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THE FLORIDA LEGISLATURE  
**JOINT ADMINISTRATIVE  
PROCEDURES COMMITTEE**

June 2, 2014

Mr. Richard D. Gaskalla  
Division Director  
Florida Department of Agriculture and Consumer Services  
Division of Plant Industry  
P.O. Box 147100  
Gainesville, Florida 32614-7100

**RE: Department of Agriculture and Consumer Services  
Rule Chapter 5B-62**

Dear Mr. Gaskalla:

I have reviewed the above-referenced rules and offer the following comments for your consideration and response:

- 5B-62.001:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.001(1)(b):** It appears that the word "which" should be "that."
- 5B-62.001(1)(c):** It appears that that the words "which meet" should be "that meets."
- 5B-62.001(1)(h):** It appears that the word "which" should be "that."
- 5B-62.001(1)(hh):** Please explain the use of the word "unthrifty" in this definition. Also, please correct the tense of the word "has" in this definition.
- 5B-62.001(1)(zz):** It appears that this definition is missing text prior to "seed-transmitted diseases" and prior to "originated from a foundation or parent tree." Please revise the definition for clarity.

**5B-62.001(1)(ccc):** This definition references the Citrus Budwood Testing Manual, Revised 03/14. Please add a reference to the rule in which this manual is incorporated.

**5B-62.003:** Structure  
It appears that this rule is missing a subsection (2) following 5B-62.003(1)(d), F.A.C. Please revise to correct.

Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.004:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

It appears that the rule incorrectly identifies the title of the Citrus Nursery Stock Certification Manual, Revised 03/14 as the “Citrus Nursery Stock Certification Procedure Manual.” Please revise to correct.

**5B-62.005:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

Please be aware that forms FDACS-08111 and FDACS-08172 listed and incorporated in this rule are also listed and incorporated with inconsistent form numbers and revision dates in Rule 5B-2.010, F.A.C.

**5B-62.006:** Law Implemented  
Please explain how this rule implements subsection 570.07(23), Florida Statutes.

**5B-62.007:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.007(2)(a):** The effective date and form number listed for the “Application for Certificate of Registration” are not consistent with the effective date and form number listed in the incorporative rule.

- 5B-62.008:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.008(1):** It is unclear how Chapter 5B-3, F.A.C., is applicable. Please explain how and which rules in 5B-3 are relevant.
- 5B-62.008(4):** The proposed rule text states, “The site must have adequate parking outside the fenced facility.” Please explain what constitutes “adequate” for purposes of this rule. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency.
- 5B-62.008(6):** The proposed rule text states, “The site must have an adequate water supply without using surface water for irrigation.” Please explain what constitutes “adequate” for purposes of this rule. See comment for 5B-62.008(4).
- 5B-62.009:** Rulemaking Authority  
It appears that section 581.1843(3), Florida Statutes, should be listed as rulemaking authority.
- Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes. Additionally, it appears that subsections 570.07(13) and 581.031(1), should be added as laws implemented.
- 5B-62.009(1)(b):** The proposed rule text states, “All equipment, if possible, should be kept on site.” Please explain what is meant by “if possible.” Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency.
- 5B-62.009(3)(b):** Rule 5B-62.010, F.A.C., is cited as being applicable to registered citrus nursery structures and soil storage areas, however the rule does not appear to be applicable to soil storage areas. Please explain.  
The proposed rule text indicates that the decontaminant used must be “approved by the department.” Further, the “Citrus Nursery Stock Certification Manual,” Revised 03/14, p. 6, lists that approved decontaminants can be found at the following web page: <http://www.freshfromflorida.com/content/download/9901/135674/de>

[contamination.pdf](#). Are Department approved decontaminates only those that are listed? It appears that this document could meet the definition of a rule as stated in section 120.52(16), Florida Statutes.

**5B-62.009(4):** The proposed rule text indicates that the Department issues a letter indicating that the “product is free from burrowing nematode *Radopolus similis*.” It appears that “the” is missing prior to the word “burrowing.” Does the Department use a standard form in the issuance of this letter? It appears that this document could meet the definition of a rule as stated in section 120.52(16), Florida Statutes.

**5B-62.010:** Rulemaking Authority  
It appears that section 581.1843(3), Florida Statutes, should be listed.

Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.010(2):** The proposed deletion of “an” in favor of “a” is incorrect.

