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stating that such record is true, correct and complete.

COURT PROCEEDINGS

§711.27 Procedure in the case of court proceedings.

Upon the institution of any suit against the review committee for the purpose of reviewing its determination upon any application for review, the review committee is required by section 365 of the Act to certify and file in court a transcript of the record upon which the determination was made, together with the findings of fact made by the review committee. Any suit for review is required to be instituted by the applicant within 15 days after a notice of the review committee's determination is mailed to him. Such suit may be instituted in the U.S. District Court or in any court of record of the State having general jurisdiction, sitting in the county of the district in which the applicant's farm is located. The bill of complaint in such proceeding may be served by delivering a copy thereof to any member of the review committee. Any member of the review committee served with papers in such suit shall immediately forward such papers to the clerk. No member of the review committee shall appear or permit any appearance in his behalf or in behalf of the review committee, or take any action in respect to the defense of such suit, except in accordance with the instructions from the Deputy Administrator.

PUERTO RICO

§711.28 Special provisions applicable to Puerto Rico.

Notwithstanding the provisions of §§711.1 to 711.50, the Caribbean Area Agricultural Stabilization and Conservation Committee (hereinafter referred to as the "ASC Committee") shall perform, insofar as applicable, the duties and assume such responsibilities and be subject to the limitations as are otherwise required of State and county committees except as provided herein. The Director, Caribbean Area FSA office, shall recommend members of the review committee panel, the areas of venue, and perform the functions of the State executive director.

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Any farmer who is eligible to vote in a referendum for which a quota has been proclaimed shall be eligible for appointment as a member of a review committee panel. The clerk shall be the ASC district supervisor of the district in which the review committee will hold its hearings. Where it is impractical or impossible to use the United States mail to serve the applicant with notice of hearing or determination, use shall be made of such other method of service as is available. However, when such other method is used, the ASC Committee shall make provision for keeping an accurate record of the date and method of delivery to the applicant.

OMB CONTROL NUMBERS

§711.29 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR part 711) have been approved by the Office of Management and Budget (OMB) in accordance with the provisions of the 44 U.S.C. Chapter 35 and have been assigned OMB control number 0560-0068.

[49 FR 38240, Sept. 28, 1984]

PART 714—REFUNDS OF PENALTIES ERRONEOUSLY, ILLEGALLY, OR WRONGFULLY COLLECTED

Sec.

- 714.35 Basis, purpose, and applicability.
- 714.36 Definitions.
- 714.37 Instructions and forms.
- 714.38 Who may claim refund.
- 714.39 Manner of filing.
- 714.40 Time of filing.
- 714.41 Statement of claim.
- 714.42 Designation of trustee.
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- 714.44 Recommendation by State committee.
- 714.45 Approval by Deputy Administrator.
- 714.46 Certification for payment.

AUTHORITY: Secs. 372, 375, 52 Stat. 65, as amended, 66, as amended; 7 U.S.C. 1372, 1375.

SOURCE: 35 FR 12098, July 29, 1970, unless otherwise noted.

§ 714.35 Basis, purpose, and applicability.

(a) *Basis and purpose.* The regulations set forth in this part are issued pursuant to the Agricultural Adjustment Act of 1938, as amended, for the purpose of prescribing the provisions governing refunds of marketing quota penalties erroneously, illegally, or wrongfully collected with respect to all commodities subject to marketing quotas under the Act.

(b) *Applicability.* This part shall apply to claims submitted for refunds of marketing quota penalties erroneously, illegally, or wrongfully collected on all commodities subject to marketing quotas under the Act. It shall not apply to the refund of penalties which are deposited in a special deposit account pursuant to sections 314(b), 346(b), 356(b), or 359 of the Agricultural Adjustment Act of 1938, as amended, or paragraph (3) of Pub. L. 74, 77th Congress, available for the refund of penalties initially collected which are subsequently adjusted downward by action of the county committee, review committee, or appropriate court, until such penalties have been deposited in the general fund of the Treasury of the United States after determination that no downward adjustment in the amount of penalty is warranted. All prior regulations dealing with refunds of penalties which were contained in this part are superseded upon the effective date of the regulations in this part.

§ 714.36 Definitions.

(a) *General terms.* In determining the meaning of the provisions of this part, unless the context indicates otherwise, words imparting the singular include and apply to several persons or things, words imparting the plural include the singular, words imparting the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present. The definitions in part 719 of this chapter shall apply to this part. The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Other terms applicable to this part.* The following terms shall have the following meanings:

(1) "Act" means the Agricultural Adjustment Act of 1938, and any amendments or supplements thereto.

(2) "Claim" means a written request for refund of penalty.

(3) "Claimant" means a person who makes a claim for refund of penalty as provided in this part.

(4) "County Office" means the office of the Agricultural Stabilization and Conservation County Committee.

(5) "Penalty" means an amount of money collected, including setoff, from or on account of any person with respect to any commodity to which this part is applicable, which has been covered into the general fund of the Treasury of the United States, as provided in section 372(b) of the Act.

(6) "State office" means the office of the Agricultural Stabilization and Conservation State Committee.

§ 714.37 Instructions and forms.

The Deputy Administrator shall cause to be prepared and issued such instructions and forms as are necessary for carrying out the regulations in the part.

§ 714.38 Who may claim refund.

Claim for refund may be made by:

(a) Any person who was entitled to share in the price or consideration received by the producer with respect to the marketing of a commodity from which a deduction was made for the penalty and bore the burden of such deduction in whole or in part.

(b) Any person who was entitled to share in the commodity or the proceeds thereof, paid the penalty thereon in whole or in part and has not been reimbursed therefor.

(c) Any person who was entitled to share in the commodity or the proceeds thereof and bore the burden of the penalty because he has reimbursed the person who paid such penalty.

(d) Any person who, as buyer, paid the penalty in whole or in part in connection with the purchase of a commodity, was not required to collect or pay such penalty, did not deduct the amount of such penalty from the price paid the producer, and has not been reimbursed therefor.

(e) Any person who paid the penalty in whole or in part as a surety on a

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bond given to secure the payment of penalties and has not been reimbursed therefor.

(f) Any person who paid the whole or any part of the sum paid as a penalty with respect to a commodity included in a transaction which in fact was not a marketing of such commodity and has not been reimbursed therefor.

§ 714.39 Manner of filing.

Claim for refund shall be filed in the county office on a form prescribed by the Deputy Administrator. If more than one person is entitled to file a claim, a joint claim may be filed by all such persons. If a separate claim is filed by a person who is a party to a joint claim, such separate claim shall not be approved until the interest of each person involved in the joint claim has been determined.

§ 714.40 Time of filing.

Claim shall be filed within 2 years after the date payment was made to the Secretary. The date payment was made shall be deemed to be the date such payment was deposited in the general fund of the Treasury as shown on the certificate of deposit on which such payment was scheduled.

§ 714.41 Statement of claim.

The claim shall show fully the facts constituting the basis of the claim; the name and address of and the amount claimed by every person who bore or bears any part or all of the burden of such penalty; and the reasons why such penalty is claimed to have been erroneously, illegally, or wrongfully collected. It shall be the responsibility of the county committee to determine that any person who executes a claim as agent or fiduciary is properly authorized to act in such capacity. There should be attached to the claim all pertinent documents with respect to the claim or duly authenticated copies thereof.

§ 714.42 Designation of trustee.

Where there is more than one claimant and all the claimants desire to appoint a trustee to receive and disburse any payment to be made to them with respect to the claim, they shall be permitted to appoint a trