

year is not conducive to maintaining actual production history (APH) records or establishing effective loss adjustment procedures.

FCIC has published new macadamia nut crop insurance provisions that will attach to the Common Crop Insurance Policy Basic Provisions for the 1999 and succeeding crop years. These changes will result in the 1998 crop year being incorporated into the 1997 and 1999 policies. Insurance coverage under the new macadamia nut crop provisions will attach on January 1, 1998, and the end of the insurance period will be June 30, 1999, for the 1999 crop year.

Coverage against insured causes of loss will be provided on all macadamia nut blooms and nuts normally produced during the production year that extends from July 1 to June 30 of the next calendar year. From January 1 to June 30 of the first calendar year of each insurance period, coverage against insured causes of loss will only be provided on the macadamia nut blooms and immature macadamia nuts that normally produce mature nuts during the production year that will start July 1. Therefore, an extension of the 1997 crop year is necessary to provide macadamia nut coverage for the latter six months of the production year that began July 1, 1997. Thereafter, each crop insurance period will include a complete production year.

No additional premium or administrative fee will be due for catastrophic risk protection, limited coverage, or additional coverage insurance that is extended for the crop year. A premium and administrative fee has been paid for the 1997 crop year, and there will be no 1998 crop year. Therefore, good cause exists to make this rule effective upon publication without prior notice and the opportunity to comment before the rule is effective.

#### List of Subjects in 7 CFR Part 455

Crop insurance, Macadamia nuts.

#### Interim Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR part 455, as follows:

#### PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 455 is revised to read as follows:

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

2. In § 455.7(d), in the Macadamia Nut Crop Insurance Policy, revise 7.(e), 8.(b)(4), and 9.(2)(3) to read as follows:

#### § 455.7 The application and policy.

\* \* \* \* \*

#### Macadamia Nut—Crop Insurance Policy

##### 7. Insurance Period

\* \* \* \* \*

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

\* \* \* \* \*

##### 8. Notice of Damage or Loss

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) \* \* \*

(4) June 30, 1998, for the 1997 crop year only.

\* \* \* \* \*

##### 9. Claim for Indemnity

(a) \* \* \*

(1) \* \* \*

(2) \* \* \*

(3) June 30, 1998, for the 1997 crop year only.

\* \* \* \* \*

Signed in Washington, D.C., on June 26, 1997.

**Kenneth D. Ackerman,**

*Manager, Federal Crop Insurance Corporation.*

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#### DEPARTMENT OF AGRICULTURE

#### Federal Crop Insurance Corporation

#### 7 CFR Parts 455 and 457

#### Macadamia Nut Crop Insurance Regulations; and Common Crop Insurance Regulations, Macadamia Nut Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of macadamia nuts. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current macadamia nut crop insurance regulations with the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current macadamia nut crop insurance regulations to the 1997 and prior crop years.

**EFFECTIVE DATES:** July 2, 1997.

**FOR FURTHER INFORMATION CONTACT:** Stephen Hoy, Insurance Management

Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

#### Executive Order No. 12866

The Office of Management and Budget (OMB) has determined this rule to be exempt for the purposes of Executive Order No. 12866, and, therefore, has not been reviewed by OMB.

#### Paperwork Reduction Act of 1995

Following publication of the proposed rule, the public was afforded 60 days to submit written comments and opinions on information collection requirements previously approved by OMB under OMB control number 0563-0053 through September 30, 1998. No public comments were received.

#### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

#### Executive Order No. 12612

It has been determined under section 6(a) of Executive Order No. 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on states or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The new provisions included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, a producer is required to complete an application and acreage report. If the crop is damaged or destroyed, the insured is required to give notice of loss and provide the necessary information to complete a claim for indemnity. The producer must also annually certify to the previous

years production if adequate records are available to support the certification. The producer must maintain the production records to support the certified information for at least three years. This regulation does not alter those requirements. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

#### **Federal Assistance Program**

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

#### **Executive Order No. 12372**

This program is not subject to the provisions of Executive Order No. 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

#### **Executive Order No. 12988**

This final rule has been reviewed in accordance with Executive Order No. 12988. The provisions of this rule will not have a retroactive effect prior to the effective date. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review may be brought.

