

**§ 457.130**

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corn by the minimum value for the planting period:

(i) Unharvested marketable sweet corn production (unharvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is later harvested and sold for any purpose);

(ii) Production lost due to uninsured causes; and

(iii) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) We may require you to continue to care for the crop so that a subsequent appraisal may be made or the crop harvested to determine actual production (If we require you to continue to care for the crop and you do not do so, the original appraisal will be used); or

(B) You may elect to continue to care for the crop, in which case the amount of production to count for the acreage will be the harvested production, or our reappraisal if the crop is not harvested.

(3) The value of all harvested production of sweet corn from the insurable acreage, except production that is sold by direct marketing as specified in section (c)(4) below:

(i) For sold production, will be the greater of:

(A) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by the minimum value; or

(B) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold by the total number of all containers of sweet corn sold.

(ii) For marketable sweet corn production that is not sold, will be the dollar amount obtained by multiplying the number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be counted as production to count unless such production is sold.

(4) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(i) The actual value received by you for direct marketed production; or

(ii) The dollar amount obtained by multiplying the total number of containers of appraised sweet corn sold by direct marketing by the minimum value.

**15. Late and Prevented Planting**

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

**16. Minimum Value Option**

(a) The provisions of this option are continuous and will be attached to and made a part of your insurance policy, if:

(1) You elect the Minimum Value Option on your application, or on a form approved by us, on or before the sales closing date for the initial crop year in which you wish to insure sweet corn under this option, and pay the additional premium indicated in the actuarial documents for this optional coverage; and

(2) You have not elected coverage under the Catastrophic Risk Protection Endorsement.

(b) In lieu of the provisions contained in section 14(c)(3) of these Crop Provisions, the total value of harvested production that is not sold by direct marketing will be determined as follows:

(1) The dollar amount obtained by multiplying the average net value per container from all sweet corn sold (this result may not be less than the minimum value option amount if such amount is provided in the Special Provisions) by the total number of all containers of sweet corn sold;

(2) For marketable sweet corn production that is not sold, the value of such production will be the dollar amount obtained by multiplying the total number of containers of such sweet corn by the minimum value for the planting period. Harvested production that is damaged or defective due to insurable causes and is not marketable will not be included as production to count.

(c) If all the requirements of insurability are met, the value of insurable production that is sold by direct marketing will be the greater of:

(1) The actual value received by you for direct marketed production; or

(2) The dollar amount obtained by multiplying the total number of containers of sweet corn sold by direct marketing by the minimum value.

(d) This option may be canceled by either you or us for any succeeding crop year by giving written notice on or before the cancellation date preceding the crop year for which the cancellation of this option is to be effective.

[62 FR 14783, Mar. 28, 1997; 62 FR 26205, May 13, 1997, as amended at 62 FR 65171, Dec. 10, 1997; 72 FR 54523, Sept. 26, 2007; 72 FR 62767, Nov. 7, 2007]

**§ 457.130 Macadamia tree crop insurance provisions.**

The macadamia tree crop insurance provisions for the 2011 and succeeding crop years are as follows:

FCIC Policies

## Federal Crop Insurance Corporation, USDA

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

### *Reinsured Policies*

(Appropriate title for insurance provider).

Both FCIC and reinsured policies:

### *Macadamia Tree Crop Provisions*

#### 1. Definitions

*Age.* The number of complete 12-month periods that have elapsed since the month the trees were set out or were grafted, whichever is later. Age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

*Crop year.* A period beginning with the date insurance attaches to the macadamia tree crop extending through December 31 of the same calendar year. The crop year is designated by the calendar year in which insurance attaches.

*Destroyed.* Trees damaged to the extent that we determine replacement, including grafts, is required.

*Good farming practices.* The cultural practices generally in use in the county for the crop to have normal growth and vigor, and are those recognized by the National Institute of Food and Agriculture as compatible with agronomic and weather conditions in the area.

*Graft.* The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

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

*Irrigated practice.* A method by which the normal growth and vigor of the insured trees is maintained by artificially applying adequate quantities of water during the growing season by appropriate systems and at the proper times.

*Rootstock.* The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

#### 2. Unit Division

(a) Sections 34(b)(1), (3), and (4) of the Basic Provisions are not applicable.

(b) 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. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of insurable age macadamia trees; or

(2) Is located on non-contiguous land.

(c) You must have provided records, which can be independently verified, of acreage and age of trees for each unit for at least the last crop year.

#### 3. Insurance Guarantees, Coverage Levels, and Dollar Amounts for Determining Indemnities

(a) In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(1) You may select only one dollar amount of insurance for all the macadamia trees in the county in each age group contained in the actuarial table that are insured under this policy. The dollar amount of insurance you choose for each age group must have the same percentage relationship to the maximum dollar amount offered by us for each age group. For example, if you choose 100 percent of the maximum dollar amount of insurance for one age group, you must also choose 100 percent of the maximum dollar amount of insurance for all other age groups.

(2) If the stand is less than 90 percent, based on the original planting pattern, the dollar amount of insurance will be reduced 1 percent for each percent below 90 percent. For example, if the dollar amount of insurance you selected is \$2,000 and the stand is 85 percent of the original stand, the dollar amount of insurance on which any indemnity will be based is \$1,900 (\$2,000 multiplied by 0.95).

