

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Federal Crop Insurance Corporation

#### 7 CFR Part 457

RIN 0563-AB63

#### Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Crop Insurance Winter Coverage Endorsement

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

**ACTION:** Final rule.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) finalizes amendments to the Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The intended effects of this action are to add provisions for the insurance of Khorasan and buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured, improve actuarial soundness, and restrict the effect of the current Small Grains Crop Insurance Provisions and the Wheat Crop Insurance Winter Coverage Endorsement to the 2003 and prior crop years.

**EFFECTIVE DATE:** June 4, 2003.

**FOR FURTHER INFORMATION CONTACT:** Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Kansas City, MO 64133, telephone (816) 926-7730.

#### SUPPLEMENTARY INFORMATION:

##### Executive Order 12866

This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, it has been reviewed by the Office of Management and Budget (OMB).

#### Cost-Benefit Analysis

A Cost-Benefit Analysis has been completed and is available to interested persons at the Kansas City address listed above. In summary, the analysis finds the effect of proposed changes on crop insurance payments is expected to be small. The greatest impacts are expected from: (1) Increasing the amount of replant payments for wheat and providing replant payments for crops that have not had them in the past; and (2) changes to the winter coverage endorsement.

#### Paperwork Reduction Act of 1995

Pursuant to 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 through February 28, 2005.

#### 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.

#### Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. New provisions included in this rule will not impact small entities to a greater extent than large entities. 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. 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 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 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. 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 impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

#### Background

On April 20, 2000, FCIC published a notice of proposed rulemaking in the **Federal Register** at 65 FR 21144-21151 to revise 7 CFR 457.101 Small Grains Crop Insurance and section 457.102 Wheat Crop Insurance Winter Coverage Endorsement. Following publication of the proposed rule the public was afforded 60 days to submit written comments and opinions. A total of 82 comments were received from reinsured companies, and grower and trade associations. The comments received and responses are as follows:

*Comment.* Two reinsured companies stated these revised provisions are being proposed for the 2002 crop year rather than the 2001 crop year as referenced in

the proposed rule. It is also understood some provisions of the Agricultural Risk Protection Act of 2000 (ARPA) will impact the proposed policy, and these legislated items are not reflected in the proposed rule.

*Response.* The new provisions will be effective beginning with the 2004 crop year, provided this final rule is made effective prior to the applicable contract change date. The provisions of ARPA affect most crops. Therefore, most policy provisions affected by ARPA are contained in the Basic Provisions of the Common Crop Insurance Policy (§ 457.8). However, ARPA provisions regarding insurance for more than one crop grown on the same acreage in the same crop year do require clarification as they pertain to the winter coverage endorsement. Accordingly, section 10 has been added to the Wheat Winter Coverage Endorsement.

*Comment.* Two reinsured companies were concerned the definition of "Prevented planting" seems to be in conflict with section 7(a)(2)(iii), which allows a winter wheat insured to elect to destroy all winter wheat acreage damaged to the extent that replanting is necessary and receive 15 percent of the winter wheat guarantee, rather than replanting to spring wheat. The commenters contend that the grower who was originally prevented from planting winter wheat should be allowed the same option, such as 15 percent of the winter wheat guarantee. The commenters ask that if the insured elects to destroy the acreage in return for 15 percent of the winter wheat guarantee, whether that acreage can be planted to spring wheat and insured. Two reinsured companies recommended that section 9(f) be removed from these provisions because it provides a disincentive to add optional coverage provided by the winter coverage endorsement. They state that if the producer wants the type of coverage offered by the endorsement, they should purchase such coverage. They also state that the proposed coverage gives the producer an incentive to "buy down." The companies argue that this provision also adds unnecessary complexity, increases company expense and in some cases will result in an unhappy insured if the payment is nil or negligible. They state that the insured should be required to replant as specified in the current provisions and, if they do not replant, no premium is owed and no loss is payable. A grower association was also concerned with section 9(f) because full premium would be charged for only 15 percent coverage. Another reinsured company stated they had received

different degrees of opposition to the proposed provisions in this section. The company stated that in the past this acreage would be deleted from the acreage report and no premium would be due. They further stated this concept would detract from sales of Options A or B, at least in South Dakota, and they were not sure there is an advantage in the proposed change.

*Response.* The proposed provisions were not in conflict. To qualify for a prevented planting payment, planting must be prevented until the spring final planting date. Similarly, the "15 percent benefit" in section 9(f) for winter wheat would not be provided if the insured planted spring wheat following a failed winter wheat crop. When acreage is replanted to spring wheat, a replant payment may be provided and insurance would continue based on the guarantee, premium, and price election applicable to the winter type. Although the proposed provisions are not in conflict, FCIC does agree that the proposed provisions would have: (1) Provided a disincentive to purchase full protection of winter wheat offered under the Wheat or Barley Winter Coverage Endorsement; (2) provided only a small benefit in exchange for full premium; and (3) increased program complexity. Therefore, the proposed provisions in section 9(f) have not been included in this final rule.

*Comment.* A growers association and four producers recommended hull-less barley be insurable under the Small Grains Crop Provisions. A growers association also questioned if hull-less oats were included or excluded from coverage.

*Response.* FCIC agrees that hull-less barley should be insurable. The Federal Grain Inspection Service (FGIS) has issued a directive providing instructions for determining quality factors for hull-less barley. This provides the means to adjust production to count when there is a loss due to low quality. FCIC and insurance providers have also received requests to insure hull-less oats, and a FGIS directive similar to that prepared for hull-less barley has been completed for hull-less oats. Therefore, the definition of "small grains" and section 11(d)(2) has been revised to include provisions for both hull-less barley and hull-less oats.

*Comment.* A reinsured company recommended that since the issue of grazing has been a hot topic in the past year, the definition of "harvest" be changed to include producers who harvest their small grain by grazing the acreage.

*Response.* In some areas it is common to allow animals to graze wheat acreage

in the fall through the early spring and then to remove the animals to allow the wheat to mature and produce a grain crop. In these cases, it would be confusing to include "grazing" in the definition of "harvest" since the actual grain harvest would occur much later than the time the acreage was grazed. However, FCIC agrees wheat that is grazed instead of being harvested for grain should be considered "harvested" for the purpose of determining insurable acreage under the provisions of section 9(a)(1) of the Basic Provisions. That provision will be amended accordingly.

*Comment.* A reinsured company accepts the addition of Khorasan (a variety of wheat) and buckwheat to these provisions as long as FCIC provides detailed, well researched handbook procedures for adjusting these crops. Also, appraisal procedures must be accurate and based on university tested methods.

*Response.* FCIC will not issue actuarial materials for Khorasan or buckwheat unless appropriate loss adjustment procedures can be issued in a timely manner. Insurance programs for these crops will become available only after county actuarial materials are released.

*Comment.* A reinsured company asked if buckwheat would be considered a pilot crop program. The commenter also asked what studies have been undertaken (including draft loss procedures) that are generally done for a new (pilot) crop.

*Response.* The insurance program for buckwheat is not considered to be a pilot program since the regulatory process is being used to implement it. A report on the feasibility of insuring buckwheat was completed by the Economic Research Service (ERS). The report provides significant detail regarding uses, varieties, supply, demand, prices, environmental requirements, cultural practices, risks, etc. Loss procedures have not yet been developed. As stated above, insurance will not be made available for buckwheat until the loss procedure has been developed and provided to the reinsured companies. However, the feasibility report suggests procedures used for buckwheat will be very similar to those currently in use for other small grains.

