

CHAPTER 5M-1

OFFICE~~DIVISION~~ OF AGRICULTURAL WATER POLICY

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5M-1.001 Definitions.

(1) “Applicable Best Management Practices” or “Applicable BMPs” means best management practices (BMPs) that have been adopted by Department rule in a BMP checklist and that are have been identified by the Enrollee and the Department for implementation on an Enrolled parcel.

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

(3) “DEP” means the Florida Department of Environmental Protection.

(4) “Department” means the Florida Department of Agriculture and Consumer Services (FDACS).

(5) “Enrolled” means the status of a Producer or Landowner who has an active Notice of Intent for implementation of the Applicable BMPs 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) “Enrollee” means a Producer or Landowner who has Enrolled and has an active Notice of Intent.

(7) “Equivalent Program” means the programs in this subsection that provide water quality protection equal to or more stringent than the adopted and applicable Department BMPs:

(a) A permit or license issued by DEP under Chapter 62-670, F.A.C.;

(b) A permit or license issued by the South Florida Water Management District under Chapter 40E-63, F.A.C.;

(c) Conservation easements, leases, or other binding agreements with a state agency or water management district that require implementation of the Department’s BMPs and include an onsite verification performed at least every two years by the state agency or water management district issuing the agreement; or

(d) A Conservation Plan developed in accordance with 5M-12, F.A.C.

~~(8)(6)~~ “Landowner” means the owner of real property of record in the county where a parcel of land is situated, whose property is used in agriculture as defined in Section 570.02(1), F.S. Landowners may also be Producers, as defined herein.

~~(9)(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, rev.)~~(FDACS 04002, 07/21)~~, 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/reference.asp?No=Ref->~~<http://www.flrules.org/Gateway/reference.asp?No=Ref-13421>~~. Submittal of an NOI shall not result in enrollment until such time as a site visit is completed by the Producer or Landowner 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.

~~(10)(8)~~ “Producer” means any person or other legal entity engaged in agriculture as defined in Section 570.02(1), F.S.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 403.067(7)(d)3., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c., 403.067(7)(d)3. FS. History–New 11-1-17, Amended 9-12-21, _____.

5M-1.004 Notice of Intent to Implement Best Management Practices.

(1) Producers and Landowners in a BMAP area are required by Section 403.067, F.S., to either implement BMPs or other management strategies or to demonstrate their compliance with state water quality standards by conducting water quality monitoring prescribed by DEP or a water management district. The Department provides

Producers and Landowners in a BMAP area the opportunity to enroll and implement BMPs and will notify DEP of any Producers and Landowners that do not enroll in accordance with Department rules. Producers and Landowners whose properties are outside a BMAP area may avail themselves of the presumption of compliance found in Sections 376.307(5), 403.067(7)(c), or 576.045(6), F.S., by enrolling and implementing BMPs pursuant to the requirements of this rule chapter.

(2) An Enrollee in the BMP programs as provided in any of the Chapters 5M-2 through 5M-14 or 5M-16 through 5M-19, F.A.C., must also comply with Chapter 5M-1, F.A.C.

(3) A Producer or Landowner that holds a permit or license issued by one of the programs listed in Rule 5M-1.001(7)(a) or (b), F.A.C., is required to complete the Notice of Intent to Implement Best Management Practices form (FDACS-04002, Rev. _____, incorporated in 5M-1.001, F.A.C.) but is not required to complete a BMP manual checklist. These NOIs shall remain in effect for the duration of the permit or license and any update or renewal thereof. A Producer or Landowner who has an active permit, license or other instrument in an Equivalent Program must submit a copy of the instrument as part of their BMP enrollment. Any renewal or update of the instrument will be provided to the Department prior to or as part of the next implementation verification site visit.

(4) Any NOI for property being operated in accordance with a Conservation Plan developed in accordance with Chapter 5M-12, F.A.C., shall remain in effect so long as the Enrollee maintains the Conservation Plan.

(5) NOIs, excepting those enrolled using subsection (3) or (4) of this rule, remain in effect until:

(a) The rule or manual for the NOI is repealed;

(b) Production or operation on the site subject to the NOI changes such that the manual or checklist are no longer applicable, such as produced commodity type changes or agriculture on the site becomes inactive. These NOIs shall remain in effect until the conditions of (7) of this rule are met so long as the agricultural activity on the site is eligible for enrollment in accordance with Rule 5M-1.010 or any of Chapters 5M-2 through 5M-14 or 5M-16 through 5M-19, F.A.C.;

(c) There is a change in ownership of an enrolled parcel that terminates the Enrollee's property control;

(d) Land use on the parcel is no longer agriculture; or

(e) The Enrollee is conducting water quality monitoring prescribed by DEP or a water management district.