(3) You must report, by the sales closing date contained in the Special Provisions, by type if applicable:

(i) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the dollar amount of insurance and the number of affected acres;

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

(iii) The month and year on which the trees were set out or grafted and the planting pattern;

(iv) For the first year of insurance following replacement, the month and year of replacement if more than 10 percent of the trees on any unit have been replaced in the previous five crop years; and

(v) For the first year of insurance for acreage interplanted with another perennial crop, and any time the planting pattern of such acreage is changed:

(A) The age of the interplanted crop, and type if applicable;

(B) The planting pattern; and

(C) Any other information that we request in order to establish your dollar amount of insurance.

We will reduce the dollar amount of insurance as necessary, based on our estimate of the effect of interplanted perennial crop, removal of trees, damage, change in practices, and any other circumstance that adversely affects the insured crop. If you fail to notify us of any circumstance that may reduce your dollar amount of insurance from previous levels, we will reduce your dollar

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amount of insurance as necessary at any time we become aware of the circumstance.

(b) The production reporting requirements contained in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8), do not apply to macadamia trees.

### 4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions (§457.8), the contract change date is August 31 preceding the cancellation date.

### 5. Cancellation and Termination Dates

In accordance with section 2 (Life of Policy, Cancellation, and Termination) of the Basic Provisions (§457.8), the cancellation and termination dates are December 31.

### 6. Insured Crop

In accordance with section 8 (Insured Crop) of the Basic Provisions (§457.8), the crop insured will be all macadamia trees in the county for which a premium rate is provided by the actuarial table:

- (a) In which you have a share;
- (b) That are grown for the production of macadamia nuts;
- (c) For which the rootstock is adapted to the area;
- (d) That are at least one year of age when the insurance period begins; and
- (e) That, if the orchard is inspected, is considered acceptable by us.

### 7. Insurable Acreage

In lieu of the provisions in section 9 (Insurable Acreage) of the Basic Provisions (§457.8), that prohibit insurance attaching to a crop planted with another crop, macadamia trees 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 (Insurance Period) of the Basic Provisions (§457.8):

(1) Coverage begins on January 1 of each crop year, except that for the year of application, if your application is received after December 22 but prior to January 1, 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 December 31.

(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.

(2) If you relinquish your insurable share on any insurable acreage of macadamia trees 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 (Causes of Loss) 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 other forms of undergrowth have not been controlled or pruning debris has not been removed from the orchard;
- (3) Earthquake;
- (4) Volcanic eruption;
- (5) Wildlife, unless proper measures to control wildlife have not been taken; or
- (6) Failure of irrigation water supply, if caused by an insured cause of loss 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 damage due to disease or insect infestation, unless adverse weather:

- (1) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or
- (2) Causes disease or insect infestation for which no effective control mechanism is available.

### 10. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§457.8), in case of damage or probable loss, if you intend to claim an indemnity on any unit, you must allow us to inspect all insured acreage before pruning or removing any damaged trees.

## 11. Settlement of Claim

(a) We will determine your loss on a unit basis.

(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 dollar amount of insurance per acre for each age group;

(2) Totaling the results in section 11(b)(1);

(3) Multiplying the total dollar amount of insurance obtained in section 11(b)(2) by the applicable percent of loss, which is determined as follows:

(i) Subtract the coverage level percent you elected from 100 percent;

(ii) Subtract the result obtained in section 11(b)(3)(i) from the actual percent of loss;

(iii) Divide the result in section 11(b)(3)(ii) by the coverage level you elected (For example, if you elected the 75 percent coverage level and your actual percent of loss was 70 percent, the percent of loss specified in section 11(b)(3) would be calculated as follows:  $100\% - 75\% = 25\%$ ;  $70\% - 25\% = 45\%$ ;  $45\% + 75\% = 60\%$ .); and

(4) Multiply the result in section 11(b)(3) by your share.

(c) The total amount of loss will include both trees damaged and trees destroyed as follows:

(1) Any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged; and

(2) Any percent of damage by uninsured causes will not be included in the percent of loss.

## 12. Late and Prevented Planting

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

[62 FR 35668, July 2, 1997, as amended at 62 FR 65172, Dec. 10, 1997; 75 FR 15887, Mar. 30, 2010; 76 FR 4804, Jan. 27, 2011]

### §457.131 Macadamia nut crop insurance provisions.

The macadamia nut crop insurance provisions for the 2012 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:

*Macadamia Nut Crop Provisions*

## 1. Definitions

*Age.* The number of complete 12-month periods that have elapsed since the month the

trees were set out or were grafted, whichever is later. An age determination will be made for each unit, or portion thereof, as of January 1 of each crop year.

*Crop year.* A period beginning with the date insurance attaches to the macadamia nut crop and extending through the normal harvest time. The crop year is designated by the calendar year in which the insurance period ends.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper or buyer. Examples of direct marketing include selling through an on-farm or roadside stand, farmer's market, and permitting the general public to enter the orchard for the purpose of picking all or a portion of the crop.

*Graft.* The uniting of a macadamia shoot to an established macadamia tree rootstock for future production of macadamia nuts.

*Harvest.* Picking of mature macadamia nuts from the ground.

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

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

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

*Rootstock.* The root and stem portion of a macadamia tree to which a macadamia shoot can be grafted.

*Wet in-shell.* The weight of the macadamia nuts as they are removed from the orchard with the nut meats in the shells after removal of the husk but prior to being dried.

## 2. Unit Division

(a) Section 34(b)(1) of the Basic Provisions is not applicable.

(b) 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. Unless otherwise allowed by written agreement, optional units may be established only if each optional unit:

(1) Contains at least 80 acres of bearing macadamia trees; or

(2) Is located on non-contiguous land.

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

In addition to the requirements of section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§457.8):

(a) You may select only one price election for all the macadamia nuts in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one