*Comment.* A reinsured company is concerned with including "buckwheat" in the Small Grains provisions. The term "small grains" usually refers to annual cool season grass species grown for grain that is milled into flour, used for cattle feed or used for production of malt. Flax has been included in this group even though it is a broadleaf crop

because it is similar to the other small grains that are grown. Generally, buckwheat does not follow the same growth habit or management system as other small grains. Buckwheat is a warm season broadleaf crop with recommended planting dates of late May and June. Buckwheat is very frost sensitive in all stages of development. Fertilization of buckwheat is basically the same as for other small grains except the level of nitrogen is usually kept low because of crop lodging. Buckwheat is indeterminate in flowering habit; it will start flowering approximately four to five weeks after emergence and continue until frost. Buckwheat is so sensitive to many stress factors it is hard to predict a yield. Currently there are no herbicides approved for buckwheat production. Buckwheat is sensitive to herbicide residues from dinitroanilines (triflurilin, ethafluralin), atrazine, and sulfonylureas (Glean, Ally). The major use of buckwheat is for making flour for soba noodles or as a pancake mix.

*Response.* The determination of which policy to add a crop to is based on which policy contains the terms that best cover the risk. Buckwheat is being added to the Small Grains policy because most provisions applicable to wheat, barley and other small grains can also be applied to buckwheat. Buckwheat is also generally produced by growers who already have a Small Grains Crop Insurance Policy in force. Therefore, it will be possible to use one policy document for these growers instead of two. Combining the crops into one policy document when possible reduces paperwork, administrative costs, etc. The difference in the growth and management systems will be reflected in the good farming practices for the crop and, therefore, covered under the policy.

*Comment.* The president of Kamut International, Ltd., requested references to "Kamut" be replaced with the name "Khorasan," which is the common name for *Triticum Turanicum*. "Kamut" is not a variety of wheat but rather a registered trademark owned by Kamut International, Ltd. Also, plant classification specialists have recently shown that Khorasan should be classified as *T. Turanicum* rather than *T. polonicum*.

*Response.* FCIC agrees with the suggestions and has revised the provisions accordingly.

*Comment.* A grower association was concerned with the language in the definition of "Prevented planting." The definition does not allow a prevented planting payment for winter wheat if a producer is able to plant spring wheat. Given the yield superiority of winter vs.

spring varieties, this provision adversely affects producers who are prevented from planting winter wheat. A possible solution to the problem would be to insure spring wheat and winter wheat separately.

*Response.* The Wheat Winter Coverage Endorsement does provide separate insurance for spring wheat when it is planted to replace damaged winter wheat and separate insurance units are allowed for initially planted spring and winter wheat in certain counties. In the future it may be possible to add provisions to the endorsement to provide separate prevented planting coverage for winter wheat. However, a change like this, which would impact a large number of producers and acreage, cannot be made without being published in a proposed rule for public comment.

*Comment.* A reinsured company recommended changing the definition of "Local market price" to the Commodity Credit Corporation (CCC) price established by the Farm Service Agency (FSA) county office, and removing the reference to "local market price" for a loss standard.

*Response.* FCIC believes the comment recommends changing quality adjustment procedures by using the "posted county price" that is available in FSA county offices rather than the "local market price." The posted county price has been used in the past. However, damaged grain can have reductions in value in the local market greater than the posted county price. This resulted in zero production to count even though the production still had value and was sold. FCIC stopped using the posted county price because of this program vulnerability. FCIC has not discovered a means to eliminate this program vulnerability if it again uses the posted county price. Therefore, no change has been made.

*Comment.* Two reinsured companies asked if premium rates will be adjusted to address the increased risk by allowing separate optional units for durum and club wheat.

*Response.* FCIC will review the adequacy of premium rates for all changes made by this rule, including optional units for durum and club wheat and ensure that all risks are covered by the premium.

*Comment.* A grower association commented that while durum wheat coverage is available as an optional unit, there are no specific provisions for durum wheat. The market price for durum is different than the predominant white wheat market, and the same terms for durum wheat in other areas of the country should be available for the

northwest. The association recommends these provisions should allow a specific durum price election, coverage level, and national availability in counties where durum is produced or is being introduced. Furthermore, separate price elections and coverage levels should be established for hard red spring wheat, hard white wheat, and club wheat.

*Response.* Language has been added to the Small Grains Crop Provisions to provide for separate units and price elections for durum and club wheat if these wheat types and prices are designated in Special Provisions. Expansion of the durum type and establishing separate price elections and coverage levels for certain types of wheat will be considered by FCIC in the future based on availability of data, program interest, and underwriting issues. FCIC lacks the information at this time so no change can be made in this rule. FCIC has added language to clarify that fall planted durum wheat may be a separate unit from spring planted durum wheat and that fall planted club wheat may be a separate unit from spring planted club wheat provided the Special Provisions specify both fall and spring types of the applicable wheat type.

*Comment.* A reinsured company recommended allowing optional units for durum wheat when it is listed as a separate insurable type. This would simplify administration of the actual production history (APH), since durum wheat producers raise, store, and market durum wheat separate from spring wheat.

*Response.* The proposed rule and this final rule allow optional units for durum wheat when it is designated as a separate type in the Special Provisions. Therefore, no change needs to be made.

*Comment.* A reinsured company agreed optional units for durum and club wheat will be an improvement but that quality factors for durum (milling) should be addressed.

*Response.* FCIC understands certain quality requirements for durum wheat are not covered by the current Small Grains Crop Insurance Policy. A method of providing insurance coverage for these quality requirements has not yet been developed. Section 508(m) of the Federal Crop Insurance Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if they accurately reflect local quality discounts. FCIC has executed the contract and after the results have been analyzed, FCIC will determine if coverage for these quality requirements is feasible. If feasible, FCIC will review

the policy at that time. However, no change will be made in this rule.

*Comment.* FCIC requires all wheat in a given county to be insured under the contract. A grower association advises as a result of this requirement many producers do not purchase wheat insurance. The association recommends allowing selection of different coverage levels and price elections by FSA farm serial number, by irrigated and non-irrigated practice, and by type and class of wheat. Other grower associations recommended allowing different price election percentages or coverage levels for summer-fallow, continuous cropping, and direct seeded acreage.

*Response.* These recommendations would constitute significant changes to the proposed rule and would be a departure from insurance provisions used in other crop insurance policies. Therefore, the suggested changes cannot be made in this rule. Additionally, sufficient data has not been established or provided to effectively support separate insurance coverage by FSA farm serial number, practice, or wheat type or class. However, these changes would appear to add significant program vulnerabilities due to shifting of production and other manipulation of yields.

*Comment.* A reinsured company asked whether durum wheat, which has a separate type code and price election in the county actuarial documents, can be insured as regular spring wheat or must it be separately insured at the higher durum price. The commenter also asks if everything is reported as spring wheat and it is discovered at loss time that some of the wheat is durum, whether the policy has to be revised to reflect the higher durum price and if liability would be increased at that point in time. The commenter also asked about being able to duplicate the APH records for durum wheat at that time. The commenter suggested that section 3(a) be clarified to address how these situations are to be handled.

*Response.* The provision has been revised to clarify that if a durum wheat price election is provided, it must be used to insure durum wheat. When a durum wheat type is misreported as spring wheat, the provisions contained in section 6 of the Basic Provisions regarding misreporting will apply. The APH for durum wheat must be based on production records for durum wheat or a T-Yield for durum wheat.

*Comment.* A reinsured company is concerned with the language in section 3(b) which allows the insured to change coverage levels or price elections by the spring sales closing date "only if they do not have any fall-planted acreage of

the insured crop." The company asked whether this applies if there is any fall-planted acreage, or only if there is insured fall-planted acreage (for example, the insured has some fall-planted acreage but it is an uninsured practice/type or not intended for harvest as grain.)

