

## § 455.2

at the time of application, of any previous applications for a Contract under the Act and the present status of the applications or contracts.

### **§ 455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.**

(a) The Manager shall establish premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed for macadamia nuts which will be included in the actuarial table on file in the applicable service offices for the county and which may be changed from year to year.

(b) At the time of application for insurance is made, the applicant will elect a coverage level and price at which indemnities will be computed from among those levels and prices set by the actuarial table for the crop year.

### **§ 455.3 OMB control numbers.**

OMB control numbers are contained in subpart H of part 400, title 7 CFR.

### **§ 455.4 Creditors.**

An interest of a person in an insured crop existing by virtue of a lien, mortgage, garnishment, levy, execution, bankruptcy, involuntary transfer or other similar interest shall not entitle the holder of the interest to any benefit under the contract.

### **§ 455.5 Good faith reliance on misrepresentation.**

Notwithstanding any other provision of the macadamia nut insurance contract, whenever—

(a) An insured under a contract of crop insurance entered into under these regulations, as a result of a misrepresentation or other erroneous action or advice by an agent or employee of the Corporation or a Reinsured company:

(1) Is indebted to the Corporation or a Reinsured company for additional premiums; or

(2) Has suffered a loss to a crop which is not insured or for which the insured is not entitled to an indemnity because of failure to comply with the terms of the insurance contract, but which the

## 7 CFR Ch. IV (1-1-02 Edition)

insured believed to be insured, or believed the terms of the insurance contract to have been complied with or waived; and

(b) The Board of Directors of the Corporation, or the Manager in cases involving not more than \$100,000, or a Reinsured company finds that:

(1) An agent or employee of the Corporation or a Reinsured company did in fact make such misrepresentation or take other erroneous action or give erroneous advice;

(2) Said insured relied thereon in good faith; and

(3) To require the payment of the additional premiums or to deny such insured's entitlement to the indemnity would not be fair and equitable, such insured shall be granted relief the same as if otherwise entitled thereto.

Request for relief under this section must be submitted to the Corporation or to the Reinsured Company, whichever is applicable, in writing.

[53 FR 6569, Mar. 2, 1988, as amended at 54 FR 30007, July 18, 1989]

### **§ 455.6 The contract.**

The insurance contract shall become effective upon the acceptance by the Corporation or a Reinsured company of a duly executed application for insurance on a form prescribed by the Corporation or a Reinsured company. The contract shall cover the macadamia nut crop as provided in the policy. The contract shall consist of the application, the policy and the county actuarial table. This contract is not continuous. Application must be made annually for the macadamia nut contract on or prior to the sales closing date established by the actuarial table. The forms referred to in the contract are available at the applicable service offices.

### **§ 455.7 The application and policy.**

(a) Application for insurance on a form prescribed by the Corporation must be made by any person to cover such person's share in the macadamia nut crop as landlord, owner-operator, or tenant if the person wishes to participate in the program. The application shall be submitted to the Corporation or a Reinsured company at the

## Federal Crop Insurance Corporation, USDA

## § 455.7

service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation or a Reinsured company may discontinue the acceptance of any application or applications in any county upon its determination that the insurance risk is excessive. The Manager of the Corporation is authorized in any crop year to extend the sales closing date for submitting applications in any county, by placing the extended date on file in the applicable service offices and publishing a notice in the FEDERAL REGISTER upon the Manager's determination that no adverse selectivity will result during the extended period. However, if adverse conditions should develop during such period, the Corporation will immediately discontinue the acceptance of applications.

(c) A contract in the form provided for in this subpart will be in effect as a macadamia nut contract applicable for one year. A new application must be submitted for each subsequent crop year.

(d) The application is found at subpart D of part 400, General Administrative Regulations (7 CFR 400.37, 400.38). The provisions of the Macadamia Nut Crop Insurance Policy for the 1988 through 1997 crop years are as follows:

### DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### *Macadamia Nut—Crop Insurance Policy*

(This is NOT a continuous contract. Refer to Section 15)

**AGREEMENT TO INSURE:** We will provide the insurance described in this policy in return for the premium and your compliance with all applicable provisions.

Throughout this policy, "you" and "your" refer to the insured shown on the accepted application and "we," "us," and "our" refer to the Federal Crop Insurance Corporation.

