

**Citrus Research, Information and Promotion Order
FCM Board of Directors Meeting
March 11, 2009**

I. Background:

Tax Challenges

The citrus equalization tax is a tax imposed by The Florida Department of Citrus (“FDOC”) on citrus juices imported into Florida under authorization by s. 601.155 Fla. Stat. Prior to 2003, revenues from both the grower “box tax” and the equalization tax had been used to fund the marketing, research and regulatory activities of the FDOC. A court challenge and a WTO challenge by Brazil were brought alleging Florida’s equalization tax was violative of the U.S. Constitution and U.S. trade agreements.

In June 2003, the Florida Department of Citrus settled the lawsuit and constitutional challenge to Florida's citrus equalization tax. A Polk County Circuit Court issued an injunction and ordered that henceforth, citrus juice importers would have the opportunity to “opt-out” of two-thirds of the equalization tax rate that applied to Florida citrus. With the “opt-out” provision, objecting importers are entitled to decline support for FDOC's marketing programs. Historically, these programs have promoted “Florida” orange juice. Equalization taxes do however, still support FDOC research and regulatory programs. The Florida Legislature amended Chapter 601 in 2004 to codify the “opt-out” provision into Florida law and with this action, Brazil dropped its WTO challenge against the United States.

“Free Rider” Situation

Studies show that marketers of non-Florida orange juice derive benefit from FDOC orange juice advertising programs. They benefit, even though they do not fund the programs nor control the message. The expression “free rider” is commonly used by agricultural commodities and is meant to mean a company or trade sector that receives a benefit with out contribution.

Before the Florida equalization tax was amended to include the “opt-out” provision, imports passing around Florida were considered to be “free riders” on FDOC programs.

After the amendment in 2004, there were simply more solids in the market that did not share in the cost of Florida's marketing programs and Florida growers considered the long standing problem more severe, particularly in the face of sinking profits at the time.

The concept of the free rider has expanded in the past year. The Florida citrus growers have funded the vast majority of HLB research. Successful research will benefit Florida as well as other citrus producing areas including, but not limited to, Texas, California, and Brazil; who currently do not fund their equitable share of the research program.

The Florida citrus growers have committed to solving the "free rider" issue. A number of ideas have been proposed including: 1) re-instituting the full equalization tax, irrespective of a threat of renewed court challenges; 2) repealing the current FDOC taxes and replacing them with a single "unified" tax; 3) limit FDOC programs to promotions for NFC; 4) capturing a portion of the monies collected from the U.S. tariffs on orange juice and re-directing these funds to supplement FDOC programs; and 5) adopt a federal research, promotion and information order.

In looking at the federal order option, an initial recommendation from a Florida Citrus Commission committee included a plan similar to the model used by Haas Avocados, but that option would require the enactment of special legislation by U.S. Congress. Effecting the Haas model was deemed most desirable but very expensive and could take several years to accomplish. Given the pressing need to raise money for canker and greening research, the Florida Citrus Processors Assn. proposed using existing U.S. statutory authority to raise industry funds for research through a federal *research* order, that did not include an assessment for funding promotion programs.

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Citrus Research Order

In 1996 Congress enacted the "Commodity Promotion, Research, and Information Act of 1996." This law provides general authority for promotion, research and information

orders. Several agricultural commodities have used the 1996 Act to adopt Orders, including most recently an industry funded program for sorghum.

The FCPA proposal was limited in scope for the limited purpose of raising research funds because FCPA believed that the need for research was a shared interest and best point from which to begin a collaboration with other sister citrus producing states and importers.

The FDOC has offered an alternate proposal for a single federal order offering all programs authorized by the 1996 Act. FDOC's proposal includes two separate assessments: one for research and one for promotion. Under this proposal, each assessment would be subject to a separate initial referendum. Although there would be only one Order and both programs would be under "one roof," the research program and the promotion programs would be controlled by separate governing councils (with supervision by the full board and the U.S. Secretary of Agriculture). A summary of how each program would work is as follows:

Research Program Summary:

- Eleven (11) board members – FL (6) CA/AZ (2) TX (1) Importers (2)
- An assessment on all domestic and imported citrus, fresh and processed
- A maximum assessment 5 cents/equivalent boxes, and FDOC has proposed the maximum as the initial rate
- Potential total revenue \$17 million/year
- Potential incremental revenue \$6 million/year
- Federal funds may be expended though contract directly with scientists and institutions or directed though other program administrators including FCPRAC, California Citrus Research Board; UF- DSO, FDOC, etc.
- Credits for state taxes funding state research programs are not included in the discussion draft, but are allowable in such programs

Promotion Program summary

- Seven (7) board members – FL (5) Importers (2)

