

§ 457.122

7 CFR Ch. IV (1-1-10 Edition)

it. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for each unit.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage for each crop, or variety if applicable, by its respective production guarantee;

(2) Multiplying the results of section 11(b)(1) by the respective price election for each crop, or variety, if applicable;

(3) Totaling the results of section 11(b)(2);

(4) Multiplying the total production to be counted of each variety, if applicable (see section 11(c)), by the respective price election;

(5) Totaling the results of section 11(b)(4);

(6) Subtracting this result of section 11(b)(5) from the result of section 11(b)(3); and

(7) Multiplying the result of section 11(b)(6) by your share;

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

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) For which you fail to provide acceptable production records;

(C) That is damaged solely by uninsured causes; or

(D) From which production is sold by direct marketing, if direct marketing is specifically permitted by the Special Provisions or a written agreement, and you fail to meet the requirements contained in section 10;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production determined to be marketable as fresh packed fruit; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general

in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count;

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

(3) All citrus that was disposed of or sold without an inspection or written consent.

(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.

(f) If we determine that frost protection equipment was not properly utilized or not properly reported, the indemnity for the unit will be reduced by the percentage of premium reduction allowed for frost protection equipment. You must, at our request, provide us records showing the start-stop times by date for each period the frost protection equipment was used.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[61 FR 44147, Aug. 28, 1996, as amended at 62 FR 65170, Dec. 10, 1997]

§ 457.122 Walnut crop insurance provisions.

The Walnut Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Walnut Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest—Removal of the walnuts from the orchard.

Interplanted—Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Net delivered weight—Delivered weight (pounds) of dry, hulled, in-shell walnuts, excluding foreign material.

Pound—A unit of weight equal to 16 ounces avoirdupois.

Production guarantee (per acre)—The number of pounds (whole in-shell walnuts), determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

2. Unit Division

Provisions in the Basic Provisions that allow optional units by section, section equivalent, or FSA farm serial number and by irrigated and non-irrigated practices are not applicable. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions (§457.8):

(a) You may select only one price election for all the walnuts in the county insured under this policy unless the Special Provisions provide different price elections by variety or varietal group, in which case you may select one price election for each walnut variety or varietal group designated in the Special Provisions. The price elections you choose for each variety or varietal group must have the same percentage relationship to the maximum price offered by us for each variety or varietal group. For example, if you choose 100 percent of the maximum price election for a specific variety or varietal group, you must also choose 100 percent of the maximum price election for all other varieties or varietal groups.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions (§457.8), by variety or varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern;

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage is changed, the age of the crop that is interplanted with the walnuts, and type if applicable, and the planting pattern; and

(5) Any other information that we request in order to establish your approved yield.

We will reduce the yield used to establish your production guarantee as necessary,

based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstances.

(c) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change dates are October 31 for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 for California and November 20 for all other states.

6. Insured Crop

In accordance with section 8 of the Basic Provisions (§457.8), the crop insured will be all the commercially grown English Walnuts (excluding black walnuts) in the county for which a premium rate is provided by the actuarial documents:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Were commercially available when the trees were set out;

(2) Are adapted to the area; and

(3) Are grown on a root stock that is adapted to the area;

(c) That are grown in an orchard that, if inspected, are considered acceptable by us;

(d) On acreage where at least 90 percent of the trees have reached at least the seventh growing season after being set out, unless otherwise provided in the Special Provisions.

(e) That are in a unit that consists of at least five acres, unless we agree in writing to insure a smaller unit.

7. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, walnuts interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

8. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) Coverage begins on February 1 in California and November 21 in all other states of each crop year, except that for the year of application, if your application is received after January 22 but prior to February 1 in California or after November 11 but prior to November 21 in all states, insurance will attach on the 10th day after your properly completed application is received in our local office, unless we inspect the acreage during the 10 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the orchard.

(2) The calendar date for the end of the insurance period for each crop year is November 15 (Exceptions, if any, for specific counties or varieties or varietal group are contained in the Special Provisions).

