

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