*Response.* The provision is intended to prevent changes in coverage levels or price elections in the spring only if there is insured fall planted acreage. Section 3(b) has been clarified accordingly.

*Comment.* A growers association was concerned with the insurability of acreage on which Conservation Reserve Program (CRP) contracts are expiring. In some cases, only a summer fallow practice is insurable and the acreage cannot be insured the first year unless the producer takes an early out with a reduction in the final payment from CRP, or summer fallows the ground the first year out of CRP. The growers association requests FCIC and FSA work together to resolve this dilemma so producers in these counties can have insurance. This could be accomplished by permitting producers in these counties to obtain an early release from the CRP contract in order to meet the criteria to classify this ground as summer fallow.

*Response.* FCIC cannot comment on possible CRP program changes since FSA administers that program and would be required to make any modifications or exceptions to it. However, FCIC is willing to work with interested parties to help coordinate program benefits. Although a premium rate is not published for continuous cropped acreage in some counties, insurance may still be obtained for the practice if the producer requests a written agreement through the producer's insurance provider. If approved, the written agreement would provide a premium rate for continuous cropped acreage.

*Comment.* A growers association recommended FSA and FCIC allow the regional office the ability to change final planting dates when agronomic conditions are such that many farmers cannot complete planting by the final planting date of the policy.

*Response.* The final planting date is a part of the crop insurance contract and changing the final planting date after the contract change date would violate the terms of the crop insurance policy and the agreement FCIC has with insurance providers. Regional Offices can recommend changes to final planting dates if program integrity would not be adversely impacted but must do so prior to the applicable contract change date

for it to be considered for that crop year. A late planting period is provided for most crops so producers who plant late may still have insurance coverage.

*Comment.* A grower association stated that wheat producers insured under the multiple peril crop insurance policy (MPCI), the Income Protection (IP) policy or the Crop Revenue Coverage (CRC) policy have a final planting date of December 31 to February 15, which is seldom applicable and diminishes the value of the replant provision of the policy. The association recommends all final planting dates be established on a county-by-county basis at the earliest practical date for the Pacific Northwest.

*Response.* The replant provision referred to in the comment has recently been amended in the Income Protection policy provisions to address this concern. The provisions in section 9(a)(5) also address this issue by providing that damage must occur after the fall final planting date for acreage covered under the winter coverage endorsement (the "earlier" or first fall final planting date in counties with two fall final planting dates). Changes made to the MPCI Small Grains Crop Insurance Policy will also be made to the CRC wheat policy.

*Comment.* A growers association recommended RMA provide winter damage protection for fall planted barley. Having no winter coverage and the mandatory replant provisions are a disincentive to plant winter barley.

*Response.* RMA agrees that winter coverage for barley should be provided and has modified the winter coverage endorsement to include barley. This optional coverage will be available only if the county actuarial table provides an additional premium rate factor for it.

*Comment.* Two reinsured companies recommended changing the section reference in section 7(a)(2)(iii) from 9(e) to 9(f).

*Response.* As stated above, section 9(f), and the reference to it, has been removed in this final rule.

*Comment.* A grower association is concerned with section 7(a)(2)(iii) which requires producers to replant fall-planted barley or wheat that is damaged prior to the spring final planting date with a winter type of the crop if practical. Mandatory replanting requirements reduce flexibility for producers who may want to destroy the crop and replant a spring type of the crop. This section also provides that damaged wheat acreage can be put to another use and an indemnity will be paid, but does not describe what alternative uses are permitted.

*Response.* Producers are free to plant a spring type of the crop after the fall

type has failed if they choose. The requirement to replant the fall type is practical only applies if the producer wants to maintain the fall planted crop production guarantee. So, if it is not practical to replant to a fall type and the producer replants a spring type, insurance will remain in force based on the production guarantee for the fall type. If a producer does not replant a fall type when it is practical to do so and plants a spring type on the acreage, insurance will still be provided based on a spring type production guarantee. Section 7(a)(2)(iii) has been clarified to distinguish when the producer will have insurance based on spring or fall types in replant situations. Since section 9(f) has been removed from this rule for the reasons stated above, the provisions regarding a benefit when damaged acreage is put to another use have also been removed in this final rule.

*Comment.* Two reinsured companies recommended that section 7(a)(2)(v) be clarified to indicate that fall barley or fall wheat that has an adequate stand in the spring will be insurable as spring barley or spring wheat.

*Response.* FCIC agrees and has revised the provisions accordingly.

*Comment.* A growers association recommended allowing the winter wheat guarantee to apply to initially planted spring wheat when cropland has been summer fallowed for one year and agronomic conditions are such that the winter wheat crop cannot be seeded.

*Response.* Current provisions do not allow the winter wheat guarantee to apply on acreage that is initially planted to spring wheat under any circumstance. This is because there are different yields and premiums associated with spring and winter wheat. To allow spring planted wheat to be insured as fall planted wheat would adversely affect program integrity. Allowing spring planted wheat to be insured as fall planted wheat when it has been replanted after a failed winter wheat crop is permitted because insurance has already attached to the winter wheat crop and replanting to the spring crop is a means to mitigate the damages associated with the failed winter wheat crop. Therefore, no change has been made.

*Comment.* A reinsured company recommended Virginia be included with the states that have a July 31 end of insurance date. The commenter stated that FCIC should consider using the same date for states such as Oklahoma, Missouri and Kansas. Another reinsured company recommended that the end of insurance date for small grains in Kansas should be reviewed because October 15 is not an appropriate date for

the end of insurance since harvest is generally completed by August 1.

*Response.* Since a proposal to change the end of the insurance period for Virginia was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

*Comment.* Two reinsured companies are concerned that replant payments for barley, oats, flax and buckwheat will add additional loss adjustment expenses for reinsured companies. Another reinsured company commented that allowing companies to pay the amount of replant payment specified in the policy without requiring calculation of actual expenses will save time in working replant claims and will be more suitable for self-certification procedures. Another reinsured company commented that allowing replant payments for all small grains will provide consistency in the Small Grains provisions, should not have a large impact on the loss payments and will benefit producers who need to replant. An insurance association also supported the proposed change.

*Response.* FCIC agrees reinsured companies may incur some additional expenses. However, FCIC has taken steps to reduce loss adjustment expenses for small grains by no longer requiring insurance providers to calculate the actual cost of replanting. This means that there is not expected to be any significant net increase in costs to the reinsured companies. Therefore, no change has been made.

*Comment.* A reinsured company asked whether or not fall planted wheat accepted for insurance in a county with only a spring planted practice would qualify for a replant payment.

*Response.* Fall planted wheat in a county with only a spring final planting date would not qualify for a replant payment. Section 9(a)(4) states that "the acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date."

*Comment.* A reinsured company recommended increasing the policy replant payment limits to four bushels for wheat since three bushels or \$9.45 hardly covers labor costs. The company also advised that the five bushel replant payment limit on oats does not seem worthwhile for the producer.

*Response.* Provisions in both the proposed and final rules use four bushels when calculating the amount of a replant payment for wheat. Replant payments are not intended to cover all the costs associated with replanting. They are intended to defray a portion of

the costs and are set at a level which will provide assistance but not significantly increase the premium. Therefore, no changes have been made.

*Comment.* Two reinsured companies were concerned with the provisions in section 9(a)(6) which allow a replanting payment when less seed is replanted than the original planting, as long as the resulting stand will produce the guarantee. The companies asked if this will require additional inspections and more expense to the company. A growers association also did not agree with the revision to allow a replanting payment when the amount of seed used is less than the amount normally used for the initial seeding.

