division shall conduct an irrigation reduction auction whereby a withdrawal permit holder with an irrigation system located within the affected areas is given an opportunity to enter into an irrigation agreement with the Division. The nature of the agreement is that in exchange for a certain sum of money per acre of irrigated land serviced by the irrigation system, the Permittee will not irrigate those particular acres for the remainder of that calendar year. The Authority shall pay the sum so agreed upon when so directed by the Director from the unexpended balance of the drought protection funds.

(1) Participation in the irrigated acreage reduction auction shall be open to all eligible agricultural permit holders or their representatives, defined in 391-3-28-.~~0506~~ above.

(2) The Director shall determine the amount of acreage which should be removed from irrigation that particular announced severe drought year.

(3) The money offered from the drought protection fund shall be for a permit holder's suspension of irrigation, from the particular irrigation system and associated particular agricultural withdrawal permit, for the duration of the announced severe drought year. Acceptance by the Division of an offer to sell shall only relate to that acreage in that severe drought calendar year and shall not impact the ability of the permit holder to continue to farm this acreage without irrigation during that year.

(4) The Director, at the outset of the auction process, may determine a maximum offer to sell price per acre level acceptable to the Division for payment from the drought protection fund. Even if insufficient acreage is offered up once that maximum offer to sell price level is reached, no further increases in offers to sell can be accepted. To assure an efficient auction, this maximum dollar figure does not need to be announced prior to the auction itself.

(b) Since the ultimate purpose of the auction is to protect flows in the Flint River, strong consideration shall be given by the Division to the different and recognizable impacts caused by the type of withdrawal and the water source for the various Permittees. ~~In this regard, the retirement of a number of irrigated acres under permits to divert surface waters from perennial streams will have a greater impact on protecting river flows than the suspension of an equal or greater number of acres irrigated from groundwater. Therefore, because of the direct and immediate impact caused by surface water withdrawals on the Flint River and its tributaries, only offers to sell from surface water permit holders withdrawing water from perennial streams shall be accepted.~~

(c) Auction Process;

The Director shall determine the auction process by which irrigation offers to sell and the associated irrigation acreage amounts are tendered to the Division and then selected by the Division. This may be a process by which:

- (1) An interactive, computerized offer to sell, bid-improvement process shall be established with an actual auction to be held.
- (2) Other auction methodologies acceptable to the Director.

(d) If the auction selection is defined Chapter 391-3-28-.0708-(c)(1) above, then the eligible permittees, holders of an auction certificate, shall be able to submit offers to sell through telecommunications equipment set up by the Division or its agents in multiple locations throughout the Flint River basin. This system shall allow the eligible permittee or their designated representative to make any number of modifications to their offers to sell throughout the select day of the auction. A “bid-improvement” auction format shall be established wherein:

(1) Auction offers to sell must apply for all acreage served by a permit-specific auction certificate. For example, consider a farmer with two certificates related to two specific water use permits. Suppose each certificate provides for the irrigation of the following certified number of acres: certificate A for 1,000 acres; certificate B for 1,100 acres. If the farmer wishes to offer to remove from irrigation lands permitted under one or both of these certificates, the farmer must submit offer prices for each individual auction certificate A and B. If offers are submitted for both certificates, the offer price for one certificate can be the same or different from the offer price rendered for a different certificate. However, the farmer cannot offer to retire 500 acres from certificate A and 250 acres from certificate B

unless the smaller acreages are irrigated by the same fixed irrigation system that irrigates the remaining acres. Offer prices apply to all acreage intended for irrigation suspension and served by the certificate for which the offer is made. Once the auction process has begun, the number of acres offered by the permittee for irrigation suspension cannot change.

(2) Irrigation reduction prices offered by permittees for their auction offers shall be on a price per acre basis; in other words, a price offered by a permittee is the price per acre required for removing from irrigation all acreage for a specific certificate, or a portion of certificate acreage irrigated by a fixed irrigation system, during the balance of the calendar year. If the permittee's offer is accepted by the Division, the permittee will receive this offered price-per-acre times the certified number of acres the permittee has agreed to not irrigate in the auction certificate.

(3) An "auction day" will be announced by the Director. On the auction day interested auction certificate holders or their representatives may go to the designated facilities for the auction. The auction process may last several hours.

(4) At the same designated time in all the auction facilities an initial auction "round" is opened. Previously determined auction certificate holders, permittees or their representatives will have some set amount of time to submit their price per acre offers on forms provided by the Division. These offers will be entered into a telecommunications system, which will allow all offers to be gathered from the separate auction facilities, and then ordered by bid offer price from low to high. These offers will be made available to the Director. The Director will use these offers to identify potential "candidate sellers". Candidate sellers are auction certificate holders whose offer prices have been provisionally accepted.

