

j. *Planting* means transplanting the tomato plants into the field.

k. *Plant stand* means the number of live plants per acre before the plants were damaged due to insurable causes.

l. *Potential production* means the number of 25-pound cartons of mature green or ripe tomatoes with classification size of 6 x 7 (2 $\frac{1}{2}$  inch minimum diameter) or larger which the tomato plants would produce or would have produced, per acre, by the end of the insurance period.

m. *Replanting* means performing the cultural practices necessary to replant insured acreage to tomatoes.

n. *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.

o. *Tenant* means a person who rents land from another person for a share of the tomatoes or a share of the proceeds therefrom.

p. *Tomatoes grown for direct consumer marketing* means tomatoes grown for the purpose of selling directly to the consumer.

q. *Unit* means all insurable acreage of tomatoes in the county on the date of planting for the crop year:

- (1) In which you have 100 percent share; or
- (2) Which is owned by one person and operated by another person on a share basis.

Land rented for cash, a fixed commodity payment, or any consideration other than a share in the tomatoes 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.

#### 18. 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.

#### 19. 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).

#### 20. 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 immediately 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.

21. 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.

[52 FR 4593, Feb. 13, 1987, as amended at 53 FR 46850, Nov. 21, 1988; 54 FR 48077, Nov. 21, 1989; 55 FR 35888, Sept. 4, 1990; 62 FR 23631, May 1, 1997; 62 FR 63633, Dec. 2, 1997]

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

#### Sec.

- 455.1 Availability of macadamia nut crop insurance.
- 455.2 Premium rates, production guarantees, coverage levels, and prices at which indemnities shall be computed.
- 455.3 OMB control numbers.
- 455.4 Creditors.
- 455.5 Good faith reliance on misrepresentation.
- 455.6 The contract.
- 455.7 The application and policy.

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

SOURCE: 53 FR 6569, Mar. 2, 1988, unless otherwise noted.

#### §455.1 Availability of macadamia nut crop insurance.

(a) 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 (hereinafter “Reinsured companies”) 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 the crop year, whether insured by the Corporation or insured by a Reinsured company. If a person has more than one contract under the Act outstanding on the same crop for the same crop year, all such contracts will be voided for that crop year but the person will still be liable for the premium on all contracts unless the person can show to the satisfaction of the Corporation that the multiple contract insurance was inadvertent and without the fault of the insured. If the multiple contract insurance is shown to be inadvertent and without the fault of the insured, the contract with the earliest application will be valid and all other contracts on that crop for that crop year will be cancelled. No liability for indemnity or premium will attach to the contracts so cancelled. The person must repay all amounts received in violation of this section with interest at the rate contained in the contract for delinquent premiums.

(b) An insured whose contract with the Corporation or with a Reinsured company under the Act has been terminated because of violation of the terms of the contract is not eligible to obtain multi-peril crop insurance under the Act with the Corporation or with a Reinsured company unless the insured can show that the default in the prior contract was cured prior to the sales closing date of the contract applied for or unless the insured can show that the termination was improper and should not result in subsequent ineligibility. All applicants for insurance under the Act must advise the agent, in writing, 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