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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Docket No. FCIC-14-0004

RIN 0563-AC44

Common Crop Insurance Regulations; Macadamia Tree Crop Insurance Provisions and Macadamia Nut Crop Insurance Provisions.

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Common Crop Insurance Regulations, Macadamia Tree Crop Insurance Provisions and the Macadamia Nut Crop Insurance Provisions to remove the provision requiring an optional unit to contain at least 80 acres. The intended effect of this action is to provide policy changes and to better meet the needs of the producers. The changes will apply for the 2016 and succeeding crop years for macadamia trees and the 2017 and succeeding crop years for macadamia nuts.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business (insert date 60 days after publication in the Federal Register) and will be considered when the rule is to be made final.

ADDRESSES: FCIC prefers that comments be submitted electronically through the Federal eRulemaking Portal. You may submit comments, identified by Docket ID No. FCIC-14-0004 by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for

submitting comments.

- Mail: Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, P.O. Box 419205, Kansas City, MO 64133-6205. All comments received, including those received by mail, will be posted without change to <http://www.regulations.gov>, including any personal information provided, and can be accessed by the public.

All comments must include the agency name and docket number or Regulatory Information Number (RIN) for this rule. For detailed instructions on submitting comments and additional information, see <http://www.regulations.gov>. If you are submitting comments electronically through the Federal eRulemaking Portal and want to attach a document, we ask that it be in a text-based format. If you want to attach a document that is a scanned Adobe PDF file, it must be scanned as text and not as an image, thus allowing FCIC to search and copy certain portions of your submissions. For questions regarding attaching a document that is a scanned Adobe PDF file, please contact the RMA Web Content Team at (816) 823-4694 or by email at [rmaweb.content@rma.usda.gov](mailto:rmaweb.content@rma.usda.gov).

PRIVACY ACT: Anyone is able to search the electronic form of all comments received for any dockets by the name of the person submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the complete User Notice and Privacy Notice for Regulations.gov at <http://www.regulations.gov/#!privacyNotice>.

FOR FURTHER INFORMATION CONTACT: Tim Hoffmann, Director, Product Administration and Standards Division, Risk Management Agency, United States Department of Agriculture, Beacon Facility, Stop 0812, Room 421, P.O. Box 419205, Kansas City, MO 64141-6205, telephone (816) 926-7730.

## SUPPLEMENTARY INFORMATION:

### Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not-significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

### Paperwork Reduction Act of 1995

Pursuant to the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563-0053.

### E-Government Act Compliance

FCIC is committed to complying with the E-Government Act of 2002, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

### Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

### Executive Order 13132

It has been determined under section 1(a) of Executive Order 13132, Federalism, that this rule does not have sufficient implications to warrant consultation with the States. The provisions

contained in this rule will not have a substantial direct effect on States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

#### Executive Order 13175

This rule has been reviewed in accordance with the requirements of Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal governments and will not have significant Tribal implications.

#### Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees and compute premium amounts, and all producers are required to submit a notice of loss and production information to determine the amount of an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure that small entities are given the same opportunities as large entities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and therefore, this regulation is exempt

from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

#### Federal Assistance Program

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

#### Executive Order 12372

This program is not subject to the provisions of Executive Order 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 12988

This proposed rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any direct action taken by FCIC or action by FCIC to require the insurance provider to take specific action under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action against FCIC for judicial review may be brought.

#### Environmental Evaluation

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

#### Background

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising §457.130 Macadamia Tree Crop Insurance Provisions and §457.131 Macadamia Nut

Crop Insurance Provisions to be effective for the 2016 and succeeding crop years for macadamia trees and the 2017 and succeeding crop years for macadamia nuts.

The proposed changes to §457.130 are as follows:

1. Section 1 – FCIC proposes to add a definition of “damaged.” The terms “damaged” and “destroyed” are used throughout the Crop Provisions. The term “damaged” is not defined, but the term “destroyed” is. FCIC is proposing to add a definition of “damaged” to clarify that there is a distinction between “damaged” and “destroyed.” FCIC’s proposed definition of “damaged” is injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the tree due to an insured cause of loss occurring during the insurance period.