(5) The Auction Certificate numbers for all candidate sellers will be announced at all auction facilities, and a second "round" of the auction may then be opened. Any auction certificate holder or their representative who wishes to revise their initial offer price for any certificate has some time announced by the Division from the opening of this second auction round to do so. If a certificate holder or their representative does not wish to revise their first-round offer, no additional action is required on their part. The first-round offer is maintained for the second and all subsequent rounds, until the offer is revoked or modified by the certificate holder or their representative.

(6) At the close of round 2, the Director again identifies "candidate sellers" in the manner described above. The new set of potential "candidate sellers" is announced. Because of potential bid modifications, the candidate sellers at the end of the first round may or may not be included in the set of candidate sellers chosen at the end of the second round on the basis of lowest revised offer prices. A new round, may then be announced and auction certificate holders or their representatives may again have the opportunity to revise offer prices for any

certificate during the following time period.

(7) This iterative auction process continues until:

- (i) no certificate holder or their representative revises an offer price, in which case the auction closes and the latest set of candidate sellers become the final sellers, and will receive their offer price per acre for accepted auction certificates; or,
- (ii) the Director chooses to end the auction, in which case the latest set of candidate sellers automatically become final sellers, and will receive their offer price per acre for accepted auction certificates.

(e) Based on considerations related to the available drought protection funds and desired levels of acreage reduction, the Director will determine the number of certificates whose offer price will be accepted, beginning with the lowest ordered offer price and continuing then to each higher offer price. The Division shall tabulate the offers received by price per acre and the cumulative suspension of irrigation acreage amounts tendered to the Division. When this cumulative acreage equals the targeted amount of acreage reduction (RA) established by the Division, the auction process is complete. If money is available from the drought protection fund, all offers below this determined offer to sell amount shall be accepted, and all offers above this offer to sell amount shall be rejected. If there is more than one offer at that particular select offer to sell price, the offers to sell at that price shall be prioritized for acceptance based on the acreage amount from greatest to smallest. To maximize the acreage suspended from irrigation, acceptable selections shall start at the greatest amount of acreage offered at that offer to sell price and proceed to lesser amounts until the required actual acreage amount is reached. In case of ties at any determining offer to sell price and acreage amount, acceptable selections shall be chosen at random until the cumulative amount of suspended acreage is reached or no further offers are available.

(f) If insufficient acreage amounts are offered during the auction to meet the required acreage reduction total set in above, the Director may then implement the measures for Non-voluntary Irrigation Acreage Reductions below.

(g) Regardless of the auction process used, the Division shall complete the entire auction process for voluntarily determining the acreage required to suspend irrigation prior to March 22 of any announced severe drought year.

- **391-3-28-.089 Payments for Irrigated Acreage Reductions.**

The agreement between the final seller and the Division, entered into in accordance with the above auction process, shall be upon such terms and conditions as the Division may deem necessary. The agreement shall provide for payment of the agreed upon sum within 30 days of the date of execution of the agreement by the parties. Failure of a final seller to comply with all terms of the agreement

for the duration thereof shall be deemed a violation of such agreement and this article and shall be subject to enforcement by the Director as provided in this article.

(1) The permit holder or their representative submitting offers must be eligible for participation in the irrigated acreage reduction auction as evidenced by their holding a valid auction certificate for each permit which is offered in the auction.

(2) Once the permittee has obtained an auction certificate, the total amount of money due the holder in instances where they are a Final Seller shall be determined by multiplying the accepted offer price-per-acre times the number of acres covered by the certificate, which is the certified number of irrigated acres allowed by a permit, or the portion of certificate acres that the permittee has agreed to not irrigate as defined in 391-3-28-.07(d)(1).

(3) For any final accepted offer, the Director shall then inform the Authority that money in that amount shall be debited from the Flint River Drought Protection Fund and disbursed to that designated final seller.

(4) Cumulative offers from final sellers may only be accepted by the Division up to, but not exceeding, the total amount of money remaining in the drought protection fund.

