

(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 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.

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(l), 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 the crop year, whether insured by the Corporation or insured by a company which is reinsured by the Corporation. 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.

An insured whose contract with the Corporation or with a Company reinsured by the Corporation 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 company reinsured by the Corporation 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.

§ 456.2 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 trees 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 the 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.

§ 456.3 OMB control numbers.

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

§ 456.4 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.

§ 456.5 Good faith reliance on misrepresentation.

Notwithstanding any other provision of the macadamia tree 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:

(1) Is indebted to the Corporation 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 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 \$100,000.00, finds that: (1) An agent or employee of the Corporation 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. Requests for relief under this section must be submitted to the Corporation in writing.

§ 456.6 The contract.

The insurance contract shall become effective upon the acceptance by the Corporation (or by a Company reinsured by the Corporation) of a duly executed application for insurance on a

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form prescribed by the Corporation. The contract shall cover the macadamia tree 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 tree 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.

§ 456.7 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 tree crop as landlord or owner-operator if the person wishes to participate in the program. The application must be submitted to the Corporation (or the Company reinsured by the Corporation) at the service office on or before the applicable sales closing date on file in the service office.

(b) The Corporation 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 tree 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 Tree Crop Insurance Policy for the 1988 through 1997 crop years are as follows:

7 CFR Ch. IV (1-1-00 Edition)

MACADAMIA TREE 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 damage to macadamia trees resulting from the following causes occurring within the insurance period:

- (1) Fire;
- (2) Volcanic eruption; or
- (3) Wind;

Unless those causes are excepted, excluded, or limited by this policy or the actuarial table.

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

- (1) Fire, where weeds and other forms of undergrowth have not been controlled or tree pruning debris has not been removed from the grove;
- (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 orchard practices; or
- (4) 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 macadamia trees grown for the production of macadamia nuts on insurable acreage which has been annually 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 all macadamia tree acreage designated as insurable 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 or owner-operator in the insured macadamia trees at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your insured share will not exceed your share at the time of loss.

d. We do not insure any macadamia trees:

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

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

(3) Interplanted with another crop;

(4) Which we consider not acceptable; or

(5) That are less than one year of age when the insured period begins.

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, and Practice

You must report on our form by unit:

a. all the acreage of macadamia trees in the county in which you have a share;

b. your share at the time insurance attaches;

c. the types of trees;

d. the number of trees set out;

e. the dates on which the trees were set out or grafted; and

f. If more than 10 percent of the trees on any unit has been replaced in the previous five crop years, the date of replacement.

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 orchard 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, and practice or we may deny liability on any unit. Any report submitted by you may be revised only upon our approval.

4. Amounts of Insurance and Coverage Levels

a. The amounts of insurance and coverage levels are contained in the actuarial table.

b. If, at the time insurance attaches, the number of macadamia trees on a unit is less than 90 percent of the number of macadamia trees that would comprise a complete planting pattern, the amount of insurance will be reduced 1 percent for each percent below 90 percent.

5. Annual Premium

a. The annual premium is earned and payable on the date insurance attaches. The amount is computed by multiplying the amount of insurance per acre 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 attaches on insurable acreage for each crop year on January 1. However, if we accept your application for insurance after January 1, insurance does not attach until the tenth (10th) day after you sign and submit a properly completed application. Insurance will not attach to any acreage determined by us, after inspection, to be unacceptable. Insurance ends at the earlier of:

a. Total destruction of the macadamia trees; or

b. December 31 of the crop year.

8. Notice of Damage or Loss

a. You must give us written notice without delay if damage resulting in probable loss occurs at any time during the insurance period. Such notice must include the dates and causes of damage.

b. If you are going to claim an indemnity on any unit, we must be allowed to inspect all insured trees before any pruning or tree removal.

c. 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 earlier of:

(1) Total destruction of the trees on the unit; or

(2) December 31 of the crop year.

b. We will not pay any indemnity unless you:

(1) Furnish all records we require concerning all trees on the unit;

(2) Show that any damage to the trees has been directly caused by one or more of the insured causes during the insurance period; and

(3) 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 amount of insurance per acre;

(2) Multiplying this result by the applicable percent of loss, which is determined for:

(a) Coverage level 3 by subtracting 25 percent from the actual percent of damage and dividing the result of 75 percent.

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(b) Coverage level 2 by subtracting 35 percent from the actual percent of damage and dividing the result by 65 percent; or

(c) Coverage level 1 by subtracting 50 percent from the actual percent of damage and dividing the result by 50 percent; and

(3) Multiplying the result for the applicable coverage level by your share.

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

e. The total amount of indemnity will include both trees damaged and trees destroyed due to an insurable cause.

(1) Any grove with over 80 percent actual damage will be determined to be 100 percent damaged.

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

(3) If you elect to exclude fire as an insured cause of loss and the macadamia trees are damaged by fire, appraisals will be made in accordance with Form FCI-78-A, "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 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 trees 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 Orchard

You must keep, for three years after the time of loss, records of the trees destroyed or

damaged on each unit, including separate records showing the same information for any uninsured acreage. Failure to keep and maintain such records may, at our option, result in cancellation of the contract prior to the crop year to which the records apply or a determination that no indemnity is due. Any person designated by us will have access to such records and the orchard 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.

b. The term of this contract begins and 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. This contract will not be renewed for any successive contract term if any amount due us on this or any other contract with you is not paid on or before the termination date. The date of payment of the amount due if deducted from:

(1) An indemnity, will be the date you sign the claim; or

(2) Payment under another program administered by the United States Department of Agriculture, will be the date both such other payment and setoff are approved.

d. Since the premium must be paid prior to insurance attaching, the termination date is the date insurance attaches.

e. 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.

f. This contract will automatically terminate at the end of the current contract period.

16. Meaning to Terms

For the purposes of macadamia tree crop insurance:

a. *Age* means the number of years after the later of when the trees have been set out or grafted. Age determination will be made for the unit on January 1 of each crop year.

b. *Actuarial table* means the forms and related materials 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 tree insurance in the county.

c. *County* means the county shown on the application.

d. *Crop year* means the period beginning with the date insurance attaches and extending through December 31 of the same calendar year and will be designated by the calendar year in which insurance attaches.

e. *Destroyed* means damage to the extent that we determine that replacement is required.

f. *Grafting* means to unite a macadamia tree shoot to an established macadamia tree root stock for future production of macadamia nuts.

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

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

i. *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.

j. *Planting pattern* means the spacing of trees on a uniform geometrical basis so that each tree is a uniform distance from other trees and resulting in a specific number of trees per acre.

k. *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.

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

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

(2) In which you are a joint owner.

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.

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 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.

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 31827, Aug. 22, 1988, as amended at 55 FR 1786, Jan. 19, 1990; 55 FR 35887, Sept. 4, 1990; 62 FR 35668, July 2, 1997]

PART 457—COMMON CROP INSURANCE REGULATIONS

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