### Terms and Conditions

#### 1. Causes of Loss

a. The insurance provided is against unavoidable loss of production resulting from the following causes occurring within the insurance period:

- (1) Adverse weather conditions;
- (2) Earthquake;
- (3) Fire;
- (4) Volcanic eruption;
- (5) Wildlife; or

(6) If applicable, failure of the irrigation water supply due to an unavoidable cause occurring after insurance attaches; unless those causes are excepted, excluded, or limited by the actuarial table or subsection 9.e.(4).

b. We will not insure against any loss of production due to:

(1) Unmarketability as a direct result of quarantine, boycott, or refusal of any entity to accept production unless production has actual physical damage due to a cause specified in subsection 1.a.;

(2) The neglect, mismanagement, or wrongdoing by you, any member of your household, your tenants, or employees;

(3) The failure to follow recognized good macadamia nut farming practices;

(4) Water contained by any governmental, public, or private dam or reservoir project;

(5) Flooding on any unit subject to a flood or water flowage easement;

(6) Flooding on any unit located between any body of water and a primary flood control structure for that body of water;

(7) Failure or breakdown of irrigation equipment or facilities;

(8) Failure to carry out a good macadamia nut irrigation practice; or

(9) Any cause not specified in subsection 1.a. as an insured cause of loss.

#### 2. Crop, Acreage, and Share Insured

a. The crop insured will be all varieties of macadamia nuts grown for processing on insurable acreage which has been inspected and accepted by us and for which a guarantee and premium rate are provided by the actuarial table.

b. The acreage insured for each crop year will be macadamia nuts grown on insurable acreage as designated by the actuarial table, and in which you have a share, as reported by you or as determined by us, whichever we elect.

c. The insured share is your share as landlord, owner-operator, or tenant in the insured macadamia nuts at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share on the earlier of:

- (1) The time of loss; or
- (2) The beginning of harvest.

d. We do not insure any macadamia nuts:

(1) If the farming practices carried out are not the same as those for which the guarantee and premium rate have been established;

(2) Of a type of variety not established as adapted to the area or excluded by the actuarial table;

(3) Produced by macadamia trees that have not reached the fifth growing season after transplanting or grafting;

(4) If the macadamia trees have not produced an average yield of at least 190 pounds

## § 455.7

of wet inshell nuts per acre in a previous year;

(5) If the trees are interplanted with a crop other than macadamia nuts;

(6) If acceptable production records of at least the previous crop year are not available;

(7) If there is less than a 50 percent stand of bearing trees based on the original planting pattern; or

(8) Which we consider not acceptable.

e. We may limit the insurable acreage to any acreage limitation established under any Act of Congress, if we advise you of the limit prior to the date insurance attaches.

### 3. Report of Acreage, Share, Variety, Practice, and Number of Bearing Trees

You must report on our form by unit:

a. All the acreage of macadamia nuts in the county in which you have a share;

b. Your share at the time insurance attaches;

c. The variety;

d. The dates on which the trees were transplanted or grafted;

e. The practice; and

f. The number of bearing trees.

You must designate separately any acreage that is not insurable. This report must be submitted annually prior to the time insurance attaches. If insurance is provided for an irrigated practice, you must report as irrigated only the acreage for which you have adequate facilities and water, at the time insurance attaches, to carry out a good macadamia nut irrigation practice. All indemnities may be determined on the basis of information you submit on this report. If you do not submit this report within 15 days after the time insurance attaches, we may elect to determine, by unit, the insured acreage, share, practice, and number of bearing trees, or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

### 4. Production Guarantees, Coverage Levels, and Prices for Computing Indemnities

a. The production guarantees, coverage levels, and prices for computing indemnities are contained in the actuarial table.

b. If the number of bearing trees (fifth growing season after transplanting or grafting and older) is reduced more than 10 percent from the preceding calendar year as a result of damage occurring within that year, the production guarantee will be reduced 1 percent for each percent reduction in excess of 10 percent.

c. You may change the coverage level and price election for the succeeding crop year on or before December 31 of the current crop year.

d. You must report production to us for the insured crop year by December 31 of that

## 7 CFR Ch. IV (1-1-02 Edition)

crop year. If you do not provide the required production report, we will assign a yield for the insured crop year. The yield assigned by us will not be more than 75 percent of the yield used to determine your guarantee for the insured crop year. The production report or assigned yield will be used to compute your production history for the purpose of determining your guarantee for the succeeding crop year. If you have filed a claim for the insured crop year, the production report will be calculated based on the actual production used to determine the indemnity payment.