(6) When a rule or manual is revised, the existing NOI will remain in effect under the rule and manual effective on the date the NOI was signed. Enrollees in the superseded rule or manual must update their enrollment to the

current version at the time of the next BMP implementation verification site visit or the next time an Enrollee enters a cost share agreement with the Department for assistance with BMP implementation. Upon updating enrollment in the current version of the manual, the NOI remains in effect and retains the initial enrollment date. If the Enrollee does not update their enrollment as provided in this subsection, the NOI will be terminated.

(7) When an NOI is subject to conditions identified in paragraph (5)(b), the existing NOI will remain in effect under the rule and manual that were effective on the date the most recent NOI was signed, until the Enrollee can meet with FDACS staff to enroll in the appropriate rule or manual.

(8) With the exception of updating an enrollment pursuant to subsections (6) or (7) of this rule, Enrollees are required to use the Request Change to Notice of Intent to Implement BMPs (FDACS-01985, rev. / /), hereby adopted and incorporated by reference, to request revision of their existing NOI. The Request Change to Notice of Intent to Implement BMPs form may be obtained from the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, Mayo Building, 407 South Calhoun Street, Tallahassee, Florida 32399 or accessed online at http://www.flrules.org/Gateway/reference.asp?No=Ref-_____.

(9) An NOI where the enrolled property does not have any portion within a BMAP area can be terminated if:

(a) The Enrollee submits a request in writing to the Department and there are no:

1. Outstanding contractual obligations to the Department for cost share related to the NOI;

2. Unresolved enforcement actions related to the NOI; or

3. Requirements of a permit, license or other agreement issued by FDEP or a water management district requiring their enrollment in an FDACS BMP program.

(b) The Department is unable, after two separate contact attempts, to confirm whether the Enrollee is implementing Applicable BMPs.

(10) A Producer or Landowner enrolling a parcel(s) of land under a manual for the first time or an Enrollee updating their enrollment to a revised rule or manual must implement any new BMP requirements within 18 months of enrollment or update.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 403.067(7)(d)3., 570.07(10), 570.07(23), FS. Law Implemented 403.067(7)(c)2., 403.067(7)(c)3., 403.067(7)(d)2.c., 403.067(7)(d)3., FS. History–New _____.

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 management. 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 Enrollee ~~Enrolled Producer or 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 provide the Enrollee ~~Producer or Landowner~~ any materials needed to complete the implementation verification site visit at least seven days prior to the date of the visit. The Department will notify DEP of any Enrollee ~~Producer or Landowner~~, if the Landowner is not the Producer, that fails to cooperate with the Department to complete an implementation verification site visit ~~within 60 days of contact by Department representatives.~~

(2) Upon completion of the implementation verification site visit, the Department will provide the Enrollee ~~Enrolled Producer or Landowner will be provided~~ notice as to the requirement of any changes in additional Applicable BMPs to be implemented on the subject parcel(s); through issuance of an updated NOI. Other updates to the NOI, such as changes to contact information, the enrollment area or parcel information must also be recorded on the updated NOI form at the time of the implementation verification site visit. The Department will provide the Enrollee a separate, written notice of any necessary 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). Enrollees ~~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, rev. ____) (FDACS-04005, 07/21), adopted herein by reference and available at http://www.flrules.org/Gateway/reference.asp?No=Ref-_____

<http://www.flrules.org/Gateway/reference.asp?No=Ref 13422>. Unless it is demonstrated that utilization of an electronic version is technically infeasible, ~~Enrollees Producers or Landowners~~ shall utilize and submit an electronic version of the form or a substantially similar form to Department representatives during the implementation verification site visit or within ten days after completion of the visit. ~~Producers or landowners may submit a~~ Any substantially similar form must include ~~if it contains~~ the following information for the Enrolled parcel(s):

(a) Manual of Best Management Practices in which the Enrollee 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) Enrolled areas subject to a permit or license for biosolids application issued by DEP in accordance with Chapter 62-640, F.A.C., must comply with the nutrient limitations in the permit or license. The Department will utilize DEP's nutrient records regarding those areas of any enrollment subject to a biosolids application permit.

(6) In the event of an emergency declared in a Governor-issued Executive Order, Enrollees are authorized to apply replacement fertilizer on enrolled areas located within a county identified in the Executive Order.

(a) Replacement fertilizer may be applied when:

1. Re-establishing, re-planting, or reconditioning crops rendered unmarketable or destroyed by the emergency event;

2. There is onsite field or grove flooding; or

3. Rainfall exceeds three inches in three days or four inches in seven days.

(b) A replacement application of fertilizer may not exceed the amount of N or P that was applied to the original crop prior to the Executive Order based upon the rate established in the applicable commodity BMP Manual;

(c) For nutrient reporting and implementation verification purposes, the Enrollee must provide documentation of the original application of N or P and documentation of the replacement application. When conducting the implementation verification, the initial application shall not be included in the computation, and the replacement

application authorized by this rule shall not constitute improper implementation of any applicable BMP for implementation verification purposes, provided the Enrollee:

1. Applies replacement fertilizer within 90 days of the effective date of the initial Executive Order addressing the emergency event; and

2. Applies replacement fertilizer in accordance with the Notice of Intent and BMP Checklist submitted by the Enrollee during enrollment, or the most recent BMP Checklist, if revised during an implementation verification site visit; and

3. Maintains all application records and other records required by the BMP Checklist and provides the required documentation to the Department during their next implementation verification site visit.

