

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

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: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend 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 Kamut 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 2000 and prior crop years.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business June 19, 2000 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before June 19, 2000.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131. Comments may also be sent via the Internet to DirectorPDD@rm.fcic.usda.gov. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CDT, Monday through

Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions, contact Rob Coultis, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO address listed above, 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) Providing benefits when damaged winter wheat is planted to a spring crop other than wheat; (2) increasing the amount of replant payments for wheat and providing replant payments for crops that have not had them in the past; and (3) changes to the Wheat Winter Coverage Endorsement.

Paperwork Reduction Act of 1995

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection and record keeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for RMA, Washington, D.C. 20503. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public concerning our proposed information collection and record keeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses.)

The collections of information for this rule revise the Multiple Peril Crop Insurance Collections of Information 0563-0053 which expire April 30, 2001.

Title: Multiple Peril Crop Insurance (Small Grains).

Abstract: This rule improves the existing Small Grains Crop Provisions and the Wheat Crop Insurance Winter Coverage Endorsement. The Small Grains Crop Provisions are revised to: (1) Allow insurance for Kamut (a variety of wheat) and buckwheat; (2) allow acreage initially planted to durum wheat or club wheat to qualify as a separate insurance unit; (3) specify that only one price election is applicable for each crop unless the Special Provisions provide different price elections by crop type, and that price elections and coverage levels can be changed until the spring sales closing date if the producer does not have any fall planted acreage of the insured crop; (4) change the December 31 contract change date for spring crops to November 30; (5) change all April 15 cancellation and termination dates to March 15; (6) change the cancellation and termination dates for specific counties; (7) add cancellation and termination dates for buckwheat; (8) clarify when the premium will be reduced for insured acreage that is intentionally destroyed prior to harvest; (9) specify that a malting barley endorsement is available where the actuarial table provides premium rates for such coverage; (10) clarify that the insured must 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, or to spring type if it is not practical to replant a winter type; (11) specify that for wheat only, in counties that have insurance for both spring and winter wheat, producers may put damaged winter wheat acreage to another use and receive a payment; (12) clarify that producers may request insurance for fall planted barley or wheat provided they do so by the spring sales closing date in counties having only a spring final planting date; (13) change the calendar date for the end of the insurance period for all small grains from October 31 to July 31 in specified states; (14) allow replanting payments for barley, oats, flax and buckwheat; (15) allow a replanting payment when the amount of seed used is less than the amount normally used for initial seeding; (16) Specify that the replant payment will be calculated in accordance with the formula in the policy regardless of the actual cost of replanting; (17) change from 3 to 4 the number of bushels used to compute the maximum amount of a replanting payment for wheat, and specify the number of bushels used to compute payments for barley, oats, flax and buckwheat; (18) specify that replanting payments will be calculated based on the price election for the crop type that is replanted and insured; (19) allow an insurance benefit for damaged winter wheat when a producer elects not to replant spring wheat and destroys any remaining winter wheat on the acreage; (20) modify calculations of indemnities to allow for situations in which there are separate crop types and more than one price election within a unit; (21) allow production to be adjusted for low quality when certain crops grade "blighted," "thin," "light smutty," or "light garlicky;" (22) allow a late planting period for fall planted wheat except for that covered under the Wheat Winter Coverage Endorsement.

The Wheat Crop Insurance Winter Coverage Endorsement is revised to: (1) Clarify that the endorsement is available only if the actuarial table provides a premium rate for it; (2) specify that all eligible winter wheat acreage must be insured under the endorsement; (3) increase the coverage amount from 30 to 50 percent of the production guarantee under Option A; (4) clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the policy provisions covering spring planted wheat; and (5) change the amount of coverage provided from 100 to 70 percent of the production guarantee under Option B.

Purpose: The purpose of this proposed rule is to add provisions for the insurance of buckwheat, include additional insurance benefits, clarify existing policy provisions to better meet the needs of the insured and the insurance company, and to improve actuarial soundness.

