

From: [Betty Johnson](#)
To: [Bartnick, Bill](#); [Fettit, Christopher](#); [Commissioner Fried](#)
Cc: [Tucker-Jenks, Jen](#)
Subject: [External] Request for Hearing of Notice of Proposed Rule Development Chapter 5M-1
Date: Wednesday, January 20, 2021 1:35:12 PM

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Office of Agricultural Water Policy
Bill Bartnick, Environmental Administrator
Florida Department of Agriculture and Consumer Services
Tallahassee, Florida
Email: Bill.Bartnick@FDACS.gov

I respectfully request public hearing of Notice of Proposed Rule Development of Chapter 5M-1 filed by Division of Agricultural Water Policy with the Florida Department Agriculture and Consumer Services that was published in the Florida Administrative Register on January 7, 2021, copy attached.

In accordance with the Department's statutory authority and responsibilities as provided in Chapter 2020-150, Laws of Florida (SB 712) by revising the implementation of best management practices I respectfully provide you with the Forest Stewardship Program within the Department of Agriculture and Consumer Services for implementation of agricultural water policy rulemaking.

The Department's Forest Stewardship Program is the best management practice for implementation of agricultural water policy rulemaking by the Division of Agricultural Water Policy to achieve state water quality standards that include cost-share grants to private non-industrial landowners. This program is an active management of forests and related resources to keep these lands in a productive and healthy condition for present and future generations, and to increase the economic, environmental and social benefits of these lands on a long-term basis and multiple-resource plan.

Rule amendment that includes the Forest Stewardship program is necessary for implementation of a forest land conversion program on agricultural lands in private ownership by the Division of Agricultural Water Policy to reduce or eliminate groundwater or surface water pollution and contamination of nitrogen and phosphorus fertilizer, chemical and pesticide discharges that directly harm and impair Outstanding Florida Springs, rivers, streams and lakes, and to protect the Floridan Aquifer for generations to come in Florida.

Private non-industrial forest landowners own almost half of the state's forestlands, and the Forest Stewardship Program presents the greatest opportunity for making improvements to the best management practices by providing essential environmental resource management.

Enclosed is the Department's contact for the Forest Stewardship Program, a copy of my public comment that I previously submitted to you for implementation of a forest land conversion program on agricultural lands and other relevant information for rulemaking development, and a copy of Notice of Proposed Rule filed by Division of Agricultural Water Policy that I respectfully request public hearing thereof.

I look forward to further discussion of this very important rulemaking with you on February 1, 2021. Please provide me with a telephone number and access code to call in.

Thank you

Betty Johnson
Email: secretpromises1947@gmail.com

Notice of Proposed Rule

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Water Policy

RULE NOS.:	RULE TITLES:
5M-1.001	Definitions
5M-1.008	Implementation Verification
5M-1.009	Best Management Practices Implementation Assistance

PURPOSE AND EFFECT: This rulemaking will implement the amendments to the Department's statutory authority and responsibilities as provided in Chapter 2020-150, Laws of Florida (SB 712) by revising the implementation verification process and adopting a nutrient application record form. The rulemaking also updates definitions, the Notice of Intent to Implement Best Management Practices (BMP) form, and clarifies the best management practices implementation assistance rule.

SUMMARY: This rulemaking will address Agricultural Best Management Practices implementation assistance and verification.

SUMMARY OF STATEMENT OF ESTIMATED REGULATORY COSTS AND LEGISLATIVE RATIFICATION:

The Agency has determined that this will not have an adverse impact on small business or likely increase directly or indirectly regulatory costs in excess of \$200,000 in the aggregate within one year after the implementation of the rule. A SERC has not been prepared by the Agency.

