

## **Final Agency Determination: FAD-295**

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**Subject:** A request dated May 6, 2020, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2017 crop year regarding the interpretation of section 1 of the Apple Crop Provisions published at 7 C.F.R. § 457.158. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Referenced policy related to the request:

The Apple Crop Provisions state, in relevant part:

#### **1. Definitions.**

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Fresh apple production.

(1) Apples:

(i) That are sold, or could be sold, for human consumption without undergoing any change in the basic form, such as peeling, juicing, crushing, etc.;

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(iv) From acreage that you certify, and, if requested by us provide verifiable records to support, that at least 50 percent of the production from acreage reported as fresh apple acreage from each unit, was sold as fresh apples in one or more of the four most recent crop years.

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### **Interpretation Submitted:**

The requestor interprets that a grower is eligible for the Fresh Fruit Quality Endorsement if, in at least one of the preceding four crop years, at least 50 percent of the grower's apple production constitutes "fresh apple production." At issue here is the precise definition of the phrase "sold as fresh."

In 2012, FCIC provided an interpretation of the definition of “fresh apple production” in Final Agency Determination 172, issued November 13, 2012. FCIC had been asked, specifically, to clarify the meaning of the word “sold” as used in the definition. FCIC, in responding, also explained the procedure to be followed in determining whether apple production is “sold as fresh.” FAD-172 states, in pertinent part, as follows:

The term “sold” as used in the definition of “fresh apple production” in section 1 of the Apple Crop Provisions is not defined. Therefore, it must be given its common meaning from the dictionary, which states to mean to give up in violation of duty, trust, or loyalty; to give up (property) to another for something of value (as money). Therefore, simple delivery of the apples to a fresh fruit packer is not the sale of those apples until grower receives payment for the apples. **If the fresh fruit packer pays the grower a price commensurate with fresh apples, the apples are considered as fresh apple production. If the fresh apple packer pays a price that is not commensurate with prices generally received for fresh apples, the apples are considered processing apples.** If the fresh fruit packer does not pay the grower for the apples, then the apples are not considered sold. Thus, sales records that show price paid to the grower and quantity purchased are used to determine when the apples are sold and whether the apples qualify as fresh or processing.

FCIC disagrees with the second requestor’s interpretation that the specific meaning of the phrase “sold, or could be sold” as used in section 1(i) quoted above specifically acknowledges the common practice of fresh apple growers delivering fresh apples to a fresh apple packer for purposes of storage, packing and sale of those fresh apples. Rather, this provision recognizes that **insurability does not depend on the management decision of the producer but rather it depends on the quality and condition of the apples.** Further, apples may be appraised if such apple production will not be harvested. The loss adjuster’s appraisal will determine the amount of fresh apple production in accordance with FCIC approved loss adjustment procedures. Finally, if apples are harvested after such appraisal, production to count is determined in accordance with section 15(b) of the Basic Provisions. In this instance, **records of harvested sold production would then be available to determine if the price received was commensurate with**

## **the price of fresh apples.**

[Emphasis added.]

The requestor asks that, in determining whether apples are “sold as fresh,” FCIC clarify that the “prices generally received for fresh apples” contemplates a comparison of net prices (the prices generally received for fresh apples of the same variety **by growers**) to net price, and not to gross prices (the prices generally received for fresh apples **by fresh apple packers**). The requestor submits that all prices referred to in FAD-172 are net prices – the prices received by growers.

Under the procedure laid out in FAD-172, the “price paid to the grower” is compared to prices paid generally to growers for fresh apples of the same variety to determine whether they are “commensurate with prices generally received for fresh apples.” The phrases “price paid to the grower,” “the price received,” and “prices generally received for fresh apples” refer to net prices received by the grower, and not to gross prices received by the packer.

If the (net) prices for fresh apples received by the **grower** were to be compared to the (gross) prices generally received by the **packer** for fresh apples of the same variety, the result would likely be that no apple production would ever qualify as fresh apple production. This is because the price the packer receives for fresh apples will always be significantly higher than the amount that packer pays to a fresh apple grower after accounting for expenses and turning a profit – such a result is not the correct interpretation of FAD-172. Rather, FCIC intended that the comparison be fresh apple prices to fresh apple prices of the same variety.

Thus, the requester submits that, in determining whether apples have been “sold as fresh” under FAD-172, the question is whether the (net) prices paid to the insured grower for apples are commensurate with (net) prices generally received **by growers** for fresh apples of the same variety. In other words, net prices are compared to net prices, and not to gross prices.

## **Final Agency Determination**

FCIC agrees, in part, with the requestor’s interpretation. When the prices paid to the grower for apples are compared to the prices generally received by growers, both values being compared must be on the same basis for this to be a meaningful comparison. However, this does not necessarily mean that it must be a gross-to-

gross or net-to-net comparison, as neither the statute nor RMA's prior FADs require a specific method of comparison. For example, a valid comparison would be based on prices received prior to any adjustments that are not a result of quality, such as handling or storage charges. The key inquiry is whether the price received is commensurate with the price generally received by other growers for fresh apples.

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:*** July 21, 2020