Burden statement: The information that FCIC collects on the specified forms will be used in offering crop insurance coverage, determining program eligibility, establishing a production guarantee, calculating losses qualifying for a payment, etc. The burden hours have increased because FCIC assumes more producers will obtain crop insurance coverage for their small grains. It is likely more producers will desire the increased coverage to help protect their investments against risk.

Estimate of Burden: We estimate that it will take insured producers, a loss adjuster, and an insurance agent an average of .8 of an hour to provide the information required by the Small Grains Crop Provisions including the wheat endorsement.

Respondents: Insureds, insurance agents, and loss adjusters.

Estimated annual number of respondents: 422,277.

Estimated annual number of responses per respondent: 2.5.

Estimated annual number of responses: 1,064,735.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 347,691 hours.

Record keeping requirements: FCIC requires records of production to be kept for three years after the end of a crop year. However, these records are retained as part of the normal business practice and FCIC's requirement does not place additional burden on insured producers. Therefore, FCIC is not estimating burden related to this record keeping requirement.

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

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by revising 7 CFR 457.101, "Small grains crop insurance" and 7 CFR 457.102, "Wheat crop insurance winter coverage endorsement" effective for the 2001 and succeeding crop years. The principal changes to the provisions for insuring small grains and providing winter coverage for wheat in certain counties are as follows:

7 CFR 457.101—Small Grains Crop Insurance

1. Section 1—Revise the definition of "small grains" to allow insurance for Kamut and buckwheat in response to industry request. Scientific names for specific small grain varieties that are insurable have also been added. Inclusion of these scientific names will help differentiate between small grain varieties that are insurable and those that are not. Also revise the definition of "prevented planting" to disallow a prevented planting benefit when small grains are prevented from being planted during the fall late planting period in counties that also have a spring final planting date. If the insured can plant spring wheat when he is not able to plant winter wheat, the insured is not prevented from planting wheat.

2. Section 2—Specify that initially planted durum or club wheat may qualify as a separate optional unit if the Special Provisions for the county designate durum or club wheat as a wheat type. Current provisions do not allow separate optional units for durum or club wheat. This change affords wheat producers additional flexibility in determining insurance coverage.

3. Section 3—Specify that the insured may select only one price election for each crop unless the Special Provisions provide different price elections by crop type, in which case the insured may select one price election for each crop type designated in the Special Provisions. The price election the insured selects for each crop type must have the same relationship to the maximum price offered. This simplifies administration of the program. Also, for counties with both fall and spring sales closing dates for the insured crop, this change allows the producer to change the coverage level or price election until the spring sales closing date only if the producer does not have any fall planted acreage of the insured crop.

4. Section 4—Change the December 31 contract change date for spring crops to November 30 to maintain an adequate amount of time between this date and new cancellation dates to permit the

insured to make informed insurance decisions. This change is consistent with other spring crop policies.

5. Section 5—Change all April 15 cancellation and termination dates to March 15 to correspond to the change in the sales closing dates to comply with the requirement of the Federal Crop Insurance Reform Act of 1994 that spring planted crop sales closing dates be made 30 days earlier.

Change the cancellation and termination dates for Matanuska-Susitna County, Alaska from October 31 and November 30, respectively, to March 15 for wheat. Winter wheat is not adapted to the area.

Change the cancellation and termination dates from the spring (April 15) to the fall in certain counties to allow coverage for winter wheat. The cancellation date will be September 30 and the termination date will be November 30 in the following counties: Aurora, Bon Homme, Davidson, Douglas, Hanson, Harding, Hutchinson, Jerauld, Perkins, and Sanborn Counties, South Dakota; Roosevelt and Valley Counties, Montana; and Buffalo, Trempealeau, Jackson, Wood, Portage, Waupaca, Outagamie, Brown, and Kewaunee Counties, Wisconsin, and all Wisconsin counties north thereof.