The Agency has determined that the proposed rule is not expected to require legislative ratification based on the statement of estimated regulatory costs or if no SERC is required, the information expressly relied upon and described herein: The Department's economic analysis of the adverse impact or potential regulatory costs of the proposed rule did not exceed any of the criteria established in Section 120.541(2)(a), Florida Statutes. As part of this analysis, the Department found that the proposed revisions require landowners and producers who have voluntarily enrolled in the Department's BMP program to collect and retain data pertaining to the application of nitrogen and phosphorus fertilizer using a standardized nutrient application record form. This form aggregates a subset of records that are already required under the Department's BMP program, thus the cost to producers to undertake this requirement is negligible. Additionally, no interested party has submitted additional information regarding the economic impact.

Any person who wishes to provide information regarding a statement of estimated regulatory costs, or provide a proposal for a lower cost regulatory alternative must do so in writing within 21 days of this notice.

RULEMAKING AUTHORITY: [403.067\(7\)\(c\)2](#), [403.067\(7\)\(d\)2.c.](#), [570.07\(10\)](#), [570.07\(23\)](#), F.S.

LAW IMPLEMENTED: [403.067\(7\)\(d\)2.c.](#), F.S.

IF REQUESTED WITHIN 21 DAYS OF THE DATE OF THIS NOTICE, A HEARING WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW (IF NOT REQUESTED, THIS HEARING WILL NOT BE HELD):

DATE AND TIME: February 1, 2021 from 1:30 p.m. to 4:00 p.m.

PLACE: Go-To-Webinar: If the hearing is held, please register at the following link <https://register.gotowebinar.com/register/4857300835507345679>

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE IS: Bill Bartnick, Office of Agricultural Water Policy, (850) 617-1705 / Bill.Bartnick@FDACS.gov

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(s).~~

(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 form (FDACS-04002, XX/XX), 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 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 but 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) ~~Agricultural Best Management Practices (BMPs) are individual practices or combinations of practices that, based on scientific research, field-testing, and expert review, have been identified as the most effective and practicable means for improving water quality and water conservation, which include nutrient management, irrigation management, and water resource protection. The Department has adopted in this Rule Title BMP manuals for many of Florida’s agricultural commodities. At least every two years, the Department will perform an implementation verification site visit of each Enrolled Producer and Landowner to verify the proper implementation of all Applicable BMPs using the data from the site visit, supplemented as needed, by information from other sources including county property appraisers, DEP, and water management districts. 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. The Department will record implementation status assessments of Applicable 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. 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.~~

(2) ~~Upon completion of the implementation verification site visit, the Enrolled Producer or Landowner will be provided notice as to the requirement of any additional Applicable BMPs to be implemented on the subject parcel(s), corrective or remedial measures pursuant to the requirements of Rule 5M-1.009, F.A.C., as well as any cost share opportunities available for the implementation of additional recommended practices or projects on the subject parcel(s).~~

(3) ~~During the implementation verification site visit, the Department will collect and review any records required by this rule or the manual under which the parcel(s) is enrolled to verify the proper implementation of the Applicable BMPs. All required records, including nutrient source and application records, shall be maintained for a minimum of five years and must be presented to a Department representative upon request.~~

(4) ~~During the implementation verification site visit, the Department will collect and retain records regarding the application of nitrogen and phosphorus on the Enrolled parcel(s). Producers or Landowners shall provide the required nutrient application records for the preceding two years to the Department by completing and submitting a Nutrient Application Record Form (FDACS-04005, XX/XX), adopted herein by reference, and available at <http://www.flrules.org/Gateway/>. Producers are strongly encouraged to utilize and submit the electronic version of the form to Department representatives during the implementation verification site visit. Producers or landowners may submit a substantially similar form if it contains the following information for the Enrolled parcel(s):~~

~~(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(s) 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.~~

(5)(2) No change.

(6)(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 (8) (5).

(7)(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 (6) (3), shall be made available to the Department upon request.~~

(8)(5) ~~Entities seeking to issue proprietary certifications for use in accordance with paragraph (6) (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.

