



DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

[Docket ID FCIC-22-0007]

RIN 0563-AC80

Walnut Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, U.S. Department of Agriculture (USDA).

ACTION: Final rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is amending its walnut crop insurance regulations to remove the minimum acreage insurability requirement. This change will align the insurability requirements for walnut crop insurance with other tree nut insurance policies. Many walnut producers also grow other tree nut crops. Having different insurability requirements for crop insurance for similar crops has created additional work and confusion for producers and their Approved Insurance Providers (AIP). Much like other tree nut policies, the Walnut Crop Provisions will continue to require that the producer has a share in the orchard, the trees be adapted to the area, grown in an orchard acceptable to the AIP if inspected, and meet a minimum age requirement. The remaining insurability requirements have proven to be effective underwriting controls in the other tree nut policies to ensure the walnut crop insurance program remains actuarially sound with this change. In aligning the insurability requirements for walnuts and similar crops, this change is expected to make it easier for producers to obtain walnut crop insurance.

DATES: *Effective date:* This final rule is effective October 31, 2022.

Comment date: We will consider comments that we receive by the close of

business [**Insert date 60 days after date of publication in the *FEDERAL REGISTER***].

FCIC may consider the comments received and may conduct additional rulemaking based on the comments.

ADDRESSES: We invite you to submit comments on this rule. You may submit comments by going through the Federal eRulemaking Portal as follows:

- Federal eRulemaking Portal: Go to <http://www.regulations.gov> and search for Docket ID FCIC-22-0007. Follow the instructions for submitting comments.

All comments will be posted without change and will be publicly available on www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Francie Tolle; telephone (816) 926-7829; or email francie.tolle@usda.gov. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720-2600 (voice) or (844) 433-2774 (toll-free nationwide).

SUPPLEMENTARY INFORMATION:

Background

FCIC serves America's agricultural producers through effective, market-based risk management tools to strengthen the economic stability of agricultural producers and rural communities. FCIC is committed to increasing the availability and effectiveness of Federal crop insurance as a risk management tool. Approved Insurance Providers (AIPs) sell and service Federal crop insurance policies in every state through a public-private partnership. FCIC reinsures the AIPs who share the risks associated with catastrophic losses due to major weather events. FCIC's vision is to secure the future of agriculture by providing world class risk management tools to rural America.

Federal crop insurance policies typically consist of the Basic Provisions, the Crop Provisions, the Special Provisions, the Commodity Exchange Price Provisions, if applicable, other applicable endorsements or options, the actuarial documents for the

insured agricultural commodity, the Catastrophic Risk Protection Endorsement, if applicable, and the applicable regulations published in 7 CFR chapter IV. Throughout this rule, the terms “Crop Provisions,” “Special Provisions,” and “policy” are used as defined in the Common Crop Insurance Policy (CCIP) Basic Provisions in 7 CFR 457.8. Additional information and definitions related to Federal crop insurance policies are in 7 CFR 457.8.

The changes to the Walnut Crop Insurance Provisions (7 CFR 457.122) resulting from the amendments in this rule are applicable for the 2023 and succeeding crop years for crops with a contract change date on or after October 31, 2022.

Through this rule, FCIC amends the Walnut Crop Insurance Provisions (7 CFR 457.122) as follows:

FCIC is removing the minimum acreage requirement to align the insurability requirements with other tree nut policies. The minimum acreage requirement was originally established to prevent producers from insuring their backyard trees. The change in this rule will reduce the additional work and confusion that it causes producers, many of whom also farm other tree nuts and must annually request a waiver of the minimum acreage requirement to insure their walnuts.

FCIC is also making a number of clarifications, corrections, and updates as follows:

FCIC is removing the introductory sentence explaining the order of priority of policy provisions because the CCIP Basic Provisions includes the priority order of policy provisions. Therefore, in the Walnut Crop Provisions, FCIC is removing the introductory sentence explaining the order of priority of policy provisions because it is duplicative of the same order of priority included in the CCIP Basic Provisions.

FCIC is clarifying that the definition of harvest is the removal of mature walnuts from the orchard, by adding the word “mature.”

FCIC is clarifying that the definition for “interplanted” overrides the definition in the CCIP Basic Provisions, by adding the statement, “In lieu of the definition contained in section 1 of the Basic Provisions” prior to the description. It will provide clear use of the definition and its application to the Crop Provisions.

FCIC is clarifying the definition for “net delivered weight” is dry, hulled, whole in-shell walnuts, by adding the word “whole” to match the description of walnuts in the definition for “production guarantee (per acre).”

FCIC is clarifying that the definition for “production guarantee (per acre)” is additional to the definition contained in section 1 of the Basic Provisions and that the number of pounds is dry, hulled, whole in-shell walnuts. It will provide clarity that the number of pounds is whole in-shell walnuts and will match the description of walnuts in the definition for “net delivered weight.”

FCIC is replacing the term “FSA farm serial number” with “FSA farm number” because the term “FSA farm serial number” is obsolete. A similar change was already implemented in the CCIP Basic Provisions in 2017 when the definition was changed to remove the word “serial.”

FCIC is revising the heading for section 3 to “Insurance Guarantees, Coverage Levels, and Prices” by removing the phrase at the end “for Determining Indemnities.” Removing this phrase will align the heading to match the corresponding section in the CCIP Basic Provisions. It also helps clarify that price is not exclusively used to determine indemnities; it is also used to establish the guarantee and determine the premium due for the producer.

FCIC is correcting the location of certain information (e.g., price elections) from “Special Provisions” to “actuarial documents.”

FCIC is clarifying the timing and method of yield adjustments, if circumstances occur that may reduce the yield potential, based on when the circumstance occurred. The

current provision states that the AIP will reduce the yield used to establish the production guarantee but does not state when or how the adjustments may apply. These changes provide three scenarios that contain specific instructions for adjustments based on the timing of when the circumstance occurred that may reduce the yield potential and whether the producer notifies the AIP by the production reporting date.

If the circumstance occurs before the beginning of the insurance period and the producer notifies the AIP by the production reporting date, the provisions require the yield used to establish the production guarantee to be reduced for the current crop year regardless of whether the circumstance was due to an insured or an uninsured cause of loss.

If the circumstance occurs after the beginning of the insurance period and the producer notifies the AIP of the circumstance by the production reporting date, the provisions require the yield used to establish the production guarantee to be reduced for the current crop year only if the potential reduction in the yield used to establish the production guarantee is due to an uninsured cause of loss.

If the producer fails to notify the AIP of the circumstance by the production reporting date, regardless of whether the circumstance occurs before or after the beginning of the insurance period, the provisions require an amount equal to the reduction in the yield to be added to the production to count due to uninsured causes. In addition, the provisions require reduction of the yield used to establish the production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or the yield potential of the insured acreage.

These provisions are similar to provisions that FCIC has added to other perennial crop insurance policies, such as the Texas Citrus Fruit Crop Insurance Provisions, published in the Federal Register on June 13, 2016, (81 FR 38061-38067). Adding these provisions is intended to remove potential ambiguity regarding the consequences when

circumstances occur that will reduce the yield potential and to promote consistency with administration of similar policies such as the Texas Citrus Crop Insurance Provisions.

FCIC is correcting punctuation in bulleted lists by adding a semi colon or adding “and” after the semi-colon.

FCIC is replacing the phrase “growing season after being set out” with “leaf year.” This changes the wording to be consistent with how the information is shown in the Special Provisions.

FCIC is simplifying the reference to the Special Provisions for exceptions to the end of insurance period by revising the phrase “(Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions)” to “unless otherwise specified in the Special Provisions.” The shorter phrase is more consistent with similar exceptions throughout other Crop Provisions.

FCIC is removing repetitive statements to “the provisions of” and parenthetical titles that reference the CCIP Basic Provisions for consistency. For example, this change deletes the reference to provisions and the parenthetical title (Insurance Period) in the sentence “In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions.” In other Crop Provisions, the reference to provisions and parenthetical titles do not appear. This change will make the Crop Provisions more consistent.

FCIC is updating prices and yields in settlement of claim examples, so they are more reflective of current values and potential indemnities.

FCIC is simplifying a statement about walnut production exceeding 30 percent mold damage, by revising the phrase “walnut production that exceeds” to “if walnut production exceeds.” The remainder of the statement is unchanged and provides that the unsold walnuts will have zero production to count.

Effective Date, Notice and Comment, and Exemptions

The Administrative Procedure Act (APA, 5 U.S.C. 553) provides that the notice and comment and 30-day delay in the effective date provisions do not apply when the rule involves specified actions, including matters relating to contracts. This rule governs contracts for crop insurance policies and therefore, falls within that exemption. Although not required by APA or any other law, FCIC has chosen to request comments on this rule.

This rule is exempt from the regulatory analysis requirements of the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996. The requirements for the regulatory flexibility analysis in 5 U.S.C. 603 and 604 are specifically tied to the requirement for a proposed rule under 5 U.S.C. 553 or any other law; in addition, the definition of rule in 5 U.S.C. 601 is tied to the publication of a proposed rule.

For major rules, the Congressional Review Act requires a delay of the effective date of 60 days after publication to allow for Congressional review. This rule is not a major rule under the Congressional Review Act, as defined by 5 U.S.C. 804(2). Therefore, this final rule is effective on October 31, 2022.

