RURAL COMMUNITY INSURANCE COMPANY, (SRA section V.Y and insurability)	)	**AGBCA No. 1999-189-F**
Appellant	)	
Representing the Appellant:	)	
Daniel N. Rosenstein Levin & Rosenstein 1130 Seventeenth Street, N.W., Suite 314 Washington, D.C. 20036	)	
Representing the Government:	)	
Kimberley E. Arrigo Office of the General Counsel U. S. Department of Agriculture Room 2449, South Building 1400 Independence Avenue, S.W. Washington, D.C. 20250-1400	)	

DECISION OF THE BOARD OF CONTRACT APPEALS

April 20, 2000

Before HOURY, VERGILIO, and WESTBROOK, Administrative Judges.

Opinion for the Board by Administrative Judge VERGILIO.

On August 11, 1999, the Board received this appeal from Rural Community Insurance Company (Rural or insurance company), of Anoka, Minnesota, involving the U. S. Department of Agriculture, Federal Crop Insurance Corporation (FCIC). Rural entered into a Standard Reinsurance Agreement (SRA) with the FCIC, which represents a cooperative financial assistance agreement to deliver multiple peril crop insurance under the authority of the Federal Crop Insurance Act, as amended, 7 U.S.C. §§ 1501 *et seq.*

Rural takes issue with an FCIC informational bulletin published on June 7, 1999, captioned "Oklahoma and Texas Loss Advisory." The bulletin states that, for that area, corn planted after a small grain (e.g., wheat) has reached its heading stage "is not insurable under the terms of the basic provisions unless a written agreement is in effect for the practice and appropriate rates have been

established." Moreover, the bulletin specifies that it is an advisory which does not change or modify any existing policy or procedure. Rural contends that corn planted after headed wheat was an insurable practice in southwest Oklahoma, such that the bulletin changed the existing policy and procedures.

Rural seeks relief pursuant to section V.Y of its SRA. That section creates a mechanism for the resolution of disagreements, such that the underlying "decision by FCIC on the act or omission will be final in the administrative process and, therefore subject only to review by the Board of Contract Appeals in a matter relating to this Agreement or to judicial review." The insurance company here opted for Board review. It asks the Board to issue a judgment declaring that the informational memorandum does not prohibit or limit the insurability and reinsurance of corn planted behind wheat that had headed. In seeking relief under section V.Y, the insurance company is not asking the Board to award it monetary relief or other damages.

The parties have submitted the case pursuant to Rule 11, without a hearing. In late February 2000, the parties submitted briefs.

The Board concludes that the informational bulletin does not change the policy regarding the insurability of corn planted after headed wheat in the area. Accordingly, the Board denies this appeal.

FINDINGS OF FACT

1. For the 1999 reinsurance year (beginning July 1, 1998, running through June 30, 1999) the FCIC and Rural entered into an SRA (Exhibits A, C (all exhibits are in the appeal file)). The SRA is a cooperative financial assistance agreement between FCIC and the insurance company to deliver eligible crop insurance under the authority of the Federal Crop Insurance Act, as amended, 7 U.S.C. §§ 1501 *et seq.* The SRA establishes the terms and conditions under which FCIC will provide subsidy and reinsurance on eligible crop insurance contracts sold or reinsured by the insurance company. (Exhibit A at 1.)

2. The SRA specifies that the "contract change date" is the date specified in the crop insurance contract by which FCIC must publish all changes to the crop insurance contract in order to make such changes binding on the FCIC, the insurance company, and the policyholder (Exhibit A at 3 (§ I)). This date for corn policies was November 30, 1998 (Exhibits J at 2 (¶ 1), 6 (¶ 4), K at 17 (¶ 3)).

3. The SRA defines "crop insurance contract" to mean:

> an agreement (with the terms in effect as of the contract change date) to insure the insurable interest of an eligible producer in a single crop in a single county, or the farm revenue attributed to the production or sale of agricultural commodities of an eligible producer, as provided by the application, the General, or Common Crop

> Insurance Policy, the Adjusted Gross Revenue Insurance Policy, the Crop Endorsements, the Basic Provisions, the Crop Provisions, the Special Provisions, the Catastrophic Risk Protection Endorsement, as applicable, the Actuarial Table, and any other instrument or endorsement as approved by FCIC.