#### **Environmental Evaluation**

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### **National Performance Review**

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicative regulations and improve those that remain in force.

#### **Background**

On Friday, April 18, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 19063-19067 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.131, Macadamia Nut

Crop Insurance Provisions. The new provisions will be effective for the 1999 and succeeding crop years. These provisions will replace and supersede the current provisions for insuring macadamia nuts found at 7 CFR part 455 (Macadamia Nut Crop Insurance Regulations). FCIC also amends 7 CFR part 455 to limit its effect to the 1997 and prior crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 14 comments were received from reinsured companies, a crop insurance agent, an insurance service organization, and an FCIC Regional Service Office (RSO). The comments received and FCIC's responses are as follows:

*Comment:* An insurance service organization and a reinsured company recommended that the word "field" in the last line of the definition of "Direct marketing" be replaced by the word "orchard."

*Response:* FCIC agrees and has revised the definition accordingly.

*Comment:* An insurance service organization and a reinsured company expressed concern with the definition of "Good farming practices," which makes reference to "cultural practices generally in use in the county \* \* \* recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county." The commenter questioned whether cultural practices exist that are not necessarily recognized (or possibly known) by the Cooperative State Research, Education, and Extension Service. The commenter also indicated that the term "county" in the definition of "Good farming practices" should be changed to "area."

*Response:* FCIC believes that the Cooperative State Research, Education, and Extension Service (CSREES) recognizes farming practices that are considered acceptable for producing macadamia nuts. If a producer is following practices currently not recognized as acceptable by the CSREES, there is no reason why such recognition cannot be sought by interested parties. The cultural practices recognized by the CSREES may pertain only to specific areas within a county. Such limitation would be considered by FCIC; therefore, no change has been made. FCIC agrees with the recommendation to change the term "county" to "area" in the definition of "Good farming practice" and has revised the definition accordingly.

*Comment:* An insurance service organization recommended that the

summary of changes in the proposed rule should have indicated that the definition of "Harvest" in section 1 had been changed from the definition in the insurance service organization's policy which defines "Harvest" as "The removal of the macadamia nuts from the orchard."

*Response:* The summary of changes in the proposed rule addressed substantive changes between the proposed provisions and the current Macadamia Nut Crop Insurance Policy issued by FCIC. No comparison was made to the insurance service organization's policy.

*Comment:* Comments received from reinsured companies, a crop insurance agent, an insurance service organization, and an FCIC RSO expressed concern that the provisions for an optional unit in section 2(e) (3) and (4), as proposed, would require each unit to contain at least 80 acres of bearing macadamia trees and be located on non-contiguous land. Optional unit division guidelines currently require at least 80 acres of bearing macadamia trees. Requiring both minimum acreage and non-contiguous land would severely limit the number of units allowed, particularly for growers with large, contiguous orchards. The majority of commenters recommended that the word "and" be replaced with "or" so that the provisions require each optional unit to be at least 80 acres of bearing macadamia trees or be located on non-contiguous land.

*Response:* FCIC agrees and has revised the requirements accordingly.

*Comment:* A reinsured company questioned the reason for the "10-day period" to inspect the acreage as specified in section 8(a)(1). The commenter indicated that the period limits their ability to reject an unacceptable orchard. In addition, an insurance service organization recommended that a specific date (by which an application must be received for insurance to attach on January 1) should not be listed. Instead of a date, this section should state "if your application is received less than ten days before the sales closing date."

*Response:* FCIC believes that the insurance provider must expedite its review of the application and any supporting documentation filed by the producer, determine if a visual inspection of the orchard is necessary, and perform any inspection within the 10-day period. The period of 10 days is believed appropriate to meet the needs of both the producer and the insurance provider. Listing the date by which an application must be received for insurance to attach on January 1 is more specific, avoids possible confusion, and

is consistent with other perennial crop policies. No change has been made to these provisions.

*Comment:* An insurance service organization stated that section 11(c)(1)(iv) should not allow the insured to defer settlement and wait for a later, generally lower, appraisal, especially on crops that have a short "shelf life."