Executive Orders 12866 and 13563

Executive Order 12866, “Regulatory Planning and Review,” and Executive Order 13563, “Improving Regulation and Regulatory Review,” direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The requirements in Executive Orders 12866 and 13563 for the analysis of costs and benefits apply to rules that are determined to be significant or economically significant.

The Office of Management and Budget (OMB) has designated this rule as not significant under Executive Order 12866. Therefore, OMB has not reviewed this rule and analysis of the costs and benefits is not required under either Executive Order 12866 or Executive Order 13563.

Clarity of the Regulation

Executive Order 12866, as supplemented by Executive Order 13563, requires each agency to write all rules in plain language. In addition to your substantive comments on this rule, we invite your comments on how to make the rule easier to understand. For example:

- Are the requirements in the rule clearly stated? Are the scope and intent of the rule clear?
- Does the rule contain technical language or jargon that is not clear?
- Is the material logically organized?
- Would changing the grouping or order of sections or adding headings make the rule easier to understand?
- Could we improve clarity by adding tables, lists, or diagrams?
- Would more, but shorter, sections be better? Are there specific sections that are too long or confusing?
- What else could we do to make the rule easier to understand?

Environmental Review

The environmental impacts of this final rule have been considered in a manner consistent with the provisions of the National Environmental Policy Act (NEPA, 42 U.S.C. 4321–4347), the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and because USDA will be making the payments to producers, the USDA regulation for compliance with NEPA (7 CFR part 1b). As specified in 7 CFR 1b.4(b)(4), FCIC is categorically excluded from the preparation of an Environmental

Analysis or Environmental Impact Statement unless the FCIC Manager (agency head) determines that an action may have a significant environmental effect. The FCIC Manager has determined this rule will not have a significant environmental effect. Therefore, FCIC will not prepare an environmental assessment or environmental impact statement for this action and this rule serves as documentation of the programmatic environmental compliance decision.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, “Civil Justice Reform.” This rule will not preempt State or local laws, regulations, or policies unless they represent an irreconcilable conflict with this rule. Before any judicial actions may be brought regarding the provisions of this rule, the administrative appeal provisions of 7 CFR part 11 are to be exhausted.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, “Consultation and Coordination with Indian Tribal Governments.” Executive Order 13175 requires Federal agencies to consult and coordinate with Tribes on a government-to-government basis on policies that have Tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

The Risk Management Agency (RMA) has assessed the impact of this rule on Indian Tribes and determined that this rule does not, to our knowledge, have Tribal implications that require Tribal consultation under EO 13175. The regulation changes do not have Tribal implications that preempt Tribal law and are not expected have a substantial direct effect on one or more Indian Tribes. If a Tribe requests consultation,

RMA will work with the USDA Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions and modifications identified in this rule are not expressly mandated by Congress.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA, Pub. L. 104-4) requires Federal agencies to assess the effects of their regulatory actions of State, local, and Tribal governments, or the private sector. Agencies generally must prepare a written statement, including cost benefits analysis, for proposed and final rules with Federal mandates that may result in expenditures of \$100 million or more in any 1 year for State, local or Tribal governments, in the aggregate, or to the private sector. UMRA generally requires agencies to consider alternatives and adopt the more cost effective or least burdensome alternative that achieves the objectives of the rule. This rule contains no Federal mandates, as defined in Title II of UMRA, for State, local, and Tribal governments, or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Federal Assistance Program

The title and number of the Assistance Listing,¹ to which this rule applies is No. 10.450 – Crop Insurance.

Paperwork Reduction Act of 1995

In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, subchapter I), the rule does not change the information collection approved by OMB under control number 0563-0053.

USDA Non-Discrimination Policy

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Agencies, offices, and employees, and institutions participating in or

¹See <https://sam.gov/content/assistance-listings>.

administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family or parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (for example, braille, large print, audiotape, American Sign Language, etc.) should contact the responsible Agency or USDA TARGET Center at (202) 720-2600 or 844-433-2774 (toll-free nationwide). Additionally, program information may be made available in languages other than English. To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at <https://www.usda.gov/oascr/how-to-file-a-program-discrimination-complaint> and at any USDA office or write a letter addressed to USDA and provide in the letter all the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by mail to: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, DC 20250-9410 or email: OAC@usda.gov.