### 5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the production guarantee times the price election, times the premium rate, times the insured acreage, times your share on the date insurance attaches.

b. Interest will accrue at the rate of one and one-fourth percent (1¼%) simple interest per calendar month, or any part thereof, on any unpaid premium balance starting on the first day of the month following the premium billing date.

### 6. Deductions for Debt

Any unpaid amount due us may be deducted from any indemnity payable to you or from any loan or payment due you under any Act of Congress or program administered by the United States Department of Agriculture or its agencies.

### 7. Insurance Period

Insurance on insurable acreage attaches for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the thirtieth (30th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage inspected by us and determined to be unacceptable. Insurance ends on a per-acre basis at the earliest of:

a. Total destruction of the macadamia nuts on the unit;

b. The date harvest would normally start on the unit on any acreage which will not be harvested;

c. Completion of harvest;

d. Final adjustment of a loss; or

e. June 30, 1998, for the 1997 crop year only.

### 8. Notice of Damage or Loss

a. You must give us written notice:

(1) Without delay if damage resulting in probable loss occurs at any time during the period before harvest; and

(2) At least fifteen (15) days before the beginning of harvest if you anticipate a loss on any unit.

b. If probable loss is determined within fifteen (15) days prior to or during harvest and you are going to claim an indemnity on any unit, you must give us notice not later than seventy-two (72) hours after the earliest of:

- (1) Total destruction of the macadamia nuts on the unit;
- (2) Discontinuance of harvest of any acreage on the unit;
- (3) The date harvest would normally start if any acreage on the unit is not to be harvested; or
- (4) June 30, 1998, for the 1997 crop year only.

c. You must obtain written consent from us before you destroy any of the macadamia nuts which are not to be harvested.

d. We may reject any claim for indemnity if you fail to comply with any of the requirements of this section or section 9.

#### 9. Claim for Indemnity

a. Any claim for indemnity on a unit must be submitted to us on our form not later than sixty (60) days after the earliest of:

- (1) Total destruction of the macadamia nuts on the unit;
- (2) Harvest of the unit; or
- (3) June 30, 1998, for the 1997 crop year only.

b. We will not pay any indemnity unless you:

- (1) Establish the total production of macadamia nuts on the unit and that any loss of production has been directly caused by one or more of the insured causes during the insurance period; and
- (2) Furnish all information we require concerning the loss.

c. The indemnity will be determined on each unit by:

- (1) Multiplying the insured acreage by the production guarantee;
- (2) Subtracting therefrom the total production of macadamia nuts to be counted (see subsection 9.e.);
- (3) Multiplying the remainder of the price election; and
- (4) Multiplying this product by your share.

d. If the information reported by you under section 3 of this policy results in a lower premium than the actual premium determined to be due, the production guarantee on the unit will be computed on the information reported, but all production from insurable acreage, whether or not reported as insurable, will count against the production guarantee.

e. The total production (wet inshell pounds) to be counted for a unit will include all harvested and appraised production.

(1) Appraised production to be counted will include:

- (a) Potential production lost due to uninsured causes and failure to follow recognized good macadamia nut farming practices;

(b) Not less than the guarantee for any acreage which is abandoned, damaged solely by an uninsured cause, or destroyed by you without our prior written consent; and

(c) Any production detached from trees and not removed from the orchard.

(2) Any appraisal we have made on insured acreage will be considered production to count unless such appraised production is:

- (a) Further damaged by an insured cause and reappraised by us; or
- (b) Harvested.

(3) We may determine the amount of production of any unharvested macadamia nuts on the basis of field appraisals conducted after the end of the insurance period.