(9)(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 as soon as practicable to achieve proper full implementation of Applicable BMPs. The identification of corrective measures will include the setting of expectations and for the time required to complete them. 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 fully implement the identified corrective measures within the established timeframe, the Department will issue a letter of non-compliance identifying 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. A Producer or Landowner that fails to implement the identified remedial measures will be subject to subsection (2).

(c) In no case shall the overall timeframe for completion of corrective and remedial measures extend beyond the date of the next implementation verification site visit.

(d)(e) A Producer or Landowner that does not cooperate with the Department to identify or implement corrective or remedial measures will be subject to subsection (2).

(2) The Department will notify DEP within 60 days after the date of scheduled completion of remedial measures identified pursuant to paragraph (1)(b), of any Enrolled Producer or Landowner that refuses or fails to properly implement Applicable BMPs.

(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 ____.

NAME OF PERSON ORIGINATING PROPOSED RULE: Christopher Pettit, Director, Office of Agricultural Water Policy

NAME OF AGENCY HEAD WHO APPROVED THE PROPOSED RULE: Commissioner of Agriculture Nicole Fried

DATE PROPOSED RULE APPROVED BY AGENCY HEAD: January 4, 2021

DATE NOTICE OF PROPOSED RULE DEVELOPMENT PUBLISHED IN FAR: October 16, 2020

Proposed <u>5M-1.001</u>	This rulemaking will implement the amendments to the Department's statutory authority and responsibilities as provided in Chapter 2020-150, Laws of Florida (SB 712) by revising the implementation verification process and	24069112	1/7/2021 Vol. 47/04
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https://www.flrules.org/BigDoc/View_Section.asp?Issue=3284&Section=2

Forest Stewardship Program

Jen Tucker-Jenks

Conservation Programs Manager

Jennifer.Tucker-Jenks@FDACS.gov

Florida Forest Service

3125 Conner Blvd., R-2

Tallahassee, FL 32399-1650

<https://www.fdacs.gov/Forest-Wildfire/For-Landowners/Programs-for-Landowners/Forest-Stewardship-Program>

Name	Organization	Phone Number	Ext.	Suncom	City
Tucker-Jenks, Jennifer K	AGR	850-681-5874	0000		Tallahassee
E-Mail Address: jennifer.tucker-jenks@fdacs.gov					

Comment - FDACS Rule Development Chapter 5M-1



Betty Johnson <secretpromises1947@gmail.com>

Mon, Nov 9, 2020, 10:51 PM



to Bill.Bartnick, Christopher.Pettit



Office of Agricultural Water Policy

Bill Bartnick, Environmental Administrator

Florida Department of Agriculture and Consumer Services

Tallahassee, Florida

Email: Bill.Bartnick@FDACS.gov

In Re: FDACS Rule Development of Chapter 5M-1 Division of Agricultural Water Policy

I respectfully submit public comment for your consideration to the above-stated notice of rule development amendment relating to definition, implementation verification and best management practices implementation assistance rule of the Department's statutory authority and responsibility as provided in Chapter 2020-150 Laws of Florida (SB 712), filed for record and in support thereof states:

The establishment of management zone(s) for forest land conversion program on agricultural lands used for crop production needs to be implemented by the department to reduce and eliminate adverse impacts of nitrogen and phosphorus fertilizer and compost contamination to Outstanding Florida Springs, rivers, streams and lakes in Florida, and

Required documentation of any chemicals applied to agricultural lands by the producer or landowner and of any chemicals used by bottled water industrial entities permitted for food establishment needs to be implemented by the department for protection of the Floridan Aquifer.

A clean and safe environment is vital to sustaining Florida's way of life and economic foundation. Public lands, wetlands, marshes, and estuaries are vital to maintaining and improving sustainable recharge for our groundwater aquifers, as well as clean and safe waterways that provide tourism, fishing, boating, and related businesses for significant revenue to the benefit of those who live, work, and enjoy life in our state. Adequate regulation of activities that impact these resources is vital to ensure that degradation does not occur.