(3) Notwithstanding paragraph (a)(1) of this section, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(4) If your walnut policy is canceled or terminated for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year but on or before the cancellation and termination dates whichever is later, insurance will not be considered to have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(b) In addition to the provisions of section 11 (Insurance Period) of the Basic Provisions (§ 457.8):

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. Acreage acquired after the acreage reporting date will not be insured.

(2) If you relinquish your insurable share on any insurable acreage of walnuts on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

9. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions (§ 457.8), insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and undergrowth have not been controlled or pruning debris has not been removed from the orchard;

(3) Insects, but not damage due to insufficient or improper application of pest control measures;

(4) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(5) Wildlife;

(6) Earthquake;

(7) Volcanic eruption; or

(8) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period.

(b) In addition to the causes of loss excluded in section 12 (Causes of Loss) of the Basic Provisions (§ 457.8), we will not insure against any damage or loss of production due to the inability to market the walnuts for any reason other than actual physical damage to the walnuts from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

10. Duties in the Event of Damage or Loss

(a) In addition to the requirements of section 14 of the Basic Provisions, if you intend to claim an indemnity on any unit:

(1) You must notify us prior to the beginning of harvest so that we may inspect the damaged production;

(2) You must give notice when knowledge is obtained of any mold damage or 15 days prior to harvest so that we may inspect the mold damaged production; and

(3) You must not sell or dispose of the damaged crop until we have given you written consent to do so.

(b) If you fail to meet the requirements of this section, all such production will be considered undamaged and included as production to count.

11. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional units, we will combine all optional units for which such production records were not provided; or

(2) For any basic units, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by the respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each variety or varietal group;

(3) Totaling the results in section 11(b)(2);

(4) Multiplying the total production to be counted of each variety or varietal group, if applicable, (see section 11(c)) by the respective price election;

(5) Totaling the results in section 11(b)(4);

(6) Subtracting the result in section 11(b)(5) from the result in section 11(b)(3); and

(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 \$0.61 per pound. You are only able to harvest 200,000 pounds. Your indemnity would be calculated as follows:

(1) 100 acres × 2,500 pounds = 250,000 pound insurance guarantee;

(2 & 3) 250,000 pounds × \$0.61 price election = \$152,500 total value of insurance guarantee;

(4 & 5) 200,000 pounds production to count × \$0.61 price election = \$122,000 total value of production to count;

(6) \$152,500 total value guarantee—\$122,000 total value of production to count = \$30,500 loss; and

(7) \$30,500 × 100 percent share = \$30,500 indemnity payment.

(c) The total production to count (whole in-shell pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is damaged solely by uninsured causes; or

(C) For which you fail to provide acceptable production records;

(ii) Production lost due to uninsured causes;

(iii) Unharvested production; and

(iv) Potential production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us

of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested production from the insurable acreage.

(d) Mature walnut production damaged due to an insurable cause of loss which occurs within the insurance period may be adjusted for quality based on an inspection by the Dried Fruit Association or during our loss adjustment process. Walnut production that has mold damage greater than 8 percent, based on the net delivered weight, will be reduced by the quality adjustment factors contained in the Special Provisions. Walnut production that exceeds 30 percent mold damage and will not be sold, the production to count will be zero.

12. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

[62 FR 20091, Apr. 25, 1997, as amended at 62 FR 65170, Dec. 10, 1997; 65 FR 47837, Aug. 4, 2000; 72 FR 10909, Mar. 12, 2007]

§ 457.123 Almond crop insurance provisions.

The Almond Crop Insurance Provisions for the 2008 and succeeding crop years are as follows:

FCIC Policies

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

Reinsured Policies

(Appropriate title for insurance provider)

Both FCIC and Reinsured Policies

Almond Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) The Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions with (1) controlling (2), etc.

1. Definitions

Harvest. The removal of mature almonds from the orchard.

Interplanted. Acreage on which two or more crops are planted in any form of alternating or mixed pattern.

Meat pounds. The total pounds of almond meats (whole, chipped and broken, and in-shell meats). In-shell almonds will be converted to meat pounds in accordance with FCIC approved procedures.