Time to Downsize the House That Jack Built?-- State Juice Regulation in a Global Market
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If State Citrus Regulations are the house...

Is it too expensive for us today? Is it still necessary to have that second floor now that the kids are gone? Is the garage filled with stuff we don’t need? Do we need to update the kitchen?
This is the house: the Citrus Code of 1949 and FDOC Rules
Chapter 601 Florida Statutes

- Citrus fruit dealer regulation
- Fruit Maturity standards
- FDOC taxes
- Authority for FDOC/FCC admin rules
- Freeze authority
- Laws governing fresh fruit
- Standards for juice products
FDOC Rules (implement the statutes—Ch. 601)

Applying for a citrus fruit dealer license; analytical test methods; how to pay FDOC taxes; register a processing plant; keep records; FL juice standards and FL grades for juice products; Sunshine Tree
Why did Florida adopt its own standards for citrus juice?

- Florida’s 1949 standards pre-dated FDA standards
- Florida Citrus Commission wanted to protect consumers and the industry “from itself”
- Adulteration and fraud
- “Florida Quality” gave equity to FDOC marketing programs; Sunshine Tree
INVENTION OF CONCENTRATE

This is the evaporator that was used in the original research work in the development of frozen concentrated orange juice.
Canned Juice
CONCENTRATE CANNING LINE
THE SS TROPICANA SAILED IN '57
The ship can carry 1,500,000 gal. of orange juice.
Regulation of processors by growers also gave growers measure of economic leverage
What has changed since 1949?

- Food Safety Modernization Act
- US Customs Country of Origin labeling
- Federal Juice Standards of Identity
- Juice drink % labeling
- Mandatory juice HACCP
- NLEA 1990 and GMPS
- Analytical methods and Codex standards
- Retailer Total Quality Programs/ISO
Florida boasted highest juice standards

National brands resist use of FDOC marks. Florida’s generic marks suggest that brand is the same quality as other brands. Standards frequently did not match seasonal quality of juice.
Florida Commercial Juice Processors

Lighter color plants stopped processing and some have been dismantled, since 2000.
“Get rid of job killing rules like Florida standards for orange juice!”

Executive Order 11-72 demanding FL agencies repeal unnecessary and out-dated rules
Competitive Processors = Jobs
Jobs, Jobs
With the state political climate, smaller processing sector, FDOC focus on marketing versus regulation, national brands, adulteration in check— timing is good for less state government!
FCPA Rule Petition to FDOC

- June 20, 2011
- Asked to amend and repeal various FDOC rules related to juice processors based on Executive Order
- Express Preemption- NLEA 1990
- Implied Preemption- “field preemption” where fed govt pervasively occupies field of regulation with scheme
NLEA 1990 - Express Preemption

- Except as provided ...no state or political subdivision of a state may directly or indirectly establish under any authority or continue in effect as to any food in interstate commerce—Any requirement for a food which is the subject of a standard of identity established under 401 which is not identical to such standard of identity or which is not identical to the requirements of section 403(g), etc....
Federal Standards of Identity
21CFR 146.132- 146.154

- Grapefruit juice.
- Orange juice.
- Frozen orange juice.
- Pasteurized OJ
- Canned orange juice.
- OJ with preservative.
- Conc OJ for mfg
- Conc OJ w/preservtive
- OJ from concentrate.
- FCOJ
- Reduced acid frozen concentrated orange juice.
- Canned concentrated orange juice.
- Orange juice for manufacturing.
Effect of Federal Preemption

- Florida’s inconsistent rules and various juice standards are null and void
- For years, USDA and FDACS inspectors have not enforced many of the preempted rules and statutes.
- They remained on the books in the event national uniformity failed/ FL’s exemption from preemption effort abandoned
FDA Standards of Identity

v.

USDA Grade Standards

State Grade Standards are not preempted *per se* since not the same as standard of identity/not mandatory
Two Grades in Florida for juice

- USDA Grade Standards – only USDA can apply a USDA grade
- Florida Grades - can differ from USDA and can be applied under a state program
- If “Florida Grade parameters are not met juice must be marked “substandard”
Mandatory Grading in Florida

- All juice that moves in commerce must be graded in Florida
- Imported juice must be graded
- Finished product for consumer must be graded but no obligation to show grade on container
- Arguably FL “Grades” operate as standards -- therefore preempted?
Florida law is a patchwork quilt of some void and some antiquated rules, grades and statutes that make it confusing and very expensive to operate in Florida -- and consumer does not really benefit.
The FCPA Plan

- Clean up FDOC Rules (and later, Chapter 601 F.S. in the next legislative session)
- Make the federal standards of identity for citrus juices—Florida’s standards.
- Make Florida grades identical to USDA grades
- Update USDA grade standards
Not all rule changes requested are based on preemption--

Water Extracted Soluble Fruit Solids Rule; segregated tanks, yellow striped barrels, sodium benzoate tracer, record keeping
In addition to rule changes, FCPA requests update to Chapter 601 F.S.

- FCPA will ask for repeal of state juice standards adopted by the legislature
- Federal Standards of identity will prevail
- Seeking support of grower organizations
- Package with other industry requests: FDOC tax rates, fresh fruit legislation, etc
- Work in progress
FCPA Petition to USDA to amend GJ grade standard

- Delete max. “sinking pulp” from USDA grade standard for grapefruit juice.
- Sinking pulp poor predictor of bitterness and consumer acceptance—UF consumer survey
- Processing technology treats bitterness
- Amendment published Fed Register Aug 18, 2011 for comment by October 18, 2011
FCPA hopes that the “clean up” and down-size of Florida’s standards/regulations can be accomplished by end of 2012 legislative session.
So- What is the role of state regulation and can it both protect the state industry and facilitate global food trade?
Florida will continue to regulate the citrus industry

- Processing plant inspection will assure that Florida citrus products meet applicable state and federal laws
- State maturity standards will apply
- State test house assures growers delivered juice solids reported accurately
- Automation of Test House to reduce $
Benefits to trade

- Mandatory HACCP, sanitation, Mod Act, U.S. Customs country of origin laws etc. apply
- Florida grade = USDA grades= consistency
- USDA has a cooperator agreement with FDA to enforce FDA laws and report violations; FDACS incorps FDA laws by ref
- Florida has a credible scheme and track record
Global economy

- Needs rule-based system
- Democratic representation of nations
- Accountability
- Transparency
- Participatory
In a global economy, state & local food standards do not facilitate trade as well as national standards.

You can even make an argument that the next step is for U.S. to nationalize the Codex Alimentarius standards for all fruit juices.
Advantages of international standards

- Reduces regulatory burdens of states
- Market access enhanced
- Trading partners will not block imports on technical or SPS grounds
Globalization

- Institutions must be reshaped to accommodate global trade
- Institutional arrangements for governing global food trade have fallen behind growth
As food standards in states, U.S. and international evolve, the role of local government (states) in setting standards will diminish. Exceptions: Safety standards and California
This is Jack. Jack will be just fine with his new house.
Special Thanks to Steve Caruso and Florida Southern College Citrus Archives for historical slides