FCIC also proposes to add a definition of “scaffold limb” since it is used in the proposed definition of “damaged.” It is given the same meaning as the term in other tree crop policies for consistency.

2. Section 2 – FCIC proposes to revise section 2 by removing paragraph (a) which states sections 34(b)(1), (3) and (4) of the Basic Provisions are not applicable. These sections of the Basic Provisions state that the crop must be planted in a manner such that there is a clear and discernible break between optional units, the insured must have records for at least the previous crop year for each optional unit, and the insured must have records of marketed or stored production from each optional unit maintained in such a manner that permits the insurance provider to verify the production from each optional unit. Under the current policy, insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is no current requirement for discernible breaks between units. By removing paragraph (a),

sections 34(b)(1), (3) and (4) of the Basic Provisions become applicable and, therefore, minimize program abuse as it relates to unit division.

FCIC also proposes to revise section 2 by removing the provision that requires an optional unit to contain at least 80 acres. Most macadamia tree orchards contain less than 80 acres so very few insureds are eligible for this provision. Removing this provision provides an equitable opportunity for insureds who farm large operations and those who farm small operations to qualify for optional units. The changes made above will mitigate any potential abuse from this change.

3. Section 10 – FCIC proposes to revise section 10 to include information regarding destroyed trees and allowing for the insurance provider to conduct an inspection before the insured removes any destroyed trees. The current provisions require insureds, if they intend to claim an indemnity on any unit, to allow the insurance provider to inspect all insured acreage before pruning or removing any damaged trees. However, the provisions are silent on regarding the removal of damaged trees. In order to conduct a proper appraisal, the insurance provider must identify damaged and destroyed trees before they are removed. Therefore, the insured must allow the insurance provider to conduct an inspection before the insured removes any damaged or destroyed trees.

4. Section 11 – FCIC proposes to revise paragraph (c)(1). The current provisions specify that any orchard with over 80 percent actual damage due to an insured cause of loss will be considered to be 100 percent damaged. The proposed provisions are revised to clarify that over 80 percent of trees damaged and trees destroyed due to an insured cause of loss will be considered to be 100 percent damaged. FCIC also proposes to add a settlement of claim example

in section 11.

The proposed changes to §457.131 are as follows:

1. Section 1 – FCIC proposes to add definitions of “floaters” and “peewees” since they are proposed to be incorporated into the definition of “wet in-shell.” These terms are commonly used in the macadamia nut and tree industry. FCIC’s proposed definition of “floaters” is inedible, husked “field run” nuts identified by water floatation. FCIC’s proposed definition of “peewees” is mature and immature wet in-shell nuts that are smaller than 16mm (5/8 inch) in diameter.

FCIC proposes to revise the definition of “wet in-shell” to incorporate a statement contained in the Special Provisions, which states wet in-shell excludes immature and unsound nuts (floaters and peewees). By incorporating this information into the Crop Provisions, FCIC can eliminate the Special Provisions statement.

2. Section 2 – FCIC proposes to revise section 2 by removing paragraph (a) which states section 34(b)(1) of the Basic Provisions is not applicable. This section of the Basic Provisions states that the crop must be planted in a manner such that there is a clear and discernible break between optional units. Under the current provisions, insureds who utilize optional units can manipulate their unit boundaries to maximize indemnities because there is no current requirement for discernible breaks between units. By removing paragraph (a), section 34(b)(1) of the Basic Provisions becomes applicable, and, therefore, minimizes program abuse as it relates to unit division.

