

FIREMAN'S FUND AGRIBUSINESS,)	AGBCA No. 2003-193-F
(Compliance Case SRCO-3415))	
)	
Appellant)	
)	
Representing the Appellant:)	
)	
W. Kurt Henke, Esquire)	
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)	
Representing the Government:)	
)	
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DECISION OF THE BOARD OF CONTRACT APPEALS

November 25, 2003

Before POLLACK, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On September 10, 2003, the Board received a notice of appeal from Fireman's Fund AgriBusiness of Kansas City, Missouri (the insurance company), disputing a decision by the Government, the U. S. Department of Agriculture, Risk Management Agency (RMA), regarding a compliance case involving the insurance policies of various insureds. The insurance company brings the case pursuant to regulation, 7 CFR 400.169(d). Counsel for the insurance company entered a notice of appearance subsequent to the notice of appeal.

Regarding the policies of various insureds, on May 5, 2003, the insurance company received final findings dated April 30, 2003, in compliance case SRCO-3415, from a Compliance Field Office. Each finding concludes that the insurance company is to pay the Government a specified amount for indemnity overpayment and/or premium overstatement. Consistent with the regulation (7 CFR 400.169(b)) it references, each finding states that it is final, subject to the insurance company

requesting a final administrative determination by the RMA's Deputy Administrator for Compliance; any request must be in writing and submitted within 45 days after receipt of the final finding.

By letter dated June 26, 2003, the insurance company sought a final administrative determination by the Deputy Administrator for Compliance. The insurance company did not seek such a determination earlier. By letter dated July 10, 2003, the Deputy Administrator acknowledged receipt of the request, and concluded that under the regulation, the request was made beyond the 45-day period within which to request such a determination. Accordingly, the Deputy Administrator denied the request because the request was made in an untimely manner.

During a telephone conference with the presiding judge and parties, held on November 19, the parties requested that the matter be dismissed without prejudice, with the dismissal converting to one with prejudice on the sixtieth day after this order of dismissal is issued, unless the insurance company earlier seeks to reinstate the matter.

DECISION

Based upon the request of the parties, this matter is dismissed without prejudice, the dismissal becomes one with prejudice 60 days from today, unless the insurance company earlier seeks to reinstate the matter.

JOSEPH A. VERGILIO
Administrative Judge

Concurring:

HOWARD A. POLLACK
Administrative Judge

ANNE W. WESTBROOK
Administrative Judge

Issued at Washington, D.C.
November 25, 2003