- Assessments on only oranges sold for juice and imported orange juice
- Maximum assessment – 25 cents/equivalent box, and FDOC has proposed 19 cents/equivalent box
- Potential total revenue \$57 million/ yr at the maximum, \$39 million at 19 cents/box
- Potential incremental revenue \$14 million/yr at 19 cents/box, over the above the revenue generated for promotion under Florida’s advertising box tax
- Credits for state taxes paid for promotion are authorized; but USDA has cautioned against credits against state taxes used for origin specific i.e. “Florida” advertising
- Federal Funds may be used to fund generic OJ advertising and promotional programs through contracts with advertising agencies, state agencies such as FDOC, or other marketing organizations or entities

Questions and Answers

1. Q: The federal orders authorize tax assessments in addition to the FDOC tax assessments. What assurance does the Florida grower have that their total assessment would not be increased or doubled by the two taxing authorities?

A: Unless Chapter 601 F.S. is amended to preclude this from happening, there is no assurance. However, because both the FCC and the board governing the Federal Order will likely be dominated by Florida growers, a political safeguard exists to mitigate the risk of this happening and the two boards would likely act with the total tax picture in mind.

2. Q: If a Federal Order with assessments for promotion and research were to be approved, how would this affect the FDOC and its programs?

A. FDOC would retain its state authority to regulate, market and conduct research programs, so theoretically, it would not be affected by the adoption of a Federal Order. Politically, however, Florida growers would likely re-align their state programs with those

of the federal order to avoid duplication and expense. For example, product and economic research programs, now conducted by FDOC, might be deemed better managed under the federal order. The FDOC could defer these programs to the Federal Order and suspend or reduce the FDOC product research mission and expense. Also, FDOC might find it can share some of its staff with the Federal Order, thus reducing some state overhead. Another possible political consequence for FDOC, if its budget and mission were to be significantly reduced as a result of a federal order, is the possible loss of FDOC's status as a separate state agency. If this were to happen, state duties and powers (example: citrus dealer licensing) would likely be transferred to the Florida Department of Agriculture and Consumer Services or other state agency.

3. Q: How is a federal order initiated?

A: The process is rather simple. FCC or FCM or a broader coalition representing the U.S. industry can request the USDA to publish a draft order in the Federal Register for comment. After an appropriate comment period, the U.S. Secretary of Agriculture will determine if support and need are such that the Order should be allowed to proceed.

4. Q: When do those taxed by the Order get to vote on whether they want the Order?

A: The FDOC proposal calls for an initial referendum before any assessments are collected. U.S. processed orange producers and orange juice importers would have a vote with a single ballot, with the option to separately approve (or reject) the research assessment and/or the promotion assessment. As to producers of all other citrus and fresh importers, the referendum would be limited to a single question on the research assessment.

5. Q: Could two separate Federal Orders (one Order for Research and another separate Order for Promotion) be adopted through separate referenda and administered separate from one another?

A: Technically yes, as this would not be prohibited under the 1996 Act. However, USDA staff has cautioned that if having separate orders would likely result in added expense to producers compared to a single order, absent a compelling reason to keep

them separate, the U.S. Secretary of Agriculture would likely not be inclined to approve the structure of separate orders.

Alternately, it would be permissible under a single Order to adopt assessments in stages, first an assessment for research and then later, an assessment for promotion, or vice versa.

6. Q: Why are “credits” allowed under these programs and what are the reasons that the FDOC discussion draft allows them for promotions, but not for research?

A. The USDA wants to ensure that producers who pay for substantially the same generic promotion messaging under state programs do not get assessed twice to pay for the same type of promotional activity related to the commodity. So, the producer’s payments to the state promotional board are also deemed to be paid to the federal program, and that producer is entitled to the same participatory rights and benefits in the federal program.

The FDOC Discussion Draft has put forward two ways to deal with credits:

1) Provide credits for producers from states where there is a state promotional agency, and the programs from that agency are generic in nature. Example: “Orange Juice. Healthy. Pure & Simple.”

2) Excludes a credit provision in the discussion draft for research. The vast majority of canker/greening expenditures outside of Florida are regulatory in nature. The discussion draft has taken the position that the order should be limited to basic and applied disease research, and developmental work on tree resistance and products to control canker/greening. Regulatory assessments paid in by growers should not be eligible to count as credits for a true **research program**.

7. Q: What does FDOC economic and market research staff say the impact of \$14mm/yr more for generic promotions of orange juice would mean for the Florida grower?

A: A \$14mm annual increase in dollars spent generically promoting orange juice should increase orange demand (all other factors being level) by 6% to 8%, or 72mm to 96mm

ssg. Assuming a domestic size of 1.2B ssg, grower prices would benefit by \$.045/ssg to \$.060/ssg. Based on a crop size of 960mm gallons, Florida grower returns would increase by \$43.2mm to \$57.6mm, each year that the \$14mm is spent.