

## **Final Agency Determination: FAD-243**

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**Subject:** Request dated August 6, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 and subsequent crop years regarding the interpretation of section 29 of the Common Crop Insurance Basic Provisions (Basic Provisions), published at 7 C.F.R. § 457.8. This request is pursuant to 7 C.F.R. § 400, subpart X.

### **Background:**

Referenced policy and procedure in request:

Section 29 of the Basic Provisions states, in relevant part:

### **29. Assignment of Indemnity.**

(a) You may assign your right to an indemnity for the crop year only to creditors or other persons to whom you have a financial debt or other pecuniary obligation. You may be required to provide proof of the debt or other pecuniary obligation before we will accept the assignment of indemnity.

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(d) If we have received the properly executed assignment of indemnity form:

(1) Only one payment will be issued jointly in the names of all assignees and you; and

(2) Any assignee will have the right to submit all loss notices and forms as required by the policy.

(e) If you have suffered a loss from an insurable cause and fail to file a claim for indemnity within the period specified in section 14(e), the assignee may submit the

claim for indemnity not later than 30 days after the period for filing a claim has expired. We will honor the terms of the assignment only if we can accurately determine the amount of the claim. However, no action will lie against us for failure to do so.

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### **Interpretation Submitted**

Although section 29 empowers an assignee to “submit all loss notices and forms” and “submit the claim for indemnity not later than 30 days after the period for filing a claim has expired,” section 29 does not authorize an assignee to initiate arbitration as provided in section 20(a) of the Basic Provisions. Likewise, section 29 does not permit an assignee to participate in arbitration as a party if the policyholder commences arbitration in accordance with section 20(a). Limiting an assignee's rights to those specifically identified in section 29 is consistent with the principle of construction referred to as *expression unius est exclusion alterius*, meaning the expression of one thing is to the exclusion of another. With respect to section 29, granting the assignee the power to submit loss notices, forms and a claim for indemnity implicitly excludes all other powers not expressly granted by section 29.

### **Final Agency Determination**

FCIC disagrees with the requestor’s interpretation. Section 29 allows an assignee to “submit all loss notices and forms” and “submit the claim for indemnity not later than 30 days after the period for filing a claim has expired” when the insured has failed to take such action and the indemnity has been assigned. In a situation where the assignee submits the forms and claims for indemnity because the insured has failed to do so, the assignee steps into the shoes of the insured and has the rights and obligations of the insured, which includes the right to initiate arbitration as provided in section 20(a) of the Basic Provisions should a dispute or disagreement ensue over the handling or determination of a claim. To do otherwise leaves no policy rights, remedy, or avenue for the assignee to challenge any potential dispute or disagreement with an approved insurance provider for a claim the assignee has filed.

This does not give an assignee the right to challenge any and all indemnities or claim determinations, nor to commence arbitration in accordance with section 20(a), when the named insured has properly filed all loss notices and forms, and submitted the claim for indemnity in accordance with the policy terms.

In accordance with 7 C.F.R. § 400.765(c), this Final Agency Determination is binding on all participants in the Federal crop insurance program for the crop years the policy provisions are in effect. Any appeal of this decision must be in accordance with 7 C.F.R. § 400.768(g).

**Date of Issue:** September 14, 2015