The state's regulatory program should ensure consistency, efficiency, transparency, public participation and the ultimate protection of both land and water-related resources of Florida for the benefit of its citizens.

Thank you for the opportunity to provide public comment for this important rule development. If questions or comments, please do not hesitate to contact me.

With best regards,

Betty Johnson
Concerned Citizen of Madison County, Florida

Telephone: (850) 973-6500
Email: secretpromises1947@gmail.com

Copy to Christopher Pettit, Director of Office of Agricultural Water Policy, Florida Department of Agriculture and Consumer Services.

Notice of Development of Rulemaking

DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Division of Agricultural Water Policy

RULE NOS.:	RULE TITLES:
5M-1.001	Definitions
5M-1.008	Implementation Verification
5M-1.009	Best Management Practices Implementation Assistance

PURPOSE AND EFFECT: This rulemaking will implement the amendments to the Department's statutory authority and responsibilities as provided in Chapter 2020-150, Laws of Florida (SB 712) by revising the implementation verification process and adopting a nutrient application record form. The rulemaking also updates definitions, the Notice of Intent to Implement Best Management Practices form, and clarifies the best management practices implementation assistance rule.

SUBJECT AREA TO BE ADDRESSED: This rulemaking will address Agricultural Best Management Practices implementation assistance and verification.

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.

A RULE DEVELOPMENT WORKSHOP WILL BE HELD AT THE DATE, TIME AND PLACE SHOWN BELOW:

DATE AND TIME: November 5, 2020 9:00 a.m. until 12:00 p.m.

PLACE: Go-to-Webinar: Prior to the workshop, please register at the following link: <https://attendee.gotowebinar.com/register/3378894200420208141>

THE PERSON TO BE CONTACTED REGARDING THE PROPOSED RULE DEVELOPMENT AND A COPY OF THE PRELIMINARY DRAFT, IF AVAILABLE, IS: Office of Agricultural Water Policy, Bill Bartnick, Environmental Administrator, (850) 617-1705 / Bill.Bartnick@FDACS.gov

THE PRELIMINARY TEXT OF THE PROPOSED RULE DEVELOPMENT IS AVAILABLE AT NO CHARGE FROM THE CONTACT PERSON LISTED ABOVE.

https://www.flrules.org/Gateway/View_Notice.asp?ID=23770449

Latest Version	Rule No.	Rule Title	Effective Date
	5M-1.001	Definitions	11/1/2017
	5M-1.008	Implementation Verification	11/1/2017
	5M-1.009	Best Management Practices Implementation Assistance	11/1/2017
	5M-1.010	Temporarily Inactive Operations	5/12/2020

Rule Chapter: 5M-1

Chapter Title: DIVISION OF AGRICULTURAL WATER POLICY

<https://www.flrules.org/gateway/ChapterHome.asp?Chapter=5M-1>



Bartnick, Bill <William.Bartnick@fdacs.gov>

Tue, Nov 10, 2020, 6:39 AM



 to me, Christopher

Thank you .

Sent from my iPhone

On Nov 9, 2020, at 10:45 PM, Betty Johnson <secretpromises1947@gmail.com> wrote:



Pettit, Christopher

Tue, Nov 10, 2020, 10:00 AM

Thank you Ms. Johnson! We appreciate your participation in this important rulemaking. Christopher Pettit Director Florida Department of Agriculture and Consumer



Betty Johnson <secretpromises1947@gmail.com>

Tue, Nov 10, 2020, 3:01 PM



to Christopher, Bill



Thank you again for understanding the importance of environmental resource management and the goals that must be accomplished through the Office of Agricultural Water Policy, relating to Chapter 2020-150, Laws of Florida (SB 712).

I trust that you and Commissioner Fried will support the amendments that I have responded to in your administrative rule development. Please let me know if I can be of further assistance.

Look forward to working with you.

Betty Johnson
secretpromises1947@gmail.com