Change the cancellation and termination dates for barley from April 15 to October 31 (for cancellation) and November 30 (for termination), in Humboldt and Pershing Counties, Nevada, and in Box Elder, Millard and Utah Counties, Utah. This change allows the establishment of winter barley coverage in these counties.

Add cancellation and termination date of March 15 for buckwheat in all states.

6. Section 6(b)(2)—Clarify the circumstances in which the premium will be reduced for insured acreage that is intentionally destroyed prior to harvest.

7. Section 6(d)—Provide that a malting barley endorsement is available where the actuarial table provides premium rates for such coverage.

8. Section 7(a)(1)—Revise so that insurance period provisions applicable to oats, rye and flax are also applicable to buckwheat. Buckwheat will be insurable under these crop provisions, so the insurance period provisions in this section will be amended accordingly.

9. Section 7(a)(2)(iii)—Specify that the insured must replant any fall planted barley or wheat that is damaged prior to the spring final planting date with a winter type of the crop if practical, or to spring type if it is not practical to replant a winter type. Previous

provisions were not clear regarding the requirement to replant to spring wheat when it was impractical to replant a winter type. Also provide provisions for wheat only that will allow producers to put damaged winter wheat acreage to another use and receive a payment in accordance with new provisions in section 9(e). This benefit would be available only in counties with both fall and spring final planting dates. Under current provisions, if a producer elects not to replant wheat, no coverage is provided and no premium is charged (acreage is removed from the acreage report).

10. Section 7(a)(2)(v)—Clarify that in counties having only a spring final planting date, producers may request insurance for fall planted barley or wheat provided they do so by the spring sales closing date. Insurance will attach to such acreage on the date the insurer determines an adequate stand exists or on the spring final planting date if the insurer does not determine adequacy of the stand by the spring final planting date. Also clarify that after insurance begins, any such insured acreage damaged prior to the spring final planting date must be replanted if it is practical to do so.

11. Section 7(b)(4)—Change the calendar date for the end of the insurance period for all small grains from October 31 to July 31 in Alabama, Arizona, Arkansas, Connecticut, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, New Jersey, North Carolina, South Carolina and Tennessee. Harvest of small grains in these states generally begins in June and ends about the middle of July.

12. Section 9—Revise to allow replanting payments for all small grains. Previous provisions allowed a replanting payment for wheat only. Also remove the requirement that replanting occur not later than 25 days after the spring final planting date. This provision is unnecessary because the provisions regarding the time for replanting are contained in the definitions of "practical to replant" and "late planting period."

13. Section 9(a)(1)—Revise to make inapplicable the Basic Provisions' limit of the amount of a replant payment to the producer's actual cost. Administrative burden associated with obtaining receipts to prove cost will be eliminated with little effect on payment amounts. Insurance providers have reported that only in rare instances is the actual cost of replanting less than the maximum payment amount allowed by the crop provisions.

14. Section 9(a)(5)—Specify which fall final planting date is to be

considered when there is more than one fall final planting date for a county. Currently damage has to occur after the fall final planting date to be eligible for a replanting payment.

15. Section 9(a)(6)—Revise to allow a replanting payment when the amount of seed used is less than the amount normally used for initial seeding. The seeding rate must be sufficient to achieve a total undamaged and new seeding plant population that will produce at least the yield used to determine the production guarantee. Allowing this payment under such circumstances will provide a greater incentive to improve poor crop stands, thereby improving production levels and reducing claims.

16. Section 9(c)—Change from three to four the number of bushels used to compute the amount of a replanting payment for wheat. Two bushels is used for flax and buckwheat, and five bushels is used for barley and oats. Average costs associated with replanting have increased substantially in recent years. These changes in the replanting payment computation better reflect actual replanting costs. Current provisions prevent the payment from being based on a production amount exceeding 20% of the production guarantee. This will protect against overpayments in areas where replanting costs may be lower.

17. Section 9(e)—Specify that replanting payments generally will be calculated based on the price election for the crop type that is replanted and insured. However, the replanting payment will be based on the price election of the type initially planted for any (1) damaged winter crop type that is replanted to a spring crop type, but retains insurance based on the winter crop type guarantee and price election; or (2) acreage replanted at a reduced seeding rate into a partially damaged stand of the insured crop.

