Final Agency Determination: FAD-253

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

Background:

Referenced policy and procedure in request:

The Basic Provisions state, in relevant part:

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1. Definitions.

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Share. Your insurable interest in the insured crop as an owner, operator, or tenant at the time insurance attaches. However, only for the purpose of determining the amount of indemnity, your share will not exceed your share at the earlier of the time of loss or the beginning of harvest.

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28. Transfer of Coverage and Right to Indemnity

If you transfer any part of your share during the crop year, you may transfer your coverage rights, if the transferee is eligible for crop insurance. We will not be liable for any more than the liability determined in accordance with your policy that existed before the transfer occurred. The transfer of coverage rights

must be on our form and will not be effective until approved by us in writing. Both you and the transferee are jointly and severally liable for the payment of the premium and administrative fees. The transferee has all rights and responsibilities under this policy consistent with the transferee's interest.

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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 Manual 24A(4) states:

(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.”

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Section 24.A of the 2014 Loss Adjustment Manual Standards Handbook (LAM),

(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.

Part 2, section 3, paragraph 252 of the 2014 Crop Insurance Handbook (CIH), states:

“An insured may assign the right to an indemnity payment for a crop(s) under a policy to a creditor(s) or other persons to whom the insured has a financial debt or other pecuniary obligation by using an Assignment of Indemnity. The assignment(s) applies for all acreage of the crop covered by the policy.

A. Effective Date

The Assignment is effective upon approval in writing by an authorized representative of the AIP. The AIP may request proof of debt or other pecuniary obligation before an assignment of indemnity is accepted. If the Assignment of Indemnity is not approved in writing by the AIP, the assignment is not effective and the proposed assignee does not obtain rights under the policy.

An Assignment executed prior to the date of a Transfer of Coverage and Right to an Indemnity, remains effective after the Transfer of Coverage and Right to an Indemnity.”

Interpretation Submitted

The requester asserts that section 24. A(4) of the 2014 LAM allows an assignee to receive a full indemnity when a policyholder voluntarily severed his rights to the insured crop before harvest without notice to the assignee or the approved insurance provider.

The requester's interpretation stems from FAD-243, which discussed the assignee's rights when a policyholder fails to exercise his rights under the insurance policy. As the Federal Crop Insurance Corporation has stated, assignees should not be left with no policy rights, remedy, or avenue to challenge a potential dispute. Assignees whose rights are severed unbeknownst to them due to a policyholder's voluntary transfer must be able to enforce their bargained-for indemnity rights, or it leaves them with no policy rights, remedies, or avenue to challenge a potential dispute. The requestor states that when the policyholder fully paid for and assigned his indemnity to the assignee, the assignee's rights to indemnity continues throughout that crop year, regardless of the policyholder's share at the time of loss.

Final Agency Determination

FCIC disagrees with the requestor's interpretation. First, the provisions of the policy take priority over any procedures so the provisions of sections 28 and 29 of the Basic Provisions control. Second, there are two provisions at issue here. Section 28 of the Basic Provisions involves the rights of the policyholder to transfer coverage to another person who acquires the policyholder's interest in the crop. In such situations, the policy transfers to the person acquiring the interest in the crop and they have the same rights as the policyholder had when the transfer occurred. The coverage transferred would only cover the insurable interest the policyholder had in the crop at the time of the transfer. Section 29 of the Basic Provisions involves an assignment of an indemnity. In this case, the policyholder retains the interest in the crop and the policy but simply gives the right to the indemnity, if any is owed, to a third party creditor, the assignee.

Under section 28 of the Basic Provisions, and section 24.A(4) of the LAM, if the insured loses an interest in the crop before harvest or loss, for whatever reason, and does not transfer the coverage and right to an indemnity to the person who gains the interest in the crop, the insured share is zero, which effectively negates coverage. This means the policyholder would not be due any indemnity for any subsequent loss to the crop. Even if the policyholder had executed an assignment of indemnity, under section 29(c) of the Basic Provisions, the assignee could not

receive an indemnity because assignee cannot receive any more indemnity than would be owed the policyholder. Since the policyholder no longer had an insurable interest in the crop, at the time of loss, no indemnity would have been due the policyholder.

However, if the policyholder had executed a transfer of coverage and right to an indemnity to another person, the policy remains in effect. Under part 2, section 3, paragraph 252 of the 2014 CIH, if the policyholder had executed an assignment of indemnity prior to executing the transfer of coverage and right to an indemnity, the transfer of coverage would have been subject to the assignment. FCIC articulated in FAD-243 that if the insured failed to submit a claim for indemnity, section 29(e) of the Basic Provisions expressly provides the assignee has the right to "step in the shoes" of the insured and has rights and obligations of the insured, 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 determination of a claim. However, this right only extends to the insurable interest the policyholder has in the crop, and any indemnity that would be owed under the policy, and cannot provide more benefits than the policyholder was entitled to receive. To the extent that the policyholder loses an insurable interest in the crop before harvest or the loss, any right to an indemnity is extinguished and no indemnity can be paid to anyone under the policy. Section 29 of the Basic Provisions provides the assignee can enforce the rights of the policyholder with respect to submitting claims but it does not give the assignee an insurable interest in the crop or the right to continue coverage when coverage no longer exists.

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: January 7, 2016