FCIC also proposes to revise section 2 by removing the provision that requires an optional unit to contain at least 80 acres. Most macadamia nut orchards contain less than 80



acres so, very few insureds are eligible for this provision. Removing this provision provides an equitable opportunity for insureds who farm large operations and those who farm small operations to qualify for optional units. These changes are consistent with the changes that are proposed to the Macadamia Tree Crop Insurance Provisions. The changes made above will mitigate any potential abuse from this change.

3. Section 3 – FCIC proposes to revise the paragraph (d) to update the crop years used in the example.

4. Section 8 – FCIC proposes to revise paragraph (a)(2) to allow the calendar date for the end of the insurance period to be changed by the Special Provisions. This will provide flexibility to update this date if the need arises.

5. Section 11 - FCIC proposes to add a settlement of claim example.

#### **List of Subjects in 7 CFR Part 457**

Crop insurance, Macadamia Tree and Macadamia Nut, Reporting and recordkeeping requirements.

#### **Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 effective for the 2016 and succeeding crop years for macadamia trees and for the 2017 and succeeding crop years for macadamia nuts to read as follows:

#### **PART 457- COMMON CROP INSURANCE REGULATIONS**

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

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

2. Amend §457.130 as follows:

- a. Amend the introductory text by removing “2011” and adding “2016” in its place;
- b. Amend section 1 by adding in alphabetical order definitions of “damaged” and “scaffold limb”;
- c. Revise section 2;
- d. Amend section 3 by removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in paragraphs (a) introductory text and (b);
- e. Amend section 4 by removing the phrase “(Contract Changes)”;
- f. Amend section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)”;
- g. Amend section 6 introductory text by removing the phrase “(Insured Crop)”;
- h. Amend section 7 by removing the phrase “(Insurable Acreage)”;
- i. Amend section 8 by removing the phrase “(Insurance Period)” paragraphs (a) introductory text and (b) introductory text;
- j. Amend section 9 by removing the phrase “(Causes of Loss)” in paragraphs (a) introductory text and (b) introductory text;
- k. Revise section 10; and
- l. In section 11, revise paragraphs (b)(4), (c) introductory text, and (c)(1).

The revisions read as follows:

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

\* \* \* \* \*

1. Definitions

\* \* \* \* \*

Damaged. Injury to the main trunk, scaffold limb(s), and any other subordinate limbs that reduces the productivity of the macadamia tree due to an insured cause of loss that occurs during the insurance period.

\* \* \* \* \*

Scaffold limb. A major limb attached directly to the trunk.

## 2. Unit Division

(a) 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. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

(b) 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.

\* \* \* \* \*

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

In addition to the requirements of section 14 of the Basic Provisions, 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 any damaged trees, removing any damaged trees, or removing any destroyed trees.

## 11. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

\* \* \* \* \*

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

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of 9-year-old macadamia trees in the unit. Your share is 100 percent. The amount of insurance per acre is \$5,850. There are 90 trees per unit. Thirty five trees are destroyed. Your indemnity would be calculated as follows:

(1)  $10 \text{ acres} \times \$5,850 = \$58,500$ ;

(3) (i)  $100 \text{ percent} - 65 \text{ percent} = 35 \text{ percent deductible}$ ;

(ii)  $35 \text{ destroyed trees} \div 90 \text{ total unit trees} = 38.9 \text{ percent loss}$ ;  $38.9 \text{ percent loss} - 35 \text{ percent deductible} = 3.9 \text{ percent}$ ;

(iii)  $3.9 \text{ percent} \div 65 \text{ percent coverage level} = 6.0 \text{ percent loss}$ ; and  $\$58,500 \text{ total amount of insurance} \times 6.0 \text{ percent loss} = \$3,510 \text{ loss}$ ; and

(4)  $\$3,510 \text{ loss} \times 100 \text{ percent share} = \$3,510 \text{ indemnity payment}$ .