(Exhibit C at 38 (§ I).)

4. The SRA defines "eligible crop insurance contract" to mean:

> a crop insurance contract that is sold and serviced consistent with the Act, 7 C.F.R. chapter IV, FCIC approved regulations and procedure, at applicable rates, terms, and special conditions; having a sales closing date within the reinsurance year; to an eligible producer, covering a crop in an area approved by FCIC or covering farm revenue attributed to the production or sale of agricultural commodities, and on forms approved in writing by FCIC.

(Exhibit C at 38 (§ I)).

5. The above-referenced (Finding of Fact (FF) 3) Common Crop Insurance Policy dictates terms of the agreement between the insurance company and the insured (e.g., producer/farmer). It defines "actuarial documents": "The material for the crop year which is available for public inspection in your agent's office, and which shows the amounts of insurance or production guarantees, coverage levels, premium rates, practices, insurable acreage, and other related information regarding crop insurance in the county" (Exhibit J at 1 (¶ 1)).

6. The Common Crop Insurance Policy defines "good farming practices":

> The cultural practices generally in use in the county for the crop to make normal progress toward maturity and produce at least the yield used to determine the production guarantee or amount of insurance, and are those recognized by the Cooperative State Research, Education, and Extension Service as compatible with agronomic and weather conditions in the county.

(Exhibit J at 2 (¶ 1)).

7. The Common Crop Insurance Policy defines "insured crop" as the "crop for which coverage is available under these Basic Provisions and the applicable Crop Provisions as shown on the application accepted by us" (Exhibit J at 2 (¶ 1)). The basic provisions of the crop policy further specify in a section on "insured crop":

> A crop which will NOT be insured will include, but will not be limited to, any crop: (1) If the farming practices carried out are not in accordance with the farming

> practices for which the premium rates, production guarantees or amounts of insurance have been established, unless insurance is allowed by a written agreement.

(Exhibit J at 7-8 (¶ 8(b)).

8. In addition to the Common Crop Insurance Policy are the Coarse Grains Crop Provisions which define coarse grains as corn, grain sorghum, soybeans (Exhibit K at 17 (¶ 1)). These provisions address "insured crop":

> In accordance with section 8 (Insured Crop) of the Basic Provisions, the crop insured will be each coarse grain crop you elect to insure for which premium rates are provided by the actuarial documents . . . [t]hat is adapted to the area based on days to maturity and is compatible with agronomic and weather conditions in the area.

(Exhibit K at 18 (¶ 5(a)).

9. The Special Provisions of Insurance, for the 1999 crop year in Tillman County, Oklahoma, for grain sorghum dictate: "Insurance shall not attach or be considered to have attached on any acreage which is non-irrigated and from which a hay crop was harvested or a small grain [e.g., wheat] crop reached the heading stage in the same calendar year" (Exhibit R at 46) (the only special provisions placed in the record are those for this county, which the parties agree are representative for resolving this dispute). Similarly, the Special Provisions of Insurance, for the 1999 crop year in Tillman County, Oklahoma, for soybeans specify under insurable practices: "Not following another crop that has reached the heading stage and/or that has been harvested in the same calendar year" (Exhibit S at 50). The Special Provisions of Insurance, for the 1999 crop year in Tillman County, Oklahoma, for corn do not contain any such restriction regarding the practice of planting non-irrigated corn (Exhibit O).

10. These differences in the special provisions arose for reasons explained in this record. It had been the practice of farmers in Oklahoma or Texas to plant corn after grain sorghum or soybeans had headed. The FCIC wanted to end the general practice of insuring such crops; hence, the special provisions explicitly make the practice uninsurable. (Exhibit T at 64-65, 87-88.) Prior to 1999, it was not the practice of farmers in Oklahoma or Texas to plant corn after wheat had headed on non-irrigated land (Exhibits T at 65-66, 78-79, U at 189). "The RSO [Regional Service Office] had discussed the practice of putting corn behind wheat with [the] extension [service]; yes, and to my recollection the issue was, well, we can't really say it's a bad farming practice because it is, in fact, a non-existent -- or, was a non-existent farming practice prior to 1999" (Exhibit T at 72). Headed wheat pulls significant moisture from the ground. On non-irrigated land, without an expectation of sufficient rainfall, one would expect that corn planted after headed wheat would not have a good yield. (Exhibits T at 81, 147, U at 181.)