4. The conditions for the application of fertilizer pursuant to this rule are not required for the application of supplemental fertilizer under the applicable BMP Manual.

(7)(5) Section 403.067(7)(c)5., F.S., provides that agricultural records, defined therein, are confidential and exempt from public records disclosure.

(8) Enrollees participating in any of the Equivalent Programs described in subsection 5M-1.001(7), F.A.C., will demonstrate compliance with BMPs on the area(s) of the NOI property subject to the Equivalent Program instrument by:

(a) Maintaining a valid permit or license under programs identified in paragraphs 5M-1.001(7)(a) or (b), F.A.C., as determined by the issuing agency.

(b) Upholding the terms of the easements, leases or binding agreements identified in paragraph 5M-1.001(7)(c), F.A.C., including an annual onsite verification by the state agency or water management district issuing the agreement.

(c) Maintaining compliance with the Conservation Plan under the program identified in paragraph 5M-1.001(7)(d), F.A.C.

~~(6) For the Producers or Landowners described below in paragraph (a), (b), or (c), verification of implementation of the Applicable BMPs will be confirmed by:~~

~~(a) Compliance with the following permits, as determined by the issuing agency:~~

~~1. Permits or authorizations issued by DEP under rule Chapter 62-670, F.A.C., or~~

~~2. Permits or authorizations issued by the South Florida Water Management District under rule Chapter 40E-63, F.A.C.~~

~~(b) Compliance with the terms of conservation easements, leases, or other binding agreements with a state agency or water management district that require implementation of the Department's BMPs and include annual onsite verification by the state agency or water management district that BMPs are being implemented, or~~

~~(c) Compliance with the requirements of proprietary certifications issued by Department qualified non-governmental entities as provided in subsection (8).~~

~~(7) A Producer's or Landowner's proof of compliance with any of the permits, agreements, or certifications or other instrument presented by the issuing agency, as provided in (6), shall be made available to the Department upon request.~~

~~(8) Entities seeking to issue proprietary certifications for use in accordance with section 5M 1.001(6)(e), F.A.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) Certification standards that incorporate implementation of the Department's BMPs;~~

~~(b) A process to license or authorize inspectors or auditors who shall not be employed by or affiliated with the standard setting entity;~~

~~(c) A process for revocation of licenses or authorizations for inspectors or auditors;~~

~~(d) Procedures or protocols for selection of inspectors or auditors who shall not be employed by or affiliated with the Producers or Landowners holding or seeking certification for their operations;~~

~~(e) An annual certification review and renewal process that includes a site inspection by the licensed or authorized inspector or auditor; and,~~

~~(f) A certification revocation process if the Producer or Landowner is found to be out of compliance with the entity's certification standards.~~

~~(9) 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., 403.067(7)(d)3., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c., 403.067(7)(d)3. FS. History—New 11-1-17, Amended 9-12-21, _____.

5M-1.009 Best Management Practices Implementation Assistance.

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

(a) If the implementation verification site visit described in subsection 5M-1.008(1), F.A.C., indicates that an Enrollee ~~Enrolled Producer or Landowner~~ has not achieved proper implementation of Applicable BMPs, the Department will work in cooperation with the Enrollee ~~Producer or Landowner~~ to identify corrective measures to be taken as soon as practicable to achieve proper implementation of Applicable BMPs. The identification of corrective measures will include the setting of expectations and the time required to complete them. If the Enrollee ~~Producer~~ is not the Landowner, the Landowner will be notified that corrective measures have been identified for the Producer's implementation.

(b) If the Enrollee ~~Producer~~ does not fully implement the identified corrective measures within the established timeframe, the Department will issue the Enrollee a letter of non-compliance identifying remedial measures to be taken by the Enrollee ~~Producer~~ and, if necessary, the Landowner, to achieve proper implementation of Applicable BMPs. The identification of remedial measures will include setting of expectations and the time required to complete them. An Enrollee ~~A Producer or Landowner~~ that fails to implement the identified remedial measures will be subject to subsection (2).

(c) Department representatives will verify the completion of corrective or remedial measures within the established timeframes. 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) An Enrollee ~~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 Enrollee ~~Enrolled Producer or Landowner~~ that refuses or fails to properly implement Applicable BMPs.