18. Section 9(f)—Allow an insurance benefit for damaged winter wheat when a producer elects not to replant spring wheat and destroys any remaining winter wheat on the acreage. The proposed benefit is equal to 15 percent of the production guarantee for the acreage. Under current provisions, if a producer elects not to replant wheat, no coverage is provided and no premium is earned (acreage is removed from the acreage report). Additional levels of winter protection will remain available under the wheat crop insurance winter coverage endorsement.

19. Section 11(b)—Revise calculations of indemnities when there are separate crop types and more than one price election within a unit. This change is

necessary because separate price elections have been established for some wheat types.

20. Section 11(c)(1)(iv)—Revise for consistency with provisions used for most other crops and to specify that in the event of a disagreement about the quantity of appraised production, the insurance provider has the option to consent to put the acreage to another use. Currently the insurance provider's consent is mandatory if the insured agrees to leave intact and care for representative samples.

21. Section 11(d)—Provide that any adjustment for excess moisture will be made before any adjustment for quality deficiencies to be consistent with other crop policies which permit both moisture and quality adjustments. Provide that buckwheat may be adjusted for excess moisture and quality deficiencies.

22. Section 11(d)(1)(iv)—Add buckwheat to the crops that are adjusted for moisture content above 16 percent.

23. Sections 11(d)(2)(i)(A) through (E)—Add musty, sour, or commercially objectionable foreign odors as factors that may qualify small grains for quality adjustment. These conditions reduce the value of production and can occur due to insured causes. Add "blighted" as a grade that qualifies barley for quality adjustment. This grade identifies production that has been damaged by certain levels of fungus or mold, both of which reduce the value of production and can occur due to insured causes. Add "thin" as a grade that qualifies oats for quality adjustment. This grade identifies production with a certain percentage of small kernels. These small kernels reduce the value of production and can occur due to insured causes such as drought. Add test weight as a factor that may qualify flaxseed for quality adjustment. Low test weight reduces the value of production and can occur due to insured causes. Add "light smutty" and "light garlicky" as grades that qualify rye for quality adjustment. These grades identify production with certain levels of smut balls or spores, or garlic bulblets, both of which reduce the value of production and can occur due to insured causes. Also clarify for wheat, barley, oats and rye, heat damaged kernels will not be considered to be damaged.

24. Section 11(d)(2)(ii)—Specify the factors that may qualify buckwheat for quality adjustment.

25. Section 11(d)(2)(iii)—Specify the factors that may qualify Kamut for quality adjustment.

26. Section 11(d)(3)—Remove the requirement that the value of damaged production be less than the local market

price of U.S. No. 2 production. The quality factors will be specified for certain quality deficiency levels, so the requirement is no longer necessary.

27. Section 11(d)(4)—Requires use of discount factors for quality adjustment if provided in the Special Provisions. The use of such factors assures consistent adjustment for insureds with quality related losses. Quality adjustment factors contained in the Special Provisions are currently being used; however, the crop provisions do not specifically refer to them.

28. Section 12—Revise to allow a late planting period for all small grains, except for wheat which is covered under the wheat crop insurance winter coverage endorsement. Current provisions do not provide coverage for late planted winter wheat unless the acreage is prevented from being planted.

7 CFR 457.102—Wheat Crop Insurance Winter Coverage Endorsement

1. Section (b)—Clarify that the endorsement is available only if the actuarial table provides a premium rate for it.

2. Section (c)(5)—Clarify that all eligible winter wheat acreage must be insured under the endorsement. Allowing a choice of the acres to be insured could result in adverse selection as producers could choose to insure only acreage more prone to winter damage. Current provisions do not specify this requirement.

3. Option A—Increase the coverage amount from 30 to 50 percent of the production guarantee. Comments regarding the previous 30 percent coverage level have indicated that it is inadequate and very few Option A policies have been sold. Premium rates will be increased to reflect the additional payment.