*Response:* A later appraisal will only be necessary if the insurance provider agrees that such an appraisal would result in a more accurate determination and if the producer continues to care for the crop. If the producer does not continue to care for the crop, the original appraisal will be used. No change will be made to these provisions.

*Comment:* An insurance service organization and a reinsured company recommended removal of the requirement for a written agreement to be renewed each year. If no substantive changes occur from one year to the next, allow the written agreement to be continuous.

*Response:* Written agreements are intended to supplement policy terms or permit insurance in unusual situations that require modification of the otherwise standard insurance provisions. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is not intended that written agreements be so numerous that they would significantly increase administrative costs and cause producer misunderstanding. It is important to minimize written agreement exceptions to assure that the insured is well aware of the specific terms of the policy. Therefore, no change will be made.

In addition to the changes described above, FCIC has made the following editorial changes to the Macadamia Nut Provisions:

1. Section 2(e)—Modified the language to clarify optional unit requirements. For each optional unit, the producer must have provided records of acreage and production by the production reporting date and maintain records of marketed production or measurement of stored production for each crop year. Each optional unit must also meet specific criteria unless otherwise specified by written agreement.

2. Section 3(c)—Added to clarify that the producer's production guarantee will be determined according to the APH regulations unless damage or changes to the orchard or trees require establishment of the yield by another method.

3. Section 3(d)—Added to clarify that instead of reporting the previous year's production, a one year lag period will

occur and the producer will report production from two crop years ago.

4. Section 8(a)—Clarified that the calendar date for the end of the insurance period is the second June 30th after insurance attaches.

5. Section 10(c)—Clarified that the producer must not destroy the damaged crop until after the insurance provider has given written consent to do so.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule improves the macadamia nut insurance coverage and brings it under the Common Crop Insurance Policy Basic Provisions for consistency among policies. The current regulations are not continuous, and actuarial filing date for the 1999 crop year is August 31, 1997. It is, therefore, imperative that these provisions be made final before that date so that the reinsured companies may have sufficient time to implement these changes. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1999 crop year.

#### List of Subjects in 7 CFR Parts 455 and 457

Crop insurance, Macadamia nuts.

#### Final Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 455 and 457, as follows:

#### PART 455—MACADAMIA NUT CROP INSURANCE REGULATIONS FOR THE 1988 THROUGH THE 1997 CROP YEARS

1. The authority citation for 7 CFR part 455 is revised to read as follows:

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

2. The part heading is revised to read as set forth above.

3. The subpart heading "Subpart—Regulations for the 1988 and Succeeding Crop Years" is removed.

4. Section 455.7 is amended by revising the introductory text of paragraph (d) to read as follows:

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

\* \* \* \* \*

(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:

\* \* \* \* \*

#### PART 457—COMMON CROP INSURANCE REGULATIONS; REGULATIONS FOR THE 1994 AND SUBSEQUENT CONTRACT YEARS

5. The authority citation for 7 CFR part 457 continues to read as follows:

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

6. Section 457.131 is added to read as follows:

#### **§ 457.131 Macadamia nut crop insurance provisions.**

The Macadamia Nut Crop Insurance Provisions for the 1999 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

If a conflict exists among the Basic Provisions (§ 457.8), these Crop Provisions, and the Special Provisions; the Special Provisions will control these Crop Provisions and the Basic Provisions; and these Crop Provisions will control the Basic 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.

*Days.* Calendar days.

*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.

*Good farming practices.* The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee, and are those recognized by the Cooperative State Research, Education, and Extension Service 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.

*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.

*Irrigated practice.* A method of producing a crop by which water is artificially applied

during the growing season by appropriate systems and at the proper times, with the intention of providing the quantity of water needed to produce at least the yield used to establish the irrigated production guarantee on the irrigated acreage planted to the insured crop.

**Non-contiguous.** Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or irrigation canal will be considered as contiguous.

**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.

**Written agreement.** A written document that alters designated terms of this policy in accordance with section 12.

## 2. Unit Division.

(a) Unless limited by the Special Provisions, a unit as defined in section 1 (Definitions) of the Basic Provisions (§ 457.8), (basic unit) may be divided into optional units if, for each optional unit, you meet all the conditions of this section.

(b) Basic units may not be divided into optional units on any basis other than as described in this section.

(c) If you do not comply fully with these provisions, we will combine all optional units that are not in compliance with these provisions into the basic unit from which they were formed. We will combine the optional units at any time we discover that you have failed to comply with these provisions. If failure to comply with these provisions is determined to be inadvertent, and the optional units are combined into a basic unit, that portion of the additional premium paid for the optional units that have been combined will be refunded to you for the units combined.

(d) All units you selected for the crop year must be identified on the acreage report for that crop year.

(e) The following requirements must be met for each optional unit:

(1) You must have provided records by the production reporting date, which can be independently verified, of acreage and production for each optional unit for at least the last crop year used to determine your production guarantee;

(2) For each crop year, records of marketed production or measurement of stored production from each optional unit must be maintained in such a manner that permits us to verify the production from each optional unit, or the production from each unit must be kept separate until loss adjustment is completed by us;

(3) Each optional unit must meet one or more of the following criteria, as applicable, unless otherwise specified by written agreement:

(i) Contain at least 80 acres of bearing macadamia trees; or

(ii) Be 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 price election for each macadamia nut type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for one type, you must also choose 100 percent of the maximum price election for all other types.

(b) You must report, by the production reporting date designated in section 3 (Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities) of the Basic Provisions (§ 457.8), by type 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; and

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

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

(ii) The planting pattern; and

(iii) 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 circumstance.

(c) The yield used to compute your production guarantee will be determined in accordance with Actual Production History (APH) regulations, 7 CFR part 400, subpart G, and applicable policy provisions unless damage or changes to the orchard or trees require establishment of the yield by another method. In the event of such damage or changes, the yield will be based on our appraisal of the potential of the insured acreage for the crop year.

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions (§ 457.8), there is a one year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2001

crop year production report, you will provide your 1999 crop year production.

## 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 nuts 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 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 rootstock that is adapted to the area.

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

(d) That are grown on trees that have reached at least the fifth growing season after being set out or grafted. However, we may agree in writing to insure acreage that has not reached this age if it has produced at least 200 pounds of (wet, in-shell) macadamia nuts per acre in a previous crop year; and

(e) That are produced from blooms that normally occur during the calendar year in which insurance attaches and that are normally harvested prior to the end of the insurance period.

## 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 nuts 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 the second June 30th after insurance attaches.

(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 nuts 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 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 damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather;

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the macadamia nuts for any reason other than actual physical damage 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.

In addition to the requirements of section 14 (Duties in the Event of Damage or Loss) of the Basic Provisions (§ 457.8), the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the

production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest, so that we may inspect the damaged production. You must not destroy the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it 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 for each type, if applicable, by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election for each type, if applicable;

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

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

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

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

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

(c) The total production to count (wet, 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 sold by direct marketing if you fail to meet the requirements contained in section 10;

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

(D) 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.

#### 12. Written Agreements.

Terms of this policy that are specifically designated for the use of written agreement may be altered by written agreement in accordance with the following:

(a) You must apply in writing for each written agreement no later than the sales closing date, except as provided in section 12(e);

(b) The application for a written agreement must contain all variable terms of the contract between you and us that will be in effect if the written agreement is not approved;

(c) If approved, the written agreement will include all variable terms of the contract, including, but not limited to, crop type or variety, the guarantee, premium rate, and price election;

(d) Each written agreement will only be valid for one year (If the written agreement is not specifically renewed the following year, insurance coverage for subsequent crop years will be in accordance with the printed policy); and

(e) An application for a written agreement submitted after the sales closing date may be approved if, after a physical inspection of the acreage, it is determined that no loss has occurred and the crop is insurable in accordance with the policy and written agreement provisions.

Signed in Washington D.C., on June 26, 1997.

**Kenneth D. Ackerman,**  
Manager, Federal Crop Insurance Corporation.

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Parts 456 and 457

#### Macadamia Tree Crop Insurance Regulations; and Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of macadamia trees. The provisions will be used in conjunction with the Common Crop Insurance Policy Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to provide policy changes to better meet the needs of the insured, include the current macadamia tree crop insurance