11. A farmer could not tell by looking at the special provisions or looking at the policy what premium rates, production guarantees, or amounts of insurance had been established for what

purposes. "While the farmer wouldn't necessarily know whether or not the rates were established for that particular practice, the farmer should know the difference between what is an accepted practice in his area and what is not." (Exhibit T at 68-69.)

12. A "team lead" of the insurance company (that is, one who supervises all claims-related activities in Oklahoma, Texas, and three other states) avers that on June 2, 1999, he first became aware of a question concerning the insurability of corn planted after a headed or harvested wheat crop, when he received an inquiry from a sales representative of the insurance company, because farmers were seeking to insure crops planted in late May or early June 1999. That day, the team lead states, he spoke with a representative of the Oklahoma City RSO, who agreed that the coarse grain crop provisions and the special provisions applicable to Tillman County did not prohibit the planting of corn after headed wheat or prevent a producer from insuring such corn. The team lead avers that he informed the sales representative of the conversation, but apparently the matter was not resolved, because, on June 2, the team lead sent a further inquiry to a different representative of the Oklahoma City RSO. On June 8, 1999, that RSO representative responded, noting that the planting of corn after headed wheat is not an insurable practice in Oklahoma and Texas. (Exhibit W at 239-41.) Both the sales representative and a different insurance agent aver that on June 2, 1999, they spoke with a representative of the Oklahoma City RSO, who informed them that the crop insurance policy for Tillman County permitted insuring corn planted after headed wheat (Exhibits X, Y).

13. In an informational bulletin dated June 7, 1999, the Risk Management Agency provided an Oklahoma and Texas loss advisory. The bulletin specifies that severe hail storms in Texas and Oklahoma resulted in the release of wheat acreage in some areas. Moreover,

> Regarding the planting of corn on acreage after a small grain has reached the headed stage, the crop insurance policy basic provisions in "Insured Crop" Section 8(b)(1) state the crop will not be insured:
>
> > If the farming practices carried out are not in accordance with the farming practices for which the premium rates, production guarantees, or amounts of insurance have been established, unless insurance is allowed by a written agreement.
>
> Corn planted behind small grains that have reached the heading stage, whether the small grains were insured or not, is not insurable under the terms of the basic provisions unless a written agreement is in effect for the practice and appropriate rates have been established.

(Exhibit E at 43.)

<u>The disagreement</u>

14. A general provision of the SRA addresses the resolution of disagreements:

> If the Company [i.e., the insurance company] disagrees with an act or omission of FCIC, except those acts implemented through the rulemaking process, the Company

> shall provide written notice of such disagreement to the Manager of FCIC. Within 10 business days of receipt of notice, the Manager or a designee will schedule a meeting with the company in an attempt to resolve the disagreement. Notwithstanding any other provision in this section, any subsequent decision by FCIC on the act or omission will be final in the administrative process and, therefore subject only to review by the Board of Contract Appeals in a matter relating to this Agreement or to judicial review. Nothing herein excuses the Company's performance under this Agreement during the attempted resolution of the dispute or constitutes a waiver of the Company's right to any remedy authorized by law.

(Exhibit A at 32 (¶ V.Y).)

15. In a letter dated July 1, 1999, to the Risk Management Agency, the insurance company provides a written notice of disagreement pursuant to section V.Y of the SRA. The insurance company specifies that it disagrees with the June 7, 1999, informational memorandum to the extent that the memorandum states, "with respect to planting corn on acreage after a small grain has headed, 'it does not change or modify any existing policy or procedure.'" The insurance company asks that, within 10 business days of the date of the letter, a meeting be scheduled to attempt to resolve the disagreement. (Exhibit F).

