Final Agency Determination: FAD-252

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Subject: Request dated October 26, 2015, to the Risk Management Agency (RMA) requesting a Final Agency Determination for the 2014 crop year regarding the interpretation section 29 of the Common Crop Insurance Basic Provisions (Basic Provisions), published at 7 CFR part § 457.8. This request is pursuant to 7 C.F.R. part 400, subpart X.

Background:

Referenced policy and procedure in request:

Section 29 of the Basic Provisions states:

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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.

(b) All assignments must be on our form and must be provided to us. Each assignment form may contain more than one creditor or other person to whom you have a financial debt or other pecuniary obligation.

(c) Unless you have provided us with a properly executed assignment of indemnity, we will not make any payment to a lienholder or other person to whom you have a financial debt or other pecuniary obligation even if you may have a lien or other assignment recorded elsewhere. Under no circumstances will we be liable:

(1) To any lienholder or other person to whom you have a financial debt or other pecuniary obligation where you have failed to include such lienholder or person on a properly executed assignment of indemnity provided to us; or

(2) To pay to all lienholders or other persons to whom you have a financial debt or other pecuniary obligation any amount greater than the total amount of indemnity owed under the policy.

(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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2014 Loss Adjustment Manuel 24A(4) states:

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(4) “The insured establishes his/her insurable share on the acreage report by reporting the share insurable at the time insurance attached. However, only for the purpose of determining the amount of indemnity: If, during the final loss adjustment inspection, it is determined that the insured's share differs from what it was at the time insurance attached, the insured's share will be the lesser of what:

(a) it was at the time insurance attached, or

(b) the AIP determines to be the share at the earlier of:

(i) the time of loss, or

(ii) the beginning of harvest of the unit, unless excepted by the specific crop policy.

At the time of final loss adjustment, if the insured's share is determined to be less than originally reported, decrease the share by entering the determined share in the appropriate column for the insured's share on the claim. This may also require a revised acreage report depending on the AIPs processing system. Follow instructions as provided by the AIP.

Interpretation Submitted

The requestor interprets section 29 of the Basic Provisions as allowing an assignee who has a valid assignment of indemnity, and has requested arbitration prior to the policyholder, to be a party to arbitration when the policyholder severed his rights to insured crop without notice to assignee or Approved Insurance Provider (AIP) prior to his rights being voluntarily severed. The requestor asserts that under 29(2)(e) of the Basic Provisions and in accordance with FAD-243, it empowers the assignee to initiate and participate in arbitration when they requested arbitration from the AIP before the policyholder, and after the policyholder was denied a full indemnity under 24.A.(4) because the policyholder’s share was less than originally reported.

Final Agency Determination

FCIC agrees in part with the requestor’s interpretation. FCIC agrees that if the policyholder failed to submit a claim for indemnity then, as stated in section 29(e) of the Basic Provisions and articulated in FAD-243, the assignee has the right to “step in the shoes” of the policyholder and has all rights and obligations of the policyholder, which includes the right to initiate or be a part of an 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.

FCIC disagrees that the assignee has the right to request arbitration when the policyholder elects to severe their rights to the insured crop without notice to the AIP or assignee. Section 29(e) of the Basic Provisions, as supported by FAD-243, explicitly provides that the rights given to the assignee are limited to only when the policyholder fails to submit all loss notices and forms, and submit the claim for indemnity. When the policyholder has properly filed all loss notices and forms, and submitted the claim for indemnity in accordance with the policy terms, the assignee does not have the right to commence an arbitration proceeding or to challenge any indemnity or claim determination in accordance with section 20(a).

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: December 17, 2015