*Response.* The replanted crop must be seeded at a rate sufficient to produce the approved APH yield not just the guarantee. Therefore, for crops that have totally failed, the amount of seed that was originally planted to produce the APH yield must be used. It is only when some of the crop still exists that reduced seeding rates can be used. Providing replant payments under these circumstances will provide a greater incentive to improve poor crop stands, thereby improving production levels and reducing claims. There are also agronomic benefits associated with improving a crop stand in this manner. Plants with established root systems are allowed to remain in place and can provide protection to newly seeded plants. Insurance providers may have to perform additional inspections and may incur some additional expenses. However, the benefits associated with reduced claims should outweigh the costs. Therefore, no change has been made.

*Comment.* Two reinsured companies asked whether a specific number of bushels is used to determine the maximum replant payment for rye and Khorasan or will 20 percent of the guarantee be used.

*Response.* Insurance for rye is available only in counties with "fall only" final planting dates. Therefore, in accordance with section 9(b), replant payments are not available for rye. As stated in section 1, Khorasan is considered to be a spring wheat for the purposes of this policy. Therefore, the replant payment is based on four bushels—the amount applicable to all types of wheat.

*Comment.* Two reinsured companies recommended allowing disinterested grain handling facilities to determine test weight and moisture of the grain.

*Response.* The Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) specifies qualifications for persons allowed to determine grain

quality for crop insurance purposes. Section 11(d)(3) of the Crop Provisions has been amended in accordance with the provisions of the 2002 Farm Bill. Therefore, no change has been made.

*Comment.* Two reinsured companies recommended, for quality adjustment purposes, that the test weight for oats be changed to 32 pounds per bushel in the Special Provisions to be more in line with current market requirements.

*Response.* Section 508(m) of the Act requires FCIC to contract with a qualified person to review quality loss adjustment procedures to determine if such procedures accurately reflect local quality discounts. Based on recommendations, FCIC may revise quality adjustment provisions for oats and other grain crops. Until recommendations are analyzed, FCIC does not have sufficient information to make the requested change. Therefore, no change has been made.

*Comment.* A grower group commented RMA is proposing changes to the Settlement of Claim section to allow adjustment for excess moisture before any adjustment for quality deficiencies. They asked if production would also be adjusted in the case of a drought.

*Response.* The provisions of section 11(d) apply when any insured production is damaged due to any insured cause of loss, including drought. The proposed changes just set the order in which such adjustment will occur, with moisture adjustment, if applicable, occurring before any other adjustments.

*Comment.* Two reinsured companies do not agree with the quality adjustment procedures which allow a local elevator to determine the salvage price for low quality grain. This process will result in indemnity differences for similar grain from area to area and may increase loss adjustment expenses as adjusters canvas local elevators for the highest salvage bid price.

*Response.* FCIC has not found reliable data on which discount factors for extremely low quality grain can be based. Therefore, quality adjustment methods based on the value of the damaged grain will continue to be used when grain is of such low quality that discount factors for it are not contained in the Special Provisions. No changes have been made.

*Comment.* A grower association asked whether the definition of "heat damaged kernels" is the same as used by the Grain Inspection, Packer and Stockyards Administration (GIPSA), for consistency and lack of confusion, or whether RMA has a different definition. The provisions in section 11(d)(2)(i)(A-E)

specify that "heat damaged kernels" will not be considered to be damaged.

*Response.* The definition of "heat damage" is the same as that used in the Official United States Standards for Grain. Section 11(d)(2)(i) has been clarified to reflect this.

*Comment.* A grower association recommended that FCIC continue to review quality loss adjustment factors for barley. Market losses from weather-related quality degradation generally far exceed those permitted under current quality loss adjustment provisions.

*Response.* As stated above, FCIC has contracted to conduct a review of the quality loss adjustment procedures. Once the review is completed and fully analyzed, FCIC will make appropriate changes to the quality loss adjustment factors.

*Comment.* A reinsured company asked if the provisions in section 11(d)(2)(iii) mean that the test weight for durum wheat will start at 54.0 pounds when the test weight normally starts at 50.9 pounds for durum wheat?

*Response.* Under the existing quality provisions, durum wheat quality adjustment for test weight begins when the test weight falls below 54.0 pounds. Therefore, this rule is not a change from the previous provisions. The language in this rule simply provides that the same quality adjustment threshold applies to Khorasan. Provisions have been added to clarify that quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat. The same clarification has been made for hull-less barley and hull-less oats.

*Comment.* A reinsured company recommended that quality adjustment factors for durum wheat (milling) should be addressed. Low quality on durum has a more adverse effect on marketing than on regular wheat.

*Response.* FCIC understands discounts for low quality durum wheat are significant. As stated above, FCIC has contracted for a review of the quality loss adjustment procedures. Once the review and FCIC's analysis is completed, FCIC will revise that procedure as appropriate. However, no change is being made to this rule.

*Comment.* A reinsured company asked if the proposed provisions in section 11(d)(4) replace all of the current provisions in section 11(d)(4)(i)-(iii) or just the sentence in (4).

*Response.* The proposed revision will replace sections 11(d)(4)(i), (ii) and (iii).

*Comment.* A reinsured company agreed late planting provisions should apply to winter wheat. However, the

company is concerned with how the time period for late planting will be determined and what the reduction percentage will be. The company recommends the reduction be not less than the prevented planting reduction percentage. In addition, two companies stated that in previous policies, winter wheat in counties with only a fall final planting date did not have a late planting period or replanting payments as the final planting dates were so late. The companies asked whether under the current proposed changes, the final planting dates will be revised to earlier dates and what will be the length of the late planting period for winter wheat.

*Response.* The late planting period reduction is already provided in section 16 of the Basic Provisions of the Common Crop Insurance Policy. This rule simply makes it applicable to certain winter wheat. The length of the late planting period or the final planting date for certain winter wheat will be adjusted in the Special Provisions where necessary. Therefore, no change has been made.

*Comment.* A grower's association recommended prevented planting payments be based on winter wheat guarantees when producers are prevented from planting in the fall and also cannot plant in the spring.

*Response.* Since a proposal to change the basis of prevented planting payments was not included in the proposed rule, and the public was not given the opportunity to comment, the recommended change cannot be adopted in this final rule.

*Comment.* Two reinsured companies asked if companies would have an opportunity to review and comment on any significant changes to the Special Provisions.

*Response.* FCIC does not anticipate significant changes to the Special Provisions as a result of this rule. Special provisions vary from county to county due to differing rotation requirements, planting dates, etc. This results in large numbers of documents being generated each year, sometimes within short time frames. Due to these time restrictions and the large number of documents involved, it is not practical to provide a comment period for the Special Provisions.

*Comment.* A growers association recommended products that represent significant product revisions should be in place and available to agents and growers 90 days prior to sales closing dates. The sales closing date for fall planted wheat in the Pacific Northwest is September 30. Program prices are futures based and are not established until mid-September leaving farmers

with little time to evaluate policy options. For this reason, two grower associations recommended a later sales closing date than September 30 be established for winter wheat in the Pacific Northwest. Seeding starts in September and ends in October. One association recommended an October 31 sales closing date but would accept an October 15 sales closing date. Another recommended the sales closing date be changed to 30 days after price release or October 31.

*Response.* All policy changes must be made by the contract change date, which is at least 90 days prior to the sales closing date. All price elections are also released prior to the sales closing date. Moving the sales closing date 30 days later, when planting is almost complete, would result in adverse selection as producers would have additional knowledge of growing conditions at that point. Therefore, no change has been made.