- **391-3-28-.~~010~~ Non-voluntary Irrigation Acreage Reductions**

(a) If the Director determines that the total number of non-irrigated acres needed during a given year cannot be sufficiently obtained through the irrigation reduction auction held in accordance with Chapter 391-3-28-.08, the Director is authorized to issue an order, in accordance with rules adopted by the board, requiring certain Permittees not to irrigate a specified number of acres of irrigated land until the end of the calendar year. When issuing such orders, the Director shall begin with the Permittees whose surface water withdrawal permits were issued most recently and then work chronologically backward with each order issued. A Permittee who is issued such an order shall be compensated for such restriction if such Permittee applied to the Division for a surface-water withdrawal permit prior to December 1, 1999, received a surface-water withdrawal permit from the Division prior to December 1, 2000, and is able to demonstrate actual previous irrigation on the same acres of land which the owner has been ordered not to irrigate. The per acre dollar amount received by a Permittee pursuant to this section shall be equal to the average agreed upon sum per acre paid pursuant to the irrigation reduction auction during the same year. The amount of the payment shall be that average offer to sell price multiplied by the acreage determination. The total amount of irrigated land chosen by the Division on a non-voluntary acreage reduction basis may be limited by the amount of money present in the drought protection fund. Additional acreage may only be selected if the resulting monetary liability does not exceed the total amount of money remaining in the drought protection fund.

(b) Strong consideration shall be given by the Division to the different and recognizable impacts caused by the type of withdrawal and the water source for the various Permittees. In this regard, the retirement of irrigated acres under permits to divert surface waters from perennial streams will have a greater impact on protecting river flows than the suspension of irrigation from ground water or those surface water users using non-perennial streams or withdrawing from ponds not on streams. Therefore, because of the direct and immediate impact caused by surface water withdrawals on the Flint River and its tributaries, the Director's orders to not irrigate from surface water permit holders withdrawing water from perennial streams shall take precedence over similar orders not to irrigate from those surface water users using non-perennial streams or withdrawing from ponds not on streams. For suspension of groundwater irrigation withdrawals, the Director shall consider, based on geologic studies, the degree to which the withdrawal will affect stream flow in the Flint River or its tributaries. The Director's orders to not irrigate from those permitted wells determined to have the greatest impact will have precedence over similar orders not to irrigate from those ground-water withdrawals determined to have a lesser impact.

(c) Additional consideration during the non-voluntary phase of selection may be given to different priorities for the suspension of irrigation on these irrigated lands, as established by the Director. This may take into account annual versus perennial crop types, planted versus non-planted acreage or any other relevant factors determined.

(d) The steps to implement this non-voluntary approach are as follows:

(1) If insufficient irrigation suspension acreage has been offered the Division during the auction, either because no further offers are being tendered by auction certificate holders or their representatives, or because the Director's chosen maximum offer to sell price has been reached, the Director may then determine the amount of additional remaining agricultural acreage which may be removed from irrigation during that particular severe drought year.

(2) The Director may then issue an order to existing agricultural permit holders requiring designated Permittees not to irrigate a specified number of acres of irrigated land until the end of that calendar year. Acceptance of this Division order does not impact the ability of the permit holder to continue to farm this acreage without irrigation. The priority for selection shall again be considered in terms of the water source, irrigated acreage amount, date of withdrawal application and by withdrawal source type.

(3) The Division may begin sending suspend irrigation orders to those permit holders who have most recently been issued an agricultural withdrawal permit from the affected area in question, and then move through all the agricultural withdrawal permits granted, stepping chronologically backwards through the list by application date, until sufficient acreage totals have been reached to fulfill the previously calculated amount of acreage needed to be taken out of irrigation that severe drought year. Permit holders selected must meet the eligibility requirements established above.

(4) If more permit holders than required are found with the same application submission date, then the appropriate number of permit holders and their acreage shall be selected by consideration of equivalent acreage impacts, or if more remain than can be approved, with a selection by random draw or lottery.

(5) The selection and notification process shall be completed on or before March 30 of any officially announced severe drought year.

(6) Any permit holder meeting the eligibility requirements above and who receives a suspend irrigation order shall be compensated from the drought fund at a rate equal to the average agreed upon offer to sell price per acre paid to all other auction certificate holders during that announced severe drought year times their number of certified acres.

- **391-3-28-.~~1011~~ Inspections and Compliance.**

The Division shall investigate and inspect to ensure compliance with this rule and any agreement or order that the Division or Director enters into or issues pursuant to this rule;

(1) The Division shall have the authority to conduct such on-site investigations and inspections as may reasonably be necessary to carry out its duties prescribed in this rule and to ensure compliance with this rule and any agreement or order that the Division or Director enters into or issues pursuant to this rule. For these purposes, the Division shall have the authority to enter at reasonable times any property, public or private, and conduct such investigations or inspections.

(2) No person shall refuse entry or access to any authorized representative of the Division who requests entry for the purposes of a lawful inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his or her official duties consistent with the provisions of this rule.

(3) Use and non-use of an irrigation system shall be determined by the eligibility measures found above.