**5B-62.010(2)(c):** The proposed rule text indicates that citrus nursery stock will not be eligible for certification until released from quarantine by the Department. Please explain how the Department determines the length necessary for quarantine and by what standards will the Department determine that release is appropriate. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency.

**5B-62.010(2)(d):** The proposed deletion of “may be” is incorrect as the words are necessary to the current sentence structure.

**5B-62.011:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.012:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

- 5B-62.013:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.013(1):** The word “from” at the end of the first sentence should be stricken.
- 5B-62.013(4):** The citation listed as “Rule 5B-62.003(b)” is incorrect. See also comments for 5B-62.003, entitled “Structure.”
- 5B-62.013(6):** The proposed deletion of the comma and addition of a semicolon is incorrect.
- 5B-62.014:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.015:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.015(3) and (4):** Please indicate from whom the notification is issued that is mentioned in these two subsections.
- 5B-62.016:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.016(7):** Please indicate from whom the notification is issued that is mentioned in this subsection.
- 5B-62.017:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.018:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.  
  
The form referenced throughout this rule has a name, form number, and revision date inconsistent with that which is listed in the incorporative rule. Please provide a copy of this form.
- 5B-62.019:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.019(1), (2), and (5):** See comment for rule 5B-62.018.

**5B-62.020:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.021:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes. Additionally, subsection 581.031(1), Florida Statutes should be added as a law implemented.

**5B-62.023:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

The proposed rule text incorrectly lists a hyphen in the title of the “Stop Sale Notice and Hold Order” form.

**5B-62.024:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.024(1):** The proposed rule text incorrectly lists a hyphen in the title of the “Stop Sale Notice and Hold Order” form. Please clarify the usage of “and/or” in the rule text.

**5B-62.024(2)(a):** Please correct the verb tense used.

**5B-62.025:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.026:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.

**5B-62.026(4):** The title of the form incorporated is inconsistent with that of the form and the title stated in the incorporative rule.

**5B-62.026(6):** Please correct the inconsistency between the subject and verb of the first sentence.

- 5B-62.027:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.028:** Law Implemented  
Please explain how this rule implements section 570.0705, Florida Statutes.
- 5B-62.028(7):** The proposed rule text indicates that seed source trees not originating from registered stock must enter the “parent tree testing program.” Please explain where this program is authorized and implemented.
- 5B-62.028(8):** The proposed rule text indicates that seed used in commercial citrus nurseries must be “treated to prevent the spread of pathogens.” Is there a specific method by which treatment must occur? By what standards of treatment will the Department determine that a nursery is in compliance with this provision? Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency.
- 5B-62.028(11):** It appears that an imperative (e.g. shall be) is required prior the word “decontaminated” at the end of the sentence.

### **Incorporated Materials**

- FDACS-08072:** This form references the “Source Tree Bud Cutting Report,” FDACS-08172, Rev. 05/12, however the version of that form provided to the Committee and amended in rule 5B-62.005, F.A.C., lists a revision date of 03/14. Additionally, a reference to the rule in which that form is incorporated should be added.
- FDACS-08318:** Page 2 of 4  
Section C.1.: A reference is needed to the rule which incorporates the listed form.  
  
Section D.1.a.: A reference is needed to the rule which incorporates the listed form.  
  
Section D.1.b.: The form indicates that the Citrus Budwood Technical Advisory Committee (CBTAC) “will review the written request and make a recommendation to the Division of Plant

Industry.” Please explain under what standards the CBTAC reviews the application.

**Citrus Budwood Testing  
Manual, Rev. 03/14:**

Page 2 of 7

Section III.A.1.: The section and page citation for where to locate the “Sample Collection and Storage Procedures” is incorrect.

Page 3 of 7

Section III.B.1.: The section and page citation for where to locate the “Sample Collection and Storage Procedures” is incorrect.

Page 4 of 7

Section IV.A.1.: This manual indicates that “The extraction procedure shall be as published unless a newly documented procedure is considered to be an improvement (Sieburth et. Al. 2009).” Please explain where the extraction procedure is described. This provision appears to be vague as it is unclear from what documentation a new procedure would be found and under what standards it could be considered an improvement. Pursuant to section 120.52(8)(d), Florida Statutes, a proposed rule is an invalid exercise of delegated legislative authority if the rule is vague, fails to establish standards for agency decisions, or vests unbridled discretion in the agency.

Section IV.A.2.: The manual references an “Appendix A,” however there was no Appendix A provided.

