



## **Final Agency Determination: FAD-272**

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**Subject:** Request dated March 2, 2016, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2015 crop year regarding the interpretation of section 14(b)(5) of the Apple Crop Insurance Provisions, published at 7 C.F.R. § 457.158. This request is pursuant to 7 C.F.R. part 400, subpart X.

### **Background:**

Referenced policy and procedure related to the request:

Section 14 of the Apple Crop Provisions states, in relevant part:

#### **14. Optional Coverage for Fresh Fruit Quality Option.**

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(b) In return for payment of the additional premium designated in the actuarial documents, this option provides for quality adjustment of fresh apple production as follows:

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(5) If appraised or harvested fresh apple production for the block or unit, as applicable, is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better the following adjustments to the production to count will apply:

(i) Fresh apple production to count with 21 percent through 40 percent damaged apple production will be reduced 2 percent for each full one percent in excess of 20 percent.

(ii) Fresh apple production to count with 41 percent through 50 percent damaged apple production will be reduced 40 percent plus

an additional 3 percent for each full one percent in excess of 40 percent.

(iii) Fresh apple production to count with 51 percent through 64 percent damaged apple production will be reduced 70 percent plus an additional 2 percent for each full one percent in excess of 50 percent.

(iv) Fresh apple production to count with 65 percent or more damaged apple production will not be considered production to count.

(v) Notwithstanding sections 14(b)(5)(i) through (iv), if you sell any of your fresh apple production as U.S. Fancy or better, all such sold production will be included as production to count under this option.

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### **Interpretations Submitted**

The requestor states that section 14(b)(5)(v) of the Apple Crop Provisions clearly states that if the insured sells any of its fresh apple production as U.S. Fancy or better, then the fruit sold [as U.S. Fancy or better] is included as production to count. However, the requestor asks for clarification on whether the quality adjustment [described in section 14(b)(5)(i) through (iv) of the Apple Crop Provisions] still applies to the damaged fruit when a grower harvests all the fruit, but packs and sells only the fruit that was not damaged. The requestor interprets section 14(b)(5) of the Apple Crop Provisions to mean that, the adjustments to production to count described in section 14(b)(5)(i) through (iv) of the Apple Crop Provisions apply to apples that are damaged [to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better] and not sold [as U.S. Fancy or better]. The requestor states that nowhere does it say that if any undamaged fruit is sold, the quality adjustment [described in section 14(b)(5)(i) through (iv) of the Apple Crop Provisions] no longer applies to the damaged fruit that is not sold [as U.S. Fancy or better].

### **Final Agency Determination**

The Federal Crop Insurance Corporation agrees with the requestor's interpretation of section 14(b)(5) of the Apple Crop Provisions. Adjustments to production to count in

section 14(b)(5)(i) through (iv) of the Apple Crop Provisions apply to appraised or harvested fresh apple production that is damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better. Therefore, when apples are damaged to the extent that more than 20 percent of the apple production does not grade U.S. Fancy or better, such damaged apples that are unsold or sold at a grade lower than U.S. Fancy will be adjusted in accordance with section 14(b)(5)(i) through (iv) of the Apple Crop Provisions. However, notwithstanding the production to count determined in accordance with section 14(b)(5)(i) through (iv), any production sold as U.S. Fancy or better, regardless of grade, is included 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:** June 5, 2017