

Final Agency Determination: FAD-254

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Subject: Joint request dated November 11, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2013 crop year regarding the interpretation of section 11 of the Arizona-California Citrus Crop Provisions, published at 7 C.F.R. § 457.121. This request is pursuant to 7 C.F.R. part 400, subpart X.

Background:

Referenced policy and procedure in request:

Section 11 of the Arizona-California Citrus Crop Provisions states in relevant part:

11. Settlement of Claim

(c) The total production to count (in cartons) from all insurable acreage on the unit will include

(2) All harvested production marketed as fresh packed fruit from the insurable acreage; and.

(d) Any production will be considered marketed or marketable as fresh packed fruit unless, due solely to insured causes, such production was not marketed or marketable as fresh packed fruit.

(e) Citrus that cannot be marketed as fresh packed fruit due to insurable causes will not be considered production to count.

Interpretation Submitted

Two interpretations were submitted in this FAD request.

First Requestor's Interpretation:

The first requestor interprets the referenced provisions in section 11 of the Arizona-California Citrus Crop Provisions (Crop Provisions) to mean that any fresh fruit packed in boxes and marketed to customers falls within the definition of "fresh packed fruit" and the end use of the product is irrelevant.

Second Requestor's Interpretation:

The second requestor interprets the phrase "fresh packed fruit" in the referenced provisions in section 11 to mean fruit that is of sufficient quality to be retailed in an unprocessed form. The requester interprets the provisions to mean that production to count includes all fruit marketed as fresh packed fruit as well as fruit marketable as fresh packed fruit. The requestor states that if due to an insurable cause the fruit does not meet the fresh packed fruit quality standards for retail sale it is not production to count unless it is marketed as fresh packed fruit. Fruit that does not qualify as fresh packed fruit due to damage from insurable causes and is marketed as juice is not production to count. The requestor further believes that the container used for the delivery of the fruit to the customers is not a factor in determining whether the fruit is to be considered production to count. The requestor states production to count should be based on the grading of the fruit quality and how it was labeled and marketed.

Final Agency Determination

FCIC agrees with the second requestor that production to count includes all harvested fruit marketed as fresh packed fruit, as well as all fruit determined to be marketable as fresh packed fruit.

Under the common meaning found in the dictionary, "marketable" means "able or fit to be sold or marketed." "Able or fit" means that it meets the applicable quality as fresh packed fruit or that it is able to be marketed as fresh packed fruit. "Marketed" means "to promote or sell something." Taken together, this means that any fruit

that is able or fit to be sold, or is promoted or sold, as fresh packed fruit counts as production to count. Neither the container used to deliver the fruit to the customer, nor the end use of the fruit by the consumer, determines whether the fruit will be considered marketed as fresh packed fruit.

Appraised unharvested citrus fruit that fails to meet the applicable quality or is unable to be marketed as fresh packed fruit due to an insured cause of loss is not considered production to count. Harvested citrus fruit that fails to meet the applicable quality due to insured causes and is not marketed as fresh packed fruit is not considered production to count. However, harvested citrus fruit that may not meet the applicable quality but is still marketed as fresh packed fruit is considered as production to count.

In accordance with 7 C.F.R. § 400.765 (c), this Final Agency Determination is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.768(g).

Date of Issue: January 12, 2016