

Florida Agribusiness Council
3122 Mahan Drive, Suite 801-319
Tallahassee, Florida 32308



FloridaAgribusinessCouncil.com | Rich@FloridaAgribusinessCouncil.com

November 12, 2020

William Bartnick, Environmental Administrator
Office of Agricultural Water Policy
Florida Department of Agriculture and Consumer Services
407 S. Calhoun St., Mailstop E-1
Tallahassee, FL 32399

Via e-mail: Bill.Bartnick@FDACS.gov

Subject: 5M-1 FAC, Notice of Rule Development

Dear Mr. Bartnick:

Please accept the comments contained herein, and attached, on behalf of the Florida Agribusiness Council whose members own land, farm and conduct allied businesses throughout Florida.

The Council suggests the attached requested administrative proposals, which are consistent with present practices.

Thank you for the opportunity to provide these comments. If you have any questions, feel free to contact the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard J. Budell". The signature is fluid and cursive, with a large initial "R" and "B".

Richard J. Budell, Executive Director
Florida Agribusiness Council
Rich@FloridaAgribusinessCouncil.com
850-519-0115

Attachment

THE FULL TEXT OF THE PROPOSED RULE IS:

5M-1.001 Definitions.

(1) “Applicable Best Management Practices” or “Applicable BMPs” means best management practices that have been adopted by Department rule and have been identified for implementation on an Enrolled parcel, in an Enrolled Producer’s or Landowner’s current Notice of Intent.

(2) “Basin Management Action Plan” or “BMAP” means a plan adopted by the Florida Department of Environmental Protection pursuant to Section 403.067(7)(a), F.S.

(3) through (4) No change.

(5) “Enrolled” means the status of a Producer or Landowner who has an active completed a Notice of Intent for implementation of the Applicable BMPs best management practices on specified parcels identified during a site visit with Department representatives, or who qualifies as a Temporarily Inactive Operation for the purposes of Rule 5M-1.010, F.A.C. If the Producer is not the Landowner, the Department will notify the Landowner of the date of enrollment and Applicable BMPs that are required to be properly implemented on the subject parcel.

(6) No change.

(7) “Notice of Intent” or “NOI” means a form provided by the Department to be submitted by an agricultural Producer or Landowner to indicate intent to enroll in and properly implement the Department’s program of best management practices in accordance with the manual under which they enroll. A Notice of Intent to Implement Best Management Practices (FDACS-04002, 10/20), hereby incorporated by reference, shall be submitted for all new enrollments to the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, Mayo Building, 407 South Calhoun Street, Tallahassee, Florida 32399. The NOI may be obtained from FDACS or accessed online at <http://www.flrules.org/Gateway/>. Submittal of an NOI after [the effective date of the rule] shall not result in enrollment until such time as a site visit is completed by the Producer and Department representatives to identify the Applicable BMPs to be implemented on the subject parcel. A Producer or Landowner that has submitted an NOI and has not undertaken the required site visit will not be reported as unenrolled to the Florida Department of Environmental Protection unless they fail to undertake the required site visit within 60 days after notification by the Department of scheduling availability.

(8) No change.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c. FS. History—New 11-1-17, Amended _____.

5M-1.008 Implementation Verification.

(1) The Department will conduct a site visit at least every two years to verify the proper implementation record ~~implementation status assessments~~ of Applicable BMPs Best Management Practices (BMPs) by Enrolled Producers or Landowners, ~~using data from site visits, periodic producer self-verifications, and staff-assisted verifications,~~ ~~supplemented by information from other sources including county property appraisers, DEP, and water management districts.~~ If the Producer is not the Landowner, the Department will notify the Landowner when an Enrolled Producer's site visit, self-verification, or staff-assisted verification is completed for the specified parcels, if the Producer is not the Landowner. The Department will notify DEP of any Producer or Landowner that fails to cooperate with the Department to complete an implementation verification site visit within 60 days of contact by Department representatives.

(2) During the implementation verification site visit, the Department will collect and review any records required by the manual under which the parcel is enrolled to verify the proper implementation of Applicable BMPs for an Enrolled parcel.

