

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 administrators 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