(4) If you elect to exclude hail and fire as insured causes of loss and the macadamia nuts are damaged by hail or fire, appraisals will be made in accordance with Form FCI-78, "Request to Exclude Hail and Fire."

f. You must not abandon any acreage to us.

g. Any suit against us for an indemnity must be brought in accordance with the provisions of 7 U.S.C. 1508(c). You must bring suit within 12 months of the date notice of denial of the claim is received by you.

h. An indemnity will not be paid unless you comply with all policy provisions.

i. It is our policy to pay your indemnity within 30 days of our approval of your claim, or entry of a final judgment against us. We will, in no instance, be liable for the payment of damages, attorney's fees, or other charges in connection with any claim for indemnity, whether we approve or disapprove such claim. However, we will pay simple interest computed on the net indemnity ultimately found to be due to you, if the reason for non-payment is not due to your failure to provide information or other material necessary for the computation or payment of the indemnity. Interest due will be paid from and including the 61st day after the date you sign, date, and submit to us the properly completed claim-for-indemnity form. The interest rate will be that established by the Secretary of the Treasury under section 12 of the Contract Disputes Act of 1978 (41 U.S.C. 611), and published in the FEDERAL REGISTER semiannually on or about January 1 and July 1.

The interest rate to be paid on any indemnity will vary with the rate announced by the Secretary of the Treasury.

j. If you die, disappear, or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved after insurance attaches for any crop year, any indemnity will be paid to the persons determined to be beneficially entitled thereto.

k. If you have other fire insurance, fire damage occurs during the insurance period, and you have not elected to exclude fire insurance from this policy, we will be liable for

## § 455.7

loss due to fire only for the smaller of the amount:

(1) Of indemnity determined pursuant to this contract without regard to any other insurance; or

(2) By which the loss from fire exceeds the indemnity paid or payable under such other insurance.

For the purpose of this subsection, the amount of loss from fire will be the difference between the fair market value of the production on the unit before the fire and after the fire.

### 10. Concealment or Fraud

We may void the contract on all crops insured without affecting your liability for premiums or waiving any right, including the right to collect any amount due us if, at any time, you have concealed or misrepresented any material fact or committed any fraud relating to the contract. Such voidance will be effective as of the beginning of the crop year with respect to which such act or omission occurred.

### 11. Transfer of Right to an Indemnity— Insured Share

If you transfer any part of your share during the crop year, you may transfer your right to an indemnity. The transfer must be on our form and approved by us. We may collect the premium from either you or your transferee or both. The transferee will have all rights and responsibilities under the contract.

### 12. Assignment of Indemnity

You may assign to another party your right to an indemnity for the crop year, only on our form and with our approval. The assignee will have the right to submit the loss notices and forms required by the contract.

### 13. Subrogation (Recovery of Loss From a Third Party)

Because you may be able to recover all or a part of your loss from someone other than us, you must do all you can to preserve any such right. If we pay for your loss, then your right of recovery will, at our option, belong to us. If we recover more than we paid you plus our expenses, the excess will be paid to you.

### 14. Records and Access to Farm

You must keep, for three years, after the time of loss, records of the harvesting, storage, shipment, sale or other disposition of all macadamia nuts produced on each unit, including separate records showing the same information for production from any uninsured acreage. Failure to keep and maintain such records may, at our option, result in:

(a) Cancellation of the contract prior to the

## 7 CFR Ch. IV (1–1–02 Edition)

crop year to which the records apply; (b) assignment of production to units by us; or (c) a determination that no indemnity is due. Any person designated by us will have access to such records and the farm for purposes related to the contract.

### 15. Life of Contract

a. This contract will be in effect for the crop year specified on the application and may not be canceled by you for such crop year.

b. The term of this contract ends as shown in section 7 of this policy. We are under no obligation to send you any renewal notice or other notice that the contract term is ending and the receipt by you of any such notice is not a waiver of this provision.

c. If you die or are judicially declared incompetent, or if you are an entity other than an individual and such entity is dissolved, the contract will terminate as of the date of death, judicial declaration, or dissolution. If such event occurs after insurance attaches for any crop year, the contract will continue in force through the crop year and terminate at the end thereof. Death of a partner in a partnership will dissolve the partnership unless the partnership agreement provides otherwise. If two or more persons having a joint interest are insured jointly, death of one of the persons will dissolve the joint entity.

d. This contract will automatically terminate at the end of the current contract period unless we offer to renew the contract for a subsequent crop year and you accept.