(3) During the implementation verification site visit, the Department will collect and retain records regarding the application of nitrogen and phosphorus on the Enrolled parcel. Producers shall provide the required records through the utilization of the Nutrient Application Record Form (FDACS-04005, 10/20), adopted herein by reference and available at <http://www.flrules.org/Gateway/>, or a substantially similar form containing the following information pursuant to the Enrolled parcel:

(a) Manual of Best Management Practices in which the producer is enrolled, including the identification of separate commodities if there are multiple enrollments under a specific manual;

(b) Month(s) and year that nutrient application occurred;

(c) Type of nutrient source utilized;

(d) Total amount of nitrogen applied in pounds;

(e) Total amount of phosphorus as P₂O₅ applied in pounds; and,

(f) Total acreage over which nitrogen or phosphorus as P₂O₅ was applied.

(2) renumbered (4) - No change.

(5)(3) For the Producers or Landowners described below in paragraph (a), (b), or (c), verification of implementation of the Applicable BMPs ~~Best Management Practices~~ will be confirmed by:

(a) through (b) No change.

(c) Compliance with the requirements of proprietary certifications issued by Department qualified non-governmental entities as provided in subsection (7) (5).

(6)(4) A Producer's or Landowner's proof of compliance with any of the permits, agreements, or certifications presented by the issuing agency, as provided in subsection (5) (3), shall be made available to the Department upon request.

(7)(5) Entities seeking to issue proprietary certifications for use in accordance with paragraph (5) (3)(c), must request a qualification review by the Department's Office of Agricultural Water Policy. Applicants will be required to demonstrate the following qualification requirements:

(a) through (f) No change.

(8)(6) Implementation verification of Best Management Practices for Silviculture shall be provided in accordance with Chapter 5I-6, F.A.C.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c. FS. History--New 11-1-17, Amended _____.

5M-1.009 Best Management Practices Implementation Assistance.

(1) The Department will provide implementation assistance to Enrolled Producers or Landowners as follows:

(a) If the implementation verification site visit ~~status assessment~~ described in subsection 5M-1.008(1), F.A.C., indicates that an Enrolled Producer has not achieved proper full implementation of Applicable (BMPs) ~~Best Management Practices (BMPs)~~, the Department will work in cooperation with the Producer or Landowner to identify corrective measures to be taken to achieve proper full implementation of Applicable BMPs. The identification of corrective measures will include setting of expectations and ~~for~~ the time required to complete them. In no case shall the timeframe for completion of corrective measures extend beyond the date of the next implementation verification site visit. If the Producer is not the Landowner, the Landowner will be notified that corrective measures have been identified for the Producer's implementation.

(b) If the Producer does not implement the identified corrective measures by the date of the next implementation verification site visit, the Department will ~~work in cooperation with the Producer and Landowner, if the Producer is not the Landowner,~~ to identify remedial measures to be taken by the Producer and, if necessary, the Landowner to achieve proper full implementation of Applicable BMPs. The identification of remedial measures will include setting of expectations and for the time required to complete them. In no case shall the timeframe for completion of remedial measures extend beyond the date of the next implementation verification site visit. A Producer or Landowner that fails to implement the identified remedial measures will be subject to subsection (2).

(c) No change.

(2) through (3) No change.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c. FS. History—New 11-1-17, Amended _____.

Comment with regard to NOI form FDACS-04002 XXXX, incorporated by reference in 5M-1.001(7).

- Please add highlighted text to instructions:

Complete the following information for the property on which BMPs will be implemented under this NOI.

You may list multiple parcels if they are contiguous, located within the same county, are owned or leased by the same person or entity, and are applying the same BMPs on them. Landowners and Producers may also include multiple parcels in one NOI if they are covered under one or more of the permits or instruments listed in Rule 5M-1.008(5)(a)-(c).

- Please add highlighted text to Notes on page 2:

NOTES:

1. You must keep records of BMP implementation, as specified in the BMP manual. All BMP records are subject to inspection and include the verification of nutrient application rates.
2. Notify FDACS if there is a full or partial change in ownership with regard to any of the parcel(s) enrolled under this NOI. Use Form FDACS - 01985 01/14, Change Form To Notice Of Intent, adopted herein by reference and available at <http://www.flrules.org/Gateway/>, or a substantially similar form providing the same information. You may list multiple parcels if they are contiguous, located within the same county, are owned or leased by the same person or entity, and are applying the same BMPs on them. If you use this form, you may also include multiple parcels if they are covered under one or more of the permits or instruments listed in Rule 5M-1.008(5)(a)-(c).
3. Remember that it is your responsibility to stay current with future updates of BMP manuals or rule changes. Visit the following website periodically to check for manual updates:
<https://www.fdacs.gov/Agriculture-Industry/Water/Agricultural-Best-Management-Practices>.