Section IV.A.3. and 5.: Please explain what “PCR” and “RT-PCR” are.

Page 5 of 7

IX.: This section is entitled, “Literature Cited,” however other than the Sieburth citation, the other materials listed do not appear to be cited within this Manual. Please consider revising to an appropriate title.

**Citrus Nursery Stock  
Certification Manual,  
Rev. 03/14:**

Page 3

3.b.: Please explain what “IFAS” is.

Page 5

Citrus Germplasm Introduction: The first paragraph following the “Important” section refers to an application, but does not indicate

the title of the form. Additionally, the revision date indicated is inconsistent with the revision date of the form listed in the cited incorporative rule.

Page 6

Personnel and Visitors: In the first and third paragraphs under this heading, the Manual refers to a PDF containing further information and approved decontaminates. It appears that this document could meet the definition of a rule as stated in section 120.52(16), Florida Statutes. Please provide a copy of this document.

Pest Monitoring: This first sentence of this section is unclear. Are pest monitoring tools optional for use? If so, that appears to conflict with the statement that the tools are used by the Department to evaluate the integrity of the structure. Additionally, there appears to be a word missing between “will” and “used” in the sentence.

Page 7

Pathogens: This section refers to the Citrus Budwood Testing Manual, but does not list the version or the incorporative information.

Page 9

Scion Tree Instructions, 7.: Please remove the extra period between the two sentences in this section.

Page 10

Grower’s Record of Registered Scion Tree Movement, 1.-16.: It appears that numbers 6.-14. constitute a sub-listing under number 5., but that numbers 15. and 16. do not. If so, the semicolons at the end of numbers 14.-16. should be changed to periods and the word “and” should be added to the end of number 13.

Page 13

Increase Budwood, 3., 4.: The title of FDACS-08172 used in these sections is inconsistent with the title of the incorporated form.

Page 14

Budwood Cutting Procedures: The title of FDACS-08172 is inconsistent with the title of the incorporated form.

Bud Cutting Reports: The title of FDACS-08172 used in the unnumbered paragraph as well as number 1. is inconsistent with the title of the incorporated form.

Page 15

Counting and Bagging the Budwood, 1.: There is a parentheses missing at the end of the sentence.

Completing Source Tree Bud Cutting Report, 6., 8.: The title of FDACS-08172 used in these sections is inconsistent with the title of the incorporated form.

Page 16

Budding Record (The Nursery Plat), 2., 4.: The title of FDACS-08172 used in these sections is inconsistent with the title of the incorporated form.

Page 17

Sale of Nursery Trees: The name, form number, and revision date listed in this section are inconsistent with that listed in the incorporative rule. See also comments for rules 5B-62.018, .019.

Page 18

Topworking: The title of FDACS-08172 used in this section is inconsistent with the title of the incorporated form.

Page 19

Parent Tree Procedures, 6.a.: It appears that the period at the end of this sentence should be a colon. Additionally, the phrasing of 6.a.ii. is inconsistent with 6.a.i.

Page 22

Citrus Budwood and Seed for Exporting: In the first paragraph, the form number and revision date listed for FDACS-08014 are inconsistent with those in the incorporative rule. The final paragraph refers to a "Phytosanitary certificate," but it is unclear if this reference is to the above listed form. If so, please ensure the form is consistently referenced throughout.

Page 24

List of Forms: This section states that the list of forms is incorporated in Chapter 5B-62, F.A.C., however not all of the listed forms are incorporated within that chapter. Additionally, I note the following issues:

FDACS-08004: The listed revision date is inconsistent with that in the incorporative rule.

Mr. Richard D. Gaskalla

June 2, 2014

Page 11

FDACS-08016: The form title is inconsistent with that in the incorporative rule.

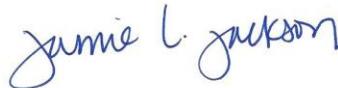
FDACS-08319: This form is listed twice in this section.

FDACS-08038: The form title, number, and revision date are inconsistent with that in the incorporative rule.

Generally: Please remove the extraneous periods at the end of the listed form titles.

If you have questions, please do not hesitate to contact me. Otherwise, I look forward to your written response.

Sincerely,



Jamie L. Jackson  
Senior Attorney

cc: Mr. Steven Hall

JJ:TL WORD/JAMIE/5B\_62.001LS060214\_156369\_156397