16. The FCIC (by Manager or designee) did not schedule a meeting within 10 days of receipt of the letter. On August 6, 1999, the FCIC advised the insurance company that it would not alter its position (Rural Exhibit 4).

17. On August 11, 1999, the Board received the underlying notice of appeal and complaint. The insurance company contends that the informational bulletin (issued after the contract changes date) could not prohibit the insurance of non-irrigated corn planted after headed wheat. It relies upon the insurance policy and special provisions applicable to Tillman County, which did not prohibit insuring, and the statements from RSO representatives that such a practice was insurable.

DISCUSSION

The insurance company contends that the informational bulletin (issued after the contract changes date) could not prohibit the insurance of non-irrigated corn planted after headed wheat. It relies upon the insurance policy and special provisions applicable to Tillman County, which did not prohibit insuring such corn crops, and the statements from RSO representatives that such a practice was insurable.

The informational bulletin does not prohibit insuring corn after headed wheat. Rather, it specifies that such a crop "is not insurable under the terms of the basic provisions unless a written agreement is in effect for the practice and appropriate rates have been established." (FF 13). This statement is not at odds with the underlying corn insurance policies and provisions (FF 7, 8).

Planting corn after headed wheat on non-irrigated land was not a farming practice in the area (FF 10). Therefore, that farming practice could not have been in accordance with the practices for which the

premium rates, production guarantees or amounts of insurance had been established (FF 7). Moreover, the record demonstrates that such corn crops were not compatible with agronomic and weather conditions in the area: headed wheat would sufficiently deplete moisture from the ground, so as not to permit a corn crop to make normal progress toward maturity and produce the yields for which insurance rates were determined, on non-irrigated land (FF 10). This conclusion relies upon insurance provisions dealing with "eligible crop insurance contract" (FF 4) and "insured crop" (FF 7-8), and should have been known by producers (FF 11); there need be no specific finding that planting corn after headed wheat on non-irrigated land constituted other than a good farming practice. Thus, based on the language in the corn insurance policies, such a corn crop would not be insurable, absent a specific written agreement of insurability. The informational bulletin stated nothing more nor less.

The insurance company here contends that the silence in the corn policies, when contrasted with the express prohibition for the other coarse grains, compels the interpretation of insurability.[1] Such an interpretation is at variance with the other specific provisions referenced above, which rely upon practices in the county and the agronomic and weather conditions in the area (FF 6-8). In light of those provisions, standards for interpretation do not compel a contrary result. Otherwise, the Government would be required to state explicitly potentially every uninsurable practice for any crop, even if farmers were not engaging in such practices. Nothing in the regulations or provisions requires or suggests such an exhaustive treatment of typically uninsurable practices.

As support for its position, the insurance company relies upon alleged statements by RSO representatives on June 2, 1999, that in Tillman County planting corn after headed wheat was an insurable practice (FF 12). The Board here assumes that the conversations are accurately described; however, the oral conversations are not dispositive. As discussed above, the specific limitations found in the policies on insurability are controlling (FF 3-7). Further, the record does not demonstrate that oral statements by RSO representatives are to be deemed the controlling interpretation. Moreover, a team lead of the insurance company had outstanding until June 8, a specific request on the insurability of such corn crops, indicating that the insurance company did not view the oral conversation as determinative of the issue.

Contrary to the assertions of the insurance company, the informational bulletin does not alter the insurability of corn crops planted after headed wheat. Thus, the date of its issuance, after the contract change date, does not alter the insurability of the corn crops, or make the informational bulletin invalid or inapplicable.

DECISION

The Board denies this appeal.

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[1] The insurance policy and special provisions applicable to Tillman County for grain sorghum and soybeans expressly prohibited the insurability of such crops on non-irrigated land after a wheat crop had headed; the policy and provisions for corn did not expressly prohibit the insurability of such a corn crop (FF 9).

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JOSEPH A. VERGILIO
Administrative Judge

Concurring:

_____ _____
EDWARD HOURY **ANNE W. WESTBROOK**
Administrative Judge Administrative Judge

Issued at Washington, D.C.
April 20, 2000