~~(3) Producers and Landowners in a BMAP area are required by Section 403.067, F.S., to implement agricultural BMPs or other management strategies. The Department will provide Producers and Landowners in a BMAP area the opportunity to enroll and implement BMPs and will notify DEP of any Producers and Landowners that do not enroll in accordance with Department rules.~~

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 403.067(7)(d)3., 570.07(10), 570.07(23) FS. Law Implemented 403.067(7)(d)2.c., 403.067(7)(d)3. FS. History–New 11-1-17, Amended 9-12-21, _____.

5M-1.010 Temporarily Inactive Operations.

(1) To qualify as a Temporarily Inactive Operation under the best management practices (BMP) programs listed in subsection (2) or (3) of this rule, an Enrollee agricultural producer must:

(a) Have been engaged in active agricultural production on parcels for which temporarily inactive status is being sought within the preceding five (5) years or, if in citrus production, ten (10) years of the date of notification required in paragraph 5M-1.010(1)(d), F.A.C.;

(b) Be enrolled in the BMP programs as provided in any of Chapters 5M-2 through 5M-14 or, 5M-16 through 5M-19, ~~or 5M-6~~, F.A.C., on applicable parcels and production activities;

(c) Maintain the land as fallow for more than one year; and

(d) Notify the Department in writing to AgBmpHelp@FDACS.gov or the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, 407 South Calhoun Street, Tallahassee, FL 32399, and request classification as a Temporarily Inactive Operation ~~within 60 days of ceasing production or 90 days of adoption of this rule~~. Such notification shall include:

1. Identification of the parcel to be classified as a Temporarily Inactive Operation, including the existing Notice of Intent to Implement BMPs (NOI) numbers, parcel numbers and geographic extent of those areas to be classified as temporarily inactive;

2. Confirmation that the Enrollee agricultural producer meets the requirements of paragraphs 5M-1.010(1)(a) and 5M-1.010(1)(b), F.A.C.; and

3. Statement that the Enrollee agricultural producer intends to return to active agricultural production on those parcels subject to temporarily inactive status within a time period not to exceed five (5) years from the date of notification, unless the production areas are verified as still inactive by the Department prior to the expiration of the five-year period.

(2) For Temporarily Inactive Operations, the following BMPs shall be applicable and constitute the basis for verification of the status of implementation:

(a) No fertilizer is applied to the inactive parcel in any form;

(b) Installed or constructed surface water management systems and structures are operated in accordance with a permit issued pursuant to Section 373.4131, F.S. In the absence of such a permit, the system and structures are maintained in working order and operated consistent with the practices below:

1. For ditch systems that contain water control structures, remove boards only when necessary to prevent adverse hydrologic impacts to adjacent parcels; and

2. During the inactive period, fixed weirs or other means of outfall shall be maintained, or repaired if necessary, to achieve the same level of service as when the operation was enrolled or the infrastructure was constructed.

(c) During the inactive period, the primary infrastructure for irrigation or water table management systems shall be maintained at the same condition as when the operation became inactive. Primary infrastructure does not include secondary distribution pumps;

(d) Implement measures to prevent or control woody exotic and invasive vegetative species listed in Rule 5B-57.007, F.A.C.; and

(e) Manage and store chemicals, fuels, and other regulated materials on the property as required by state and federal law.

(3) ~~Enrollees Producers~~ who have executed, or expect to be under, a contract, easement, or other agreement with the Florida Department of Environmental Protection, a water management district, or the Department to operate a water resource project shall operate in compliance with the terms of such contract, easement, or other agreement. The ~~Enrollee producer~~ must return to active agricultural production within five (5) years of the expiration or termination of the contract, easement, or other agreement, including any extensions and amendments. If the operations are terminated prior to the expiration due to lack of funding, the time period to return to active agricultural operation shall begin from the last date of operating the system.

(4) Those areas within an existing NOI that are not subject to classification as Temporarily Inactive Operations shall remain subject to the conditions of the existing NOI.

(5) ~~An Enrollee Producers~~ who has parcels classified as a Temporarily Inactive Operation ~~are temporarily inactive~~ must notify the Department in writing to AgBmpHelp@FDACS.gov or the Florida Department of Agriculture and Consumer Services, Office of Agricultural Water Policy, 407 South Calhoun Street, Tallahassee, FL 32399, and request re-classification or enroll in BMPs specific to their commodity within 60 days of starting production.

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 5-12-20, Amended_____.

5M-1.011 Record Keeping.

Enrollees must keep records for a period of at least five years after they are generated to document implementation and maintenance of the practices identified in the manual under which they are enrolled and in the NOI. All documentation is subject to inspection by Department representatives.

Rulemaking Authority 403.067(7)(c)2., 403.067(7)(d)2.c., 570.07(10), (23) FS. Law Implemented 403.067(7)(c)2. FS. History—New_____.