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List of Subjects in 7 CFR Part 457

Acreage allotments, Crop insurance, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FCIC amends 7 CFR part 457, effective for the 2023 and succeeding crop years for crops with a contract change date on or after October 31, 2022, as follows:

PART 457 - COMMON CROP INSURANCE REGULATIONS

1. The authority citation for part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(o).

2. Amend § 457.122:

a. In the undesignated introductory paragraph, by removing the year “2008” and adding “2023” in its place;

b. By removing the text between “Walnut Crop Provisions” and section 1 (Definitions);

c. In section 1:

i. In the definition of “harvest,” by removing the words, “the walnuts” and adding “mature walnuts” in their place;

ii. By revising the definition of “Interplanted”;

iii. In the definition of “net delivered weight”, by removing the words, “hulled, in-shell” and adding “hulled, whole in-shell” in their place; and

iv. By revising the definition of “Production guarantee (per acre)”;

d. In section 2, by removing the word “serial” in the first sentence;

e. In section 3:

i. By revising the section heading;

ii. In paragraph (a), by removing the words, “unless the Special Provisions provide” and adding “unless the actuarial documents provide” in their place in the first sentence;

iii. In paragraph (b)(4), by removing the word, “anytime” and adding the words, “any time” in their place;

iv. By redesignating paragraph (c) as (d);

v. By designating the undesignated paragraph following paragraph (b)(5) as paragraph (c); and

- vi. By revising newly designated paragraph (c);
- f. In section 6:
 - i. In paragraph (c), by adding the word “and” at the end;
 - ii. In paragraph (d), by removing the words “growing season after being set out” and adding “leaf year” in their place; and
 - iii. By removing paragraph (e);
- g. In section 7, by removing the words, “Provisions (§ 457.8), that” and adding “Provisions (§ 457.8) that” in their place;
- h. In section 8:
 - i. In paragraph (a) introductory text, by removing the words “the provisions of”;
 - ii. In paragraph (a)(1), by removing the words “year, except that for” and adding “year except for” in their place and by removing the words “the 10 day period” and adding “the 10-day period” in their place;
 - iii. By revising paragraph (a)(2);
 - iv. In paragraph (a)(4), by removing the words “termination dates” and adding “termination dates,” in their place; and
 - v. In paragraph (b) introductory text, by removing the words “the provisions of section 11 (Insurance Period)” and adding “section 11” in their place;
- i. In section 9:
 - i. In paragraph (a) introductory text, by removing the words “the provisions of”;and
 - ii. In paragraph (b), by removing the parenthetical phrase, “(Causes of Loss)”;
- j. In section 11:
 - i. By revising paragraph (b)(7); and
 - ii. In paragraph (d), by removing the words “Walnut production that” and adding “If walnut production” in their place.

The revisions read as follows:

§ 457.122 Walnut Crop Insurance Provisions.

* * * * *

1. Definitions

* * * * *

Interplanted. In lieu of the definition contained in section 1 of the Basic Provisions, acreage on which two or more crops are planted in any form of alternating or mixed pattern.

* * * * *

Production guarantee (per acre). In addition to the definition contained in section 1 of the Basic Provisions, the number of pounds is dry, hulled, whole in-shell walnuts.

* * * * *

3. Insurance Guarantees, Coverage Levels, and Prices

* * * * *

(c) We will reduce the yield used to establish your production guarantee, as necessary, based on our estimate of the effect of any circumstance that may reduce your yields from previous levels. Examples of these circumstances that may reduce yield may include but are not limited to: interplanted perennial crop; removal of trees; damage; and change in practices. If the circumstance occurred:

(1) Before the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for the current crop year regardless of whether the circumstance was due to an insured or uninsured cause of loss;

(2) After the beginning of the insurance period and you notify us by the production reporting date, the yield used to establish your production guarantee will be reduced for

the current crop year only if the potential reduction in the yield used to establish your production guarantee is due to an uninsured cause of loss; or

(3) Before or after the beginning of the insurance period and you fail to notify us by the production reporting date, an amount equal to the reduction in the yield will be added to the production to count calculated in section 11(c) of these Crop Provisions due to uninsured causes. We will reduce the yield used to establish your production guarantee for the subsequent crop year to reflect any reduction in the productive capacity of the trees or in the yield potential of the insured acreage.

* * * * *

8. Insurance Period

(a) * * *

(2) The calendar date for the end of the insurance period for each crop year is November 15, unless otherwise specified in the Special Provisions.

* * * * *

11. Settlement of Claim

* * * * *

(b) * * *

(7) Multiplying the result in section 11(b)(6) by your share.

For example:

You have a 100 percent share in 100 acres of walnuts in the unit, with a guarantee of 2,500 pounds per acre and a price election of \$0.90 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) $100 \text{ acres} \times 2,500 \text{ pounds} = 250,000 \text{ pound insurance guarantee};$

(2 & 3) $250,000 \text{ pounds} \times \$0.90 \text{ price election} = \$225,000 \text{ total value of insurance guarantee};$

(4 & 5) $200,000 \text{ pounds production to count} \times \$0.90 \text{ price election} = \$180,000$

total value of production to count;

(6) \$225,000 total value guarantee - \$180,000 total value of production to count =

\$45,000 loss; and

(7) $\$45,000 \times 100$ percent share = \$45,000 indemnity payment.

* * * * *

Marcia Bunger,
Manager,
Federal Crop Insurance Corporation.

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