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

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

\* \* \* \* \*

3. Amend §457.131 as follows:

a. Amend the introductory text by removing “2012” and adding “2017” in its place;

b. In section 1:

- i. By adding definitions of in alphabetical order “floaters” and “peewees”; and
- ii. By revising the definition of “wet in-shell”;
- c. Revise section 2;
- d. In section 3:
  - i. By removing the phrase “(Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities)” in the introductory text and paragraph (b) introductory text;
  - ii. In paragraph (b)(4) introductory text by removing the word “anytime” and replacing it with the phrase “any time”; and
  - iii. By revising paragraph (d);
- e. Amend section 4 by removing the phrase “(Contract Changes)”;
- f. Amend section 5 by removing the phrase “(Life of Policy, Cancellation, and Termination)”;
- g. In section 6:
  - i. By removing the phrase “(Insured Crop)” in the introductory text; and
  - ii. In paragraph (d) by removing the phrase “agree in writing” and adding in its place the phrase “give our approval in writing”; and
  - iii. In paragraph (d) by removing the phrase “wet, in-shell” and adding in its place the phrase “wet in-shell”;
- h. In section 7:
  - i. By removing the phrase “(Insurable Acreage)”;
  - ii. By removing the comma after the phrase “Basic Provisions (§457.8)”;
- i. In section 8:

i. By removing the phrase “(Insurance Period)” in paragraphs (a) introductory text and (b) introductory text; and

ii. By revising paragraph (a)(2);

j. Amend section 9 by removing the phrase “(Causes of Loss)” in paragraphs (a) introductory text and (b) introductory text;

k. Amend section 10 introductory text by removing the phrase “(Duties in the Event of Damage or Loss)”;

l. In section 11:

i. In paragraph (b)(4) by removing the phrase “if applicable, (see section 11(c))” and adding in its place the phrase “if applicable (see section 11(c)),”;

ii. Adding a settlement of claim example after paragraph (b)(7); and

iii. In paragraph (c) by removing the phrase “(wet, in-shell pounds)” and adding in its place the phrase “(we in-shell pounds)”.

The revisions and additions read as follows:

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

\* \* \* \* \*

**1. Definitions**

\* \* \* \* \*

Floaters. Inedible, husked “field run” nuts identified by water floatation.

\* \* \* \* \*

Peewees. Mature and immature wet in-shell nuts that are smaller than 16 mm (5/8 inch) in diameter, or as otherwise specified in the Special Provisions.

\* \* \* \* \*

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 and excluding floaters and peewees but prior to being dried.

## 2. Unit Division

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. Optional units may be established only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement.

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

\* \* \* \* \*

(d) Instead of reporting your macadamia nut production for the previous crop year, as required by section 3 of the Basic Provisions, there is a one-year lag period. Each crop year you must report your production from two crop years ago, e.g., on the 2016 crop year production report, you will provide your 2014 crop year production.

\* \* \* \* \*

## 8. Insurance Period

(a) \* \* \*

(2) The calendar date for the end of the insurance period for each crop year is the second June 30th after insurance attaches, or as specified in the Special Provisions.

\* \* \* \* \*

## 11. Settlement of Claim

\* \* \* \* \*

(b) \* \* \*

(7) \* \* \*

For example:

You select 65 percent coverage level and 100 percent of the price election on 10 acres of macadamia nuts in the unit. Your share is 100 percent. Your production guarantee (per acre) is 4,000 pounds. The price election is \$0.78. You are able to harvest 25,000 pounds. Your indemnity would be calculated as follows:

(1) 10 acres x 4,000 pounds = 40,000 pounds guarantee;

(2) 40,000 pounds x \$0.78 price election = \$31,200 total value of guarantee;

(4) 25,000 pounds production to count x \$0.78 price election = \$19,500 value of production to count;

(6) \$31,200 total value of guarantee - \$19,500 value of production to count = \$11,700 loss; and

(7) \$11,700 loss x 100 percent share = \$11,700 indemnity payment.

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Signed in Washington, D.C., on July 23, 2014.

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Brandon Willis  
Manager  
Federal Crop Insurance Corporation

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