### 16. Meaning of Terms

For the purposes of macadamia nut crop insurance:

a. *Actuarial table* means the forms and related material for the crop year approved by us. The Actuarial Table is available for public inspection in your service office and shows the production guarantees, coverage levels, premium rates, prices for computing indemnities, practices, insurable and uninsurable acreage, and related information regarding macadamia nut insurance in the country.

b. *County* means the county shown on the application and any additional land located in a local producing area bordering on the county, as shown by the actuarial table.

c. *Crop year* means the period beginning with the date insurance attaches and extending through the normal harvest time and will be designated by the calendar year in which the macadamia nuts are normally harvested.

d. *Harvest* means the picking of the macadamia nuts from the ground.

e. *Insurable acreage* means the land classified as insurable by us and shown as such by the actuarial table.

## Federal Crop Insurance Corporation, USDA

## § 456.1

f. *Insured* means the person who submitted the application accepted by us.

g. *Person* means an individual, partnership, association, corporation, estate, trust, or other legal entity, and wherever applicable, a State or a political subdivision or agency of a State.

h. *Service office* means the office servicing your contract as shown on the application for insurance or such other approved office as may be selected by you or designated by us.

i. *Tenant* means a person who rents land from another person for a share of the macadamia nuts or a share of the proceeds therefrom.

j. *Unit* means all insurable acreage of macadamia nuts in the county on the date of planting for the crop year:

(1) In which you have a 100 percent share; or

(2) Which is owned by one entity and operated by another entity on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the macadamia nuts on such land will be considered as owned by the lessee.

Land which would otherwise be one unit may be divided according to applicable guidelines on file in your service office. Units will be determined when the acreage is reported. Errors in reporting units may be corrected by us to conform to applicable guidelines when adjusting a loss. We may consider any acreage and share thereof reported by or for your spouse or child or any member of your household to be your bona fide share or the bona fide share of any other person having an interest therein.

k. *Wet inshell* means the weight of the macadamia nuts as they are removed from the orchard with the nuts meats in the shells after removal of the husk and prior to being dried.

### 17. Descriptive Headings

The descriptive headings of the various policy terms and conditions are formulated for convenience only and are not intended to affect the construction or meaning of any of the provisions of the contract.

### 18. Determinations

All determinations required by the policy will be made by us. If you disagree with our determinations, you may obtain reconsideration of or appeal those determinations in accordance with the Appeal Regulations (7 CFR Part 400, Subpart J).

### 19. Notices

All notices required to be given by you must be in writing and received by your service office within the designated time unless otherwise provided by the notice requirement. Notices required to be given im-

mediately may be by telephone or in person and confirmed in writing. Time of the notice will be determined by the time of our receipt of the written notice.

20. Notwithstanding the terms of the crop insurance policy and any contract for crop insurance under the provisions of this part, coverage under the terms of such crop insurance policy will be effective subject to the availability of appropriations.

[53 FR 6569, Mar. 2, 1988, as amended at 55 FR 35887, Sept. 4, 1990; 62 FR 35662, 35664, July 2, 1997]

## PART 456—MACADAMIA TREE CROP INSURANCE REGULATIONS FOR THE 1988 THROUGH 1997 CROP YEARS

Sec.

456.1 Availability of macadamia tree crop insurance.

456.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.

456.3 OMB control numbers.

456.4 Creditors.

456.5 Good faith reliance on misrepresentation.

456.6 The contract.

456.7 The application and policy.

AUTHORITY: 7 U.S.C. 1506(1), 1506(p).

SOURCE: 53 FR 31827, Aug. 22, 1988, unless otherwise noted.

### § 456.1 Availability of macadamia tree crop insurance.

Insurance shall be offered under the provisions of this subpart on the insured crop in counties within the limits prescribed by and in accordance with the provisions of the Federal Crop Insurance Act, as amended (the Act). The counties shall be designated by the Manager of the Corporation from those approved by the Board of Directors of the Corporation. The insurance is offered through two methods. First, the Corporation offers the contract contained in this part directly to the insured through Agents of the Corporation. Those contracts are specifically identified as being offered by the Federal Crop Insurance Corporation. Second, companies reinsured by the Corporation offer contracts containing substantially the same terms and conditions as the contract set out in this part. No person may have in force more than one contract on the same crop for