*Comment.* A growers association recommended making the increased premium subsidy permanent after the 2000 crop year.

*Response.* Section 508(e) of the Act provides for increased subsidies that are applicable each year unless Congress acts to reduce them. Therefore, no change has been made.

*Comment.* A growers association recommended keeping Option A and Option B at the current percentages rather than the proposed percentages. A reinsured company also disagreed with the changes to Option A and Option B as these changes will not be popular with the insureds. The company does not know of any change to Option A that would make insureds select this option. It states that reducing the coverage for Option B is a mistake since companies, Congress and special interest groups have worked hard to improve coverage for farmers, not decrease coverage. The company also stated that, in the past, Option B with the MPCI policy has worked well for insureds and the insureds believe they have a positive coverage. Another reinsured company supported the change of Option B coverage from 100 percent to 70 percent because it believed the coverage provided by the option was too lucrative and that it was abused. This company also stated that by reducing Option B and increasing Option A the coverage becomes similar and that it might reduce confusion by offering a single option.

*Response.* FCIC agrees it is confusing to have two options and that option A has not been popular with producers. Therefore Option A has been removed from the final rule. FCIC also agrees

with the comments that recommend retaining 100 percent coverage under Option B (now the only option) and has revised the proposed provisions accordingly. One hundred percent coverage is being retained to keep a more meaningful level of coverage in place, particularly when the indemnity for the first crop, winter wheat, may be reduced if a second crop is planted.

*Comment.* Two reinsured companies recommended that the coverage under Option A and B be provided when 20 percent of the insured planted acreage in the unit is damaged rather than the current requirement of 20 acres or 20 percent of the acreage in the unit. They state that this change will be consistent with language in the replanting payment section of the Basic Provisions.

*Response.* FCIC agrees that the replant provision in the Basic Provisions of the Common Crop Insurance Policy refers to at least the lesser of 20 acres or 20 percent of the insured planted acreage in the unit. The provision has been revised to be consistent with this requirement.

*Comment.* Two reinsured companies recommended the sentence "You may use such acreage for any purpose, including planting and separately insuring any other crop." in both Option A and B, be clarified. If an insured plants back to barley, and barley was not on the policy, and it is past the sales closing date, it could not be insured. Likewise if barley was on the policy already, such acreage would have to be insured per the terms of the policy.

*Response.* FCIC agrees and has clarified the language accordingly.

*Comment.* A grower association commented that under the proposed winter coverage endorsement all winter wheat acreage must be insured, which reduces flexibility of producers who may wish to have the endorsement for one tract of land but not for another. The association recommended additional endorsements be made available at the option of the producer for additional premium.

*Response.* This change would allow insureds to select insurance on acreage with a higher likelihood of loss. This adverse selection could reduce program integrity and adversely impact premium rates for all producers. Therefore, no change has been made.

*Comment.* A grower association recommended since Option A provides for a coverage increase and an increase in premium, then with coverage being reduced under Option B, the premium should also be reduced.

*Response.* The coverage level under Option B (now the only option) has not changed. However, FCIC does review all

premium rates periodically, and may revise those applicable to the winter coverage endorsement based on those reviews. Option A of the endorsement has been removed for the reasons stated above.

*Comment.* A reinsured company recommended making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions to be elected on the application or policy change form as with other crop options or endorsements.

*Response.* The Wheat Crop Insurance Winter Coverage Endorsement is used only in counties for which the Special Provisions designate both fall and spring final planting dates. Making the Wheat Crop Insurance Winter Coverage Endorsement a part of the Small Grains Crop Provisions would increase the amount of paper sent to all producers who have the Small Grains Crop Provisions and might result in confusion for those in counties in which the endorsement is not available. Therefore, no change has been made.

*Comment.* A reinsured company asked that if an insured has selected Option B and elects to destroy the winter wheat and then replant to spring wheat, whether will it be mandatory for the insured to insure the spring wheat. Another reinsured company agrees with the change that requires spring wheat to be insured after winter wheat has been destroyed rather than having an option to do so.

*Response.* The proposed provisions did require the spring wheat to be insured. However, due to the provisions of the Act that reduce indemnities for a first crop when a second crop is planted and has a loss on the same acreage in the same crop year, FCIC has elected to return to previous provisions that allowed producers to elect whether or not they wanted insurance for the spring wheat. Section 11(c) has been amended accordingly.

In addition to the changes described above, FCIC has made the following changes:

1. Revised the definition of "local market price" to specify quality levels for Khorasan, hull-less barley, hull-less oats and buckwheat, and to specify the applicable subclasses for durum and hard red spring wheat.

2. Changed the cancellation date for wheat from October 31 to September 30 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

3. Changed the October 31 cancellation date and November 30 termination date for barley to March 15 in Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California. This change makes program dates consistent between these Northern California counties and Oregon, which has similar agronomic conditions.

4. Revised section 11(d)(2)(ii) to base the level at which buckwheat production can be quality adjusted on a certain grade rather than specific quality factors. This change is made to allow quality adjustment at levels appropriate for the crop type (large or small seed) and to avoid the need for revision if grading standards should change.

Good cause is shown to make this rule effective upon filing for public inspection at the Office of the Federal Register. Good cause to make the rule effective upon filing at the Office of the Federal Register exists when the 30 day delay in the effective date is impracticable, unnecessary, or contrary to the public interest.

With respect to the provisions of this rule, it would be contrary to the public interest to delay implementation of improved insurance benefits until the 2005 crop year. The public interest is served by improving the insurance product as follows: (1) Providing insurance for producers of hull-less barley, hull-less oats, and Khorasan. Insurance coverage for these crop types is not available under the current Small Grains Crop Provisions; (2) increasing insurance flexibility by providing for separate insurance units for durum and club wheat; (3) moving the contract change date earlier to provide a greater amount of time between the contract change date and the sales closing date to allow producers more time to make insurance decisions; (4) changing program dates to provide coverage for winter wheat in certain counties where coverage for winter wheat is not currently provided; (5) adding replanting payment benefits for barley, oats and flax and increasing the replanting payment amount for wheat. Replanting payments help defray costs incurred by producers who have to replant their crops under the terms of these provisions; (6) allowing winter protection for fall planted barley which is not provided for under current provisions; and (7) improving clarity of the insurance policy.

If FCIC is required to delay the implementation of this rule 30 days after the date it is published, the provisions of this rule could not be implemented until the 2005 crop year. This would mean the affected producers

would be without the benefits described above for an additional year.

For the reasons stated above, good cause exists to make these policy changes effective upon filing with the Office of the Federal Register.

List of Subjects in 7 CFR Part 457

Barley, Buckwheat, Crop insurance, Flax, Oats, Rye, Wheat.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 for the 2004 and succeeding crop years 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(l) and 1506(p).

- 2. Amend the crop insurance provisions in § 457.101 as follows:
a. Revise the introductory text;
b. Amend section 1 of the crop provisions by adding a definition for "Khorasan" and revising the definitions of "local market price," "prevented planting" and "small grains;"
c. Revise section 2;
d. Revise section 3;
e. Revise section 4;
f. Revise section 5;
g. Delete the period before the parenthetical phrase in section 6(b)(1);
h. Revise section 6(c);
i. Revise section 6(b)(2) and add section 6(d);
j. Revise the introductory text of section 7;
k. Revise sections 7(a)(1) introductory text, 7(a)(2)(iii), 7(a)(2)(v) and 7(b)(4);
1. Revise section 9;
m. Revise sections 11(b), 11(c)(1)(iv) and 11(d); and
n. Revise section 12, all to read as follows:

§ 457.101 Small Grains Crop Insurance.