- **391-3-28-.~~1112~~ Violations.**

(1) Except as may otherwise be provided in Chapter 391-3-28-.10, whenever the Director has reason to believe that a violation of any provision of this article or any rule or regulation adopted pursuant to this article has occurred, he or she shall attempt to obtain compliance

therewith by conference, conciliation, or persuasion, if the making of such an attempt is appropriate under the circumstances. If he or she fails to obtain compliance in this manner, the Director may order the violator to take whatever corrective action the Director deems necessary in order to obtain such compliance within a period of time to be prescribed in such order.

(2) Except as may otherwise be provided in Chapter 391-3-28-.10, any order issued by the Director under this article shall become final unless the person or persons named therein file with the Director a written request for a hearing within 30 days after such order or permit is served on such person or persons.

(3) Except as may otherwise be provided in Chapter 391-3-28-.10, hearings on contested matters and judicial review of final orders and other enforcement actions under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

(4) The Director may file in the superior court of the county wherein the person under order resides, or if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final order of the Director unappealed from or a final order of the Director affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

(5) Institute, in the name of the Division, proceedings of mandamus, injunction, or other proper administrative or civil proceedings to enforce this article, the rules and regulations promulgated under this article, or any agreements or orders entered into or issued under this article;

(6) For purposes of this Code section, a violation of an agreement entered into in accordance with Chapter 391-3-28-.08 or an order issued by the Director in accordance with Chapter 391-3-28-.10 shall be prima facie established upon a showing that:

(i) During the effective period of the agreement or order, the irrigation system was observed in person or via remote sensing or otherwise established by representatives of the Division or others to have been operating and disbursing water; or

(ii) During the effective period of the agreement or order, a seal, lock, or other device placed by the Division on the system to prevent operation of the system has been broken or otherwise tampered with.

(7) A Permittee who enters into an agreement in accordance with Chapter 391-3-28-.08 or

Chapter 391-3-28-.10 shall not irrigate during the period covered by the agreement on those acres that the owner has agreed not to irrigate. If the Permittee irrigates said acres during the period covered by the agreement, such action shall be deemed a violation of the agreement and this article and shall be subject to a penalty as determined by the Director as provided in this article.

- **391-3-28-~~1213~~ Penalties.**

The Division shall have the authority to receive and collect all repayment penalties paid pursuant to this article and to transfer same to the Authority for inclusion in the drought protection funds;

(a) A repayment penalty in the amount of three times the dollar amount of payments received from the drought protection funds shall be paid by any person who irrigates in violation of an agreement entered into in accordance with Chapter 391-3-28-.08 or in violation of an order issued by the Director in accordance with Chapter 391-3-28-.10. Such penalties may be assessed on a per violation basis. A violation shall be deemed to have occurred each time a person irrigates in violation of an agreement or order.

(b) Within 30 days after discovery that a Permittee violated an agreement entered into pursuant to Chapter 391-3-28-.08 or an order issued by the Director in accordance with Chapter 391-3-28-.10, the Director shall send via certified mail a notice of violation to the Permittee stating:

(1) The date on which the violation occurred;

(2) The facts constituting the violation and a statement that such facts will be deemed admitted unless denied by petition for hearing; and

(3) The total dollar amount of repayment penalties owed by the Permittee, together with a demand that said amount be paid in full within 30 days of the Permittee's receipt of the notice.

(c) A Permittee receiving a notice of violation pursuant to this Chapter shall have 30 days from receipt thereof either to pay in full the total amount of repayment penalties set forth in the notice or to submit a petition challenging such notice to the Director. If a petition is filed within the required time, then a hearing shall be conducted with respect to same in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations applicable thereto.

(d) If a Permittee receiving a notice of violation pursuant to this Chapter does not either pay the total amount of repayment penalties or submit a petition challenging the notice, then the

facts set out in the notice shall be deemed admitted and the Director shall issue an order to the Permittee, assessing the total repayment penalties due from the Permittee as set forth in the notice of violation and requiring payment of same within 30 days of issuance of the order. Any order issued by the Director pursuant to this subsection shall be deemed final, and no hearing or appeal may be taken.

- **391-3-28-.~~1314~~ 1414 Hearings**

The Division shall have the authority to establish procedures for the conduct of any meetings or hearings pursuant to this rule.

- **391-3-28-.~~1415~~ 1415 Enforcement.**

(a) The Division shall have the authority to exercise general supervision over the enforcement of this article and all rules, regulations, and orders promulgated pursuant to this article;

(b) The Division shall have the authority to perform any and all acts and exercise all incidental powers necessary to carry out the purposes and requirements of this article.

(c) The administration and enforcement of these Rules and Regulations shall be in accordance with the Flint River Drought Protection Act (O.C.G.A. Section 12-5-540 et seq.) and the Georgia Administrative Procedure Act. Such enforcement procedures include, but shall not be limited to, administrative orders, court orders, injunctive relief, and civil and criminal penalties.