4. Option A, section (a)—Clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the provisions covering spring planted wheat. Current provisions give insureds the option of insuring such acreage. This change is intended to maintain consistency in insurance requirements for spring wheat planted to replace damaged winter wheat and reduce reporting requirements associated with a decision to insure.

5. Option B—Change the amount of coverage provided from 100 to 70 percent of the production guarantee. This change is made based on the potential production and income from various spring crops, including spring wheat, and the potential income from coverage provided by Option B.

Premium rates will be reduced accordingly.

6. Option B, section (c)—Clarify that if the insured elects to destroy the crop and plant the acreage to spring wheat, it will be insured under the provisions covering spring planted wheat. Current provisions give insureds the option of insuring such acreage. This change is intended to maintain consistency in insurance requirements for spring wheat planted to replace damaged winter wheat and reduce reporting requirements associated with a decision to insure.

List of Subjects in 7 CFR Part 457

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

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457 to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

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

Authority: 7 U.S.C. 1506(l) and 1506(p).

2. Amend the crop insurance endorsement in § 457.101 as follows:

a. Amend section 1 of the crop provisions by adding a definition for “Kamut” and revising the definitions of “prevented planting” and “small grains;”

- b. Revise section 2;
- c. Revise section 3;
- d. Revise section 4;
- e. Revise section 5;

f. Revise section 6(b)(2) and add section 6(d);

g. Revise sections 7(a)(1) introductory text, 7(a)(2)(iii), 7(a)(2)(v) and 7(b)(4);

h. Revise section 9;

i. Revise sections 11(b), 11(c)(1)(iv) and 11(d); and

j. Revise section 12, all to read as follows:

§ 457.101 Small grains crop insurance.

* * * * *

1. Definitions.

* * * * *

Kamut. A variety of wheat (*Triticum polonicum*) that is commonly called “Kamut.” Kamut is considered to be spring wheat for the purposes of this policy.

* * * * *

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 Kamut (*T. polonicum*); barley (*Hordeum vulgare*), excluding hull-less and black barley; oats (*Avena sativa* and *A. byzantina*); rye (*Secale Cereale*); flax (*Linum usitatissimum*); and buckwheat (*Fagopyrum esculentum*).

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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. A separate optional unit for durum wheat may be established only in counties for which the Special Provisions designate durum wheat as a wheat type.

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 you may select one price election for each crop type designated in the Special Provisions. 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 three of the Basic Provisions, in counties with both fall and spring sales closing dates for the insured crop, you may change your coverage level or price election until the spring sales closing date only if you do not have any fall planted acreage of the insured crop.

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
Wheat: 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, Utah, Vermont, Washington, and Wyoming.	September 30	September 30.

Crop, state and county	Cancellation date	Termination date
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; California; 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.
Barley:		
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; California; Clark, Humboldt, Nye and Pershing Counties, Nevada; and Box Elder, Millard and Utah Counties, Utah.	October 31	November 30.
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, Pershing and Nye; Taos County, New Mexico; all Utah counties except Box Elder, Millard and Utah; and all other states except Arizona, California, and (except) Texas, Oklahoma, Missouri, Illinois, Indiana, Ohio, Pennsylvania, New Jersey and all states south and east thereof.	March 15	March 15.
Oats:		
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.
Rye:		
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 out 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.

* * * * *

(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 options for producers who grow malting barley under contract and those who do not have a contract. Coverage under the endorsement is effective only if you qualify under the terms of the option selected and you execute the endorsement by the sales closing date.