The small grains crop insurance provisions for the 2004 and succeeding crop years are as follows:

Definitions

Khorasan. The common name for a variety of wheat (Triticum turanicum) that is marketed under trademarks such as Kamut. Khorasan is considered to be spring wheat for the purposes of this policy.

Local market price. The cash grain price per bushel for the applicable quality level indicated below and offered by buyers in the area in which you normally market the insured crop. The local market price will

reflect the maximum limits of quality deficiencies allowable for the applicable quality level indicated below. Factors not associated with the specified quality levels, including but not limited to protein, oil or moisture content, or milling quality will not be considered.

(1) U.S. No. 2 for Wheat (subclass hard amber durum for durum wheat and subclass northern spring for hard red spring wheat), except Khorasan; barley (including hull-less barley); oats (including hull-less oats); rye; and flax.

(2) The quality factor levels required for durum wheat to grade U.S. No. 2 for Khorasan.

(3) No. 2 grade buckwheat determined in accordance with the applicable state grading standards.

Prevented planting. In lieu of the definition contained in the Basic Provisions, failure to plant the insured crop with proper equipment by the latest final planting date designated in the Special Provisions for the insured crop in the county. You may also be eligible for a prevented planting payment if you failed to plant the insured crop with the proper equipment within the applicable late planting period following the latest final planting date. You must have been prevented from planting the insured crop due to an insured cause of loss that is general in the surrounding area and that prevents other producers from planting acreage with similar characteristics.

Small grains. Wheat, including only common wheat (Triticum aestivum), club wheat (T. compactum), durum wheat (T. durum) and Khorasan (T. turanicum); barley (Hordeum vulgare), including hull-less barley and excluding black barley; oats (Avena sativa, and A. byzantina), and hull-less oats (A. Nuda); rye (Secale cereale); flax (Linum usitatissimum); and buckwheat (Fagopyrum esculentum).

2. Unit Division

In addition to the requirements of section 34(b) of the Basic Provisions, for wheat only, in addition to, or instead of, establishing optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices, optional units may be established if each optional unit contains only initially planted winter wheat, only initially planted spring wheat, only initially planted club wheat or only initially planted durum wheat. Separate optional units for initially planted winter wheat and initially planted spring wheat may be established only in counties having both winter and spring type final planting dates as designated in the Special Provisions. A separate optional unit for club wheat may be established only in counties for which the Special Provisions designate club wheat as a wheat type (separate optional units may be established for initially planted winter club and initially planted spring club wheat if the Special Provisions specify both as wheat types). A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate



durum wheat as a separate wheat type (separate optional units may be established for initially planted winter durum wheat and initially planted spring durum wheat if the Special Provisions specify both as wheat types).

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

(a) In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for each crop in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case each type must be insured using the

price election for the respective type. 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) In addition to the requirements of section 3 of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may only change your coverage level or price election until the spring sales closing date if you do not have any insured fall planted acreage of the

insured crop. If you have any insured fall planted acreage of the insured crop, you may not change your coverage level or price election after the fall sales closing date.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates

The cancellation and termination dates are:

Crop, state and county	Cancellation date	Termination date
<b>Wheat:</b>		
All Colorado counties except Alamosa, Archuleta, Conejos, Costilla, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Rio Grande, Routt, Saguache, and San Miguel; all Iowa counties except Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware, Dubuque and all Iowa counties north thereof; all Wisconsin counties except Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, Kewaunee and all Wisconsin counties north thereof; all other states except Alaska, Arizona, California, Connecticut, Idaho, Maine, Massachusetts, Minnesota, Montana, Nevada, New Hampshire, New York, North Dakota, Oregon, Rhode Island, South Dakota, Vermont, Washington, and Wyoming.	September 30 .....	September 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; Archuleta, Custer, Delta, Dolores, Eagle, Garfield, Grand, La Plata, Mesa, Moffat, Montezuma, Montrose, Ouray, Pitkin, Rio Blanco, Routt and San Miguel Counties, Colorado; Connecticut; Idaho; Plymouth, Cherokee, Buena Vista, Pocahontas, Humbolt, Wright, Franklin, Butler, Black Hawk, Buchanan, Delaware and Dubuque Counties, Iowa, and all Iowa counties north thereof; Massachusetts; all Montana counties except Daniels and Sheridan; New York; Oregon; Rhode Island; all South Dakota counties except Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, Yankton and all South Dakota counties north and east thereof; Washington; Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof; all Wyoming counties except Big Horn, Fremont, Hot Springs, Park, and Washakie.	September 30 .....	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Nevada; and Utah.	October 31 .....	November 30.
Alaska; Alamosa, Conejos, Costilla, Rio Grande and Saguache Counties, Colorado; Maine; Minnesota; Daniels and Sheridan Counties, Montana; New Hampshire; North Dakota; Corson, Walworth, Edmunds, Faulk, Spink, Beadle, Kingsbury, Miner, McCook, Turner, and Yankton Counties, South Dakota, and all South Dakota counties north and east thereof; Vermont; and Big Horn, Fremont, Hot Springs, Park, and Washakie Counties, Wyoming.	March 15 .....	March 15.
<b>Barley:</b>		
All New Mexico counties except Taos; Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	September 30 .....	September 30.
Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas Counties, Colorado, and all Colorado counties south and east thereof; Connecticut; Kansas; Massachusetts; New York; and Rhode Island.	September 30 .....	November 30.
Arizona; all California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31 .....	November 30.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity Counties, California; All Colorado counties except Kit Carson, Lincoln, Elbert, El Paso, Pueblo and Las Animas, and all Colorado counties south and east thereof; all Nevada counties except Clark, Humboldt, Nye and Pershing; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15 .....	March 15.
<b>Oats:</b>		
Alabama; Arkansas; Florida; Georgia; Louisiana; Mississippi; All New Mexico counties except Taos County; North Carolina; Oklahoma; South Carolina; Tennessee; Texas; and Patrick, Franklin, Pittsylvania, Campbell, Appomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland Counties, Virginia, and all Virginia counties east thereof.	September 30 .....	September 30.
Arizona; All California counties except Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou and Trinity.	October 31 .....	October 31.
Del Norte, Humboldt, Lassen, Modoc, Plumas, Shasta, Siskiyou, and Trinity Counties, California; Taos County, New Mexico; all Virginia counties except Patrick, Franklin, Pittsylvania, Campbell, Attomattox, Fluvanna, Buckingham, Louisa, Spotsylvania, Caroline, Essex, and Westmoreland, and all Virginia counties east thereof; and all other states except Alabama, Arizona, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, and Texas.	March 15 .....	March 15.
<b>Rye:</b>		

Crop, state and county	Cancellation date	Termination date
All states .....	September 30 .....	September 30.
Flax:		
All states .....	March 15 .....	March 15.
Buckwheat:		
All states .....	March 15 .....	March 15.

6. Insured Crop

\* \* \* \* \*

(b) \* \* \*

(2) May report all planted acreage as insurable when you report your acreage for the crop year. Premium will be due on all the acreage except as set forth herein. If the Special Provisions allow a reduced premium amount for acreage intentionally destroyed prior to harvest, you may qualify for such reduction only if you notify us in writing on or before the date designated in the Special Provisions of the intended destruction, and do not claim an indemnity on the acreage. No premium reduction will be allowed if the required notice is not given or if you claim an indemnity for the acreage. Upon receiving timely notice, insurance coverage on the acreage you do not intend to harvest will cease and we will revise your acreage report to indicate the applicable reduction in premium. If you do not destroy the crop as intended, you will be subject to the under-reporting provisions contained in section 6 of the Basic Provisions.

