

type has failed if they choose. The requirement to replant the fall type if 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