7. Insurance Period

* * * * *

(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 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 unless we agree that replanting is not practical. If it is not practical to replant to winter barley, but is practical to plant spring barley, you must replant spring barley to keep your barley insurance in force. If it is not practical to replant to winter wheat but is practical to plant spring wheat, you must replant spring wheat to keep your wheat insurance in force. Any winter barley or wheat acreage that is replanted to a spring type of the same crop will be insured as the winter type and will maintain the guarantee, premium and price election applicable to the winter type. You may also elect to destroy any remaining wheat on the acreage and, if eligible, receive a payment in accordance with the provisions in section 9(e). If you

have elected coverage under a wheat winter coverage option (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 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. 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 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 for small grains, 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) The 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 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 (includes rye) in any county for which the Special Provisions contain only a fall final planting date (includes 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 a 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 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.

(f) When any acreage of winter wheat is eligible for a replanting payment in accordance with these crop provisions and the Basic Provisions, but you elect not to replant wheat, you may destroy any remaining wheat on the acreage and utilize it for any purpose other than the production of wheat. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 85 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with the provisions in section 11 if such an appraisal results in a greater amount of production. 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.

* * * * *

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 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, result in:

(A) Wheat, except Kamut, 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 objectional foreign odor (except smut odor), or grading garlicky, light smutty, smutty or ergoty;

(B) 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 objectional foreign odor (except smut or garlic odor), or grading blighted, smutty, garlicky, or ergoty;

(C) Oats not meeting the grade requirements for U.S. No. 4 (grade U.S. sample grade) because of test weight or percentage of sound oats (heat-damaged kernels will be considered to be sound oats), a musty, sour, or commercially objectional 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) or thin rye, a musty, sour, or commercially objectional 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 objectional 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 having a test weight lower than 42 pounds per bushel, or a musty, sour or commercially objectional 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 Kamut 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, Kamut 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 Kamut seed; or

(iv) 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; and

(iii) The samples are analyzed by a grain grader licensed under the authority of the

United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health. Test weight for quality adjustment purposes may be determined by our loss adjustor.

(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 wheat acreage covered under the terms of the Wheat Crop Insurance Winter Coverage Endorsement. Wheat covered under the terms of the Wheat Crop Insurance Winter Coverage Endorsement must be planted on or prior to the applicable final planting date specified in the Special Provisions. In counties having a fall final planting date for acreage covered under the Wheat Winter Coverage Endorsement and a 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 section (b);
- b. Add section (c)(5);
- c. Amend Option A by revising the heading, the introductory paragraph and paragraph (a) introductory text; and
- d. Amend Option B by revising the heading, the introductory paragraph and paragraph (c) introductory text, all to read as follows:

§ 457.102 Wheat crop insurance winter coverage endorsement.

* * * * *

(b) This endorsement is available only in counties for which the Special Provisions designate both a fall final planting date and a spring final planting date, and for which the actuarial table provides a premium rate for this coverage.

(c) * * *

(5) All eligible winter wheat acreage must be insured under this endorsement.

* * * * *

Option A (50 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the 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) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 50

percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Small Grains Crop Provisions if such an appraisal results in a greater amount of production. 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 Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to plant spring wheat, it will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to spring wheat, and you must:

* * * * *

Option B (70 Percent Coverage and Acreage Release)

Whenever any winter wheat is damaged during the insurance period and at least 20 acres or 20 percent of the 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:

* * * * *

(c) Destroy the remaining crop on such acreage. By doing so, you agree to accept an amount of production to count against the unit production guarantee equal to 30 percent of the production guarantee for the damaged acreage, or an appraisal determined in accordance with section 11(c)(1) of the Small Grains Crop Provisions if such an appraisal results in a greater amount of production. 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 Provisions. You may use such acreage for any purpose, including planting and separately insuring any other crop. If you elect to plant spring wheat, it will be insured in accordance with the policy provisions that are applicable to acreage that is initially planted to spring wheat, and you must:

* * * * *

Signed in Washington, DC, on April 11, 2000.

Kenneth D. Ackerman,
Manager, Federal Crop Insurance Corporation.

[FR Doc. 00-9599 Filed 4-19-00; 8:45 am]

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FARM CREDIT ADMINISTRATION

12 CFR Parts 614, 615, and 618

RIN 3052-AB96

Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions; OFI Lending

AGENCY: Farm Credit Administration (FCA).