(c) In counties for which the actuarial table provides premium rates for the Wheat or Barley Winter Coverage Endorsement (7 CFR 457.102), additional coverage is available for wheat or barley damaged between the time coverage begins and the spring final planting date. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

(d) In counties for which the actuarial table provides premium rates for malting barley coverage, an endorsement is available (7 CFR 457.118) that provides additional insurance protection for malting barley. This endorsement provides coverage for producers who grow malting barley under contract and for those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the endorsement and you execute the endorsement by the sales closing date.

7. Insurance Period

In lieu of the requirements under section 11 (Insurance Period) of the Basic Provisions (§ 457.8), and subject to any provisions provided by the Wheat or Barley Winter Coverage Endorsement (§ 457.102) if you have elected such endorsement, the insurance period is as follows:

(a) \* \* \*

(1) For oats, rye, flax and buckwheat, the following limitations apply:

\* \* \* \* \*

(2) \* \* \*

(iii) Whenever the Special Provisions designate both fall and spring final planting dates, any winter barley or winter wheat that is damaged before the spring final planting date, to the extent that growers in the area

would normally not further care for the crop, must be replanted to a winter type of the insured crop to maintain insurance based on the winter type unless we agree that replanting is not practical. If it is not practical to replant to the winter type of wheat or barley but is practical to replant to a spring type, you must replant to a spring type to keep your insurance based on the winter type in force. Any winter barley or winter wheat acreage that is replanted to a spring type of the same crop when it was practical to replant the winter type will be insured as the spring type and the production guarantee, premium and price election applicable to the spring type will be used. In this case, the acreage will be considered to be initially planted to the spring type. If you have elected coverage under a barley or wheat winter coverage endorsement (if available in the county), insurance will be in accordance with the option.

\* \* \* \* \*

(v) Whenever the Special Provisions designate only a spring final planting date, any acreage of fall planted barley or fall planted wheat is not insured unless you request such coverage on or before the spring sales closing date, and we agree in writing that the acreage has an adequate stand in the spring to produce the yield used to determine your production guarantee. The fall planted barley or fall planted wheat will be insured as a spring type for the purpose of the production guarantee, premium and price election. Insurance will attach to such acreage on the date we determine an adequate stand exists or on the spring final planting date if we do not determine adequacy of the stand by the spring final planting date. Any acreage of such fall planted barley or fall planted wheat that is damaged after it is accepted for insurance but before the spring final planting date, to the extent that growers in the area would normally not further care for the crop, must be replanted to a spring type of the insured crop unless we agree it is not practical to replant. If fall planted acreage is not to be insured it must be recorded on the acreage report as uninsured fall planted acreage.

(b) \* \* \*

(4) The following applicable date of the calendar year in which the crop is normally harvested:

(i) September 25 following planting in Alaska;

(ii) July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee; or

(iii) October 31 in all other states; or

\* \* \* \* \*

9. Replanting Payments

(a) A replanting payment is allowed as follows:

(1) In lieu of provisions in section 13 of the Basic Provisions that limit the amount of a replant payment to the actual cost of replanting, the amount of any replanting payment will be determined in accordance with these crop provisions;

(2) You must comply with all requirements regarding replanting payments contained in section 13 of the Basic Provisions (except as allowed in section 9(a)(1)) and in any winter coverage endorsement for which you are eligible and which you have elected;

(3) The insured crop must be damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee for the acreage;

(4) The acreage must have been initially planted to a spring type of the insured crop in those counties with only a spring final planting date;

(5) Damage must occur after the fall final planting date in those counties where both a fall and spring final planting date are designated (If the Special Provisions provide more than one fall final planting date, the fall final planting date applicable to policies with the Wheat or Barley Winter Coverage Endorsement will be used for this purpose, regardless of whether or not the endorsement is actually in effect.); and

(6) The replanted crop must be seeded at a rate sufficient to achieve a total (undamaged and new seeding) plant population that will produce at least the yield used to determine your production guarantee.

(b) No replanting payment will be made for acreage initially planted to a winter type of the insured crop (including rye) in any county for which the Special Provisions contain only a fall final planting date (including final planting dates in December, January and February).

(c) The maximum amount of the replanting payment per acre will be the lesser of 20.0 percent of the production guarantee or the number of bushels for the applicable crop specified below, multiplied by your price election and your share:

- (1) 2 bushels for flax or buckwheat;
- (2) 4 bushels for wheat; or
- (3) 5 bushels for barley or oats.

(d) When the crop is replanted using a practice that is uninsurable for an original planting, the liability on the unit will be reduced by the amount of the replanting payment. The premium amount will not be reduced.

(e) Replanting payments will be calculated using the price election and production guarantee for the crop type that is replanted and insured. For example, if damaged spring

wheat is replanted to durum wheat, the price election applicable to durum wheat will be used to calculate any replanting payment that may be due. A revised acreage report will be required to reflect the replanted type. Notwithstanding the previous two sentences, the following will have a replanting payment based on the guarantee and price election for the crop type initially planted:

(1) Any damaged winter crop type that is replanted to a spring crop type, but that retains insurance based on the winter crop type guarantee and price election; and

(2) Any acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

\* \* \* \* \*

#### 11. Settlement of Claim

\* \* \* \* \*

(b) In the event of loss or damage covered by this policy, we will settle your claim by:

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 11(b)(1) by the respective price election;

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

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

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

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

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

(c) \* \* \*

(1) \* \* \*

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

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

\* \* \* \* \*

(d) Mature wheat, barley, oat, rye, and buckwheat production may be adjusted for excess moisture and quality deficiencies. Flax production may be adjusted for quality deficiencies only. If a moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Production will be reduced by .12 percent for each .1 percentage point of moisture in excess of:

(i) 13.5 percent for wheat;

(ii) 14.5 percent for barley;

(iii) 14.0 percent for oats; and

(iv) 16.0 percent for rye and buckwheat.

We may obtain samples of the production to determine the moisture content.

(2) Production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain including the definition of terms used in section 11(d), result in:

(A) Wheat, except Khorasan, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; total damaged kernels (heat-damaged kernels will not be considered to be damaged); shrunken or broken kernels; defects (foreign material and heat damage will not be considered to be defects); a musty, sour, or commercially objectionable foreign odor (except smut odor); or grading garlicky, light smutty, smutty or ergoty;

(B) Barley, except hull-less barley, not meeting the grade requirements for U.S. No. 4 (grades U.S. No. 5 or worse) because of test weight; percentage of sound barley (heat-damaged kernels will be considered to be sound barley); damaged kernels (heat-damaged kernels will not be considered to be damaged); thin barley; black barley; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading blighted, smutty, garlicky or ergoty;

(C) Oats, except hull-less oats, not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight; percentage of sound oats (heat-damaged kernels will be considered to be sound oats); a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading smutty, thin, garlicky or ergoty;

(D) Rye not meeting the grade requirements for U.S. No. 3 (grades U.S. No. 4 or worse) because of test weight; percent damaged kernels (heat-damaged kernels will not be considered to be damaged); thin rye; a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor); or grading light smutty, smutty, light garlicky, garlicky, or ergoty;

(E) Flaxseed not meeting the grade requirements for U.S. No. 2 (grades U.S. sample grade) due to test weight; damaged kernels (heat-damaged kernels will not be considered to be damaged); or a musty, sour, or commercially objectionable foreign odor (except smut or garlic odor);

(ii) Deficiencies in the quality of buckwheat, determined in accordance with applicable state grading standards, result in it not meeting No. 3 grade requirements due to test weight; a musty, sour or commercially objectionable foreign odor (except smut or garlic odor); or grading garlicky, smutty or ergoty if such grades are provided for by the applicable state grading standards;

(iii) Quality factors for Khorasan fall below the levels contained in the Official United States Standards for Grain that cause durum wheat to grade less than U.S. No. 4. For example, if durum wheat grades less than U.S. No. 4 when its test weight falls below

54.0 pounds per bushel, Khorasan would be eligible for quality adjustment if its test weight falls below 54.0 pounds per bushel.

The same quality factors considered for quality adjustment of durum wheat will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of Khorasan seed. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to Khorasan at the same levels applicable to durum wheat;

(iv) Quality factors for hull-less barley fall below the levels contained in the Official United States Standards for Grain that cause barley to grade less than U.S. No. 4. For example, if barley grades less than U.S. No. 4 when its test weight falls below 40.0 pounds per bushel, hull-less barley would be eligible for quality adjustment if its test weight falls below 40.0 pounds per bushel.

The same quality factors considered for quality adjustment of barley will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less barley. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less barley at the same levels applicable to barley;

(v) Quality factors for hull-less oats fall below the levels contained in the Official United States Standards for Grain that cause oats to grade less than U.S. No. 4. For example, if oats grade less than U.S. No. 4 when its test weight falls below 27.0 pounds per bushel, hull-less oats would be eligible for quality adjustment if the test weight falls below 27.0 pounds per bushel. The same quality factors considered for quality adjustment of oats will be applicable and determination of deficiencies will be made in accordance with the Federal Grain Inspection Service directive that establishes procedures for quality factor analysis of hull-less oats. Quality adjustment discount factors for U.S. grades specified in the Special Provisions will also apply to hull-less oats at the same levels applicable to oats; or

(vi) Substances or conditions are present, including mycotoxins, that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these crop provisions;

(ii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us;

(iii) With regard to deficiencies in quality (except test weight, which may be determined by our loss adjustor), the samples are analyzed by:

(A) A grain grader licensed under the United States Grain Standards Act or the United States Warehouse Act;

(B) A grain grader licensed under State law and employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation; or

(C) A grain grader not licensed under State law, but who is employed by a warehouse operator who has a commodity storage agreement with the Commodity Credit Corporation and is in compliance with State law regarding warehouses; and

(iv) With regard to substances or conditions injurious to human or animal health, the samples are analyzed by a laboratory approved by us.

(4) Small grain production that is eligible for quality adjustment, as specified in sections 11(d)(2) and (3), will be reduced by the quality adjustment factor contained in the Special Provisions.

\* \* \* \* \*

## 12. Late Planting

A late planting period is applicable to small grains, except to any barley or wheat acreage covered under the terms of the Wheat or Barley Winter Coverage Endorsement. Barley or wheat covered under the terms of the Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having one fall final planting date for acreage covered under the Wheat or Barley Winter Coverage Endorsement and another fall final planting date for acreage not covered under the endorsement, the fall late planting period will begin after the final planting date for acreage not covered under the endorsement.

\* \* \* \* \*

■ 3. Amend the crop insurance endorsement contained in § 457.102 as follows:

- a. Revise the section title; and
- b. Revise the endorsement, all to read as follows:

### § 457.102 Wheat or barley winter coverage endorsement.

#### United States Department of Agriculture

#### Federal Crop Insurance Corporation

#### Wheat or Barley Winter Coverage Endorsement

(This is a continuous endorsement)

1. In return for payment of the additional premium designated in the actuarial documents, this endorsement is attached to and made part of the Small Grains Crop Provisions subject to the terms and conditions described herein.

2. This endorsement is available only in counties for which the Special Provisions for the insured crop designate both a fall final planting date and a spring final planting date, and for which the actuarial documents provide a premium rate for this coverage.

3. You must have a Small Grains Crop Insurance Policy in force and elect to insure barley or wheat under that policy.

4. You must select this coverage, by crop, on your application for insurance. Failure to do so means you have rejected this coverage for both wheat and barley and this endorsement is void.

5. In addition to the requirements of section 34(b) of the Basic Provisions and section 2 of the Small Grains Crop Provisions, optional units may be established for barley if each optional unit contains only initially planted winter barley or only initially planted spring barley.

6. If you elect this endorsement for winter barley, the contract change, cancellation, and termination dates applicable to wheat in the county will be applicable to all your spring and winter barley.

7. Coverage under this endorsement begins on the later of the date we accept your application for coverage or on the fall final planting date designated in the Special Provisions. Coverage ends on the spring final planting date designated in the Special Provisions.

8. The provisions of section 14 of the Basic Provisions are amended to require that all notices of damage be provided to us by the spring final planting date designated in the Special Provisions.

9. All eligible acreage of each crop covered under this endorsement must be insured.

10. The amount of any indemnity paid under the terms of this endorsement will be subject to any reduction specified in the Basic Provisions for multiple crop benefits in the same crop year.

11. Whenever any winter wheat or barley is damaged during the insurance period and at least 20 acres or 20 percent of the insured planted acreage in the unit, whichever is less, does not have an adequate stand to produce at least 90 percent of the production guarantee for the acreage, you may, at your option, take one of the following actions:

(a) Continue to care for the damaged crop. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement.

(b) Replant the acreage to an appropriate variety of the insured crop, if it is practical, and receive a replanting payment in accordance with the terms of section 9 (Replanting Payments) of the Small Grains Crop Insurance Provisions. By doing so, coverage will continue under the terms of the Basic Provisions, the Small Grains Crop Insurance Provisions and this endorsement, and the production guarantee for winter wheat or barley will remain in effect.

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an appraised amount of production determined in accordance with section 11(c)(1) of the Small Grains Crop Insurance Provisions to count against the unit production guarantee. This amount will be considered production to count in determining any final indemnity on the unit and will be used to settle your claim as described in section 11 (Settlement of Claim) of the Small Grains Crop Insurance Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop if such insurance is available. If you elect to plant and elect to insure a spring type of the same crop (you must elect whether or not you want insurance on the spring type of the same crop at the time we release the winter type acreage), you must pay additional premium for the insurance. Such acreage will be

insured in accordance with the policy provisions that are applicable to acreage that is initially planted to a spring type of the insured crop, and you must:

(1) Plant the spring type in a manner which results in a clear and discernable break in the planting pattern at the boundary between it and any remaining acreage of the winter type; and

(2) Store or market the production in a manner which permits us to verify the amount of spring type production separately from any winter type production. In the event you are unable to provide records of production that are acceptable to us, the spring type acreage will be considered to be a part of the original winter type unit.

Signed in Washington, DC, on June 3, 2003.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

#### 21 CFR Part 165

[Docket No. 03N-0068]

#### Beverages: Bottled Water; Confirmation of Effective Date

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** The Food and Drug Administration (FDA) is confirming the effective date of December 8, 2003, for the direct final rule that appeared in the **Federal Register** of March 3, 2003 (68 FR 9873). The direct final rule amends the bottled water quality standards regulations by establishing an allowable level for uranium. This document confirms the effective date of the direct final rule.

**DATES:** Effective date confirmed: December 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Paul South, Center for Food Safety and Applied Nutrition (HFS-306), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740-3835, 301-436-1640.

**SUPPLEMENTARY INFORMATION:** In the **Federal Register** of March 3, 2003 (68 FR 9873), FDA published a direct final rule that amends the bottled water quality standards regulations (21 CFR part 165) by establishing an allowable level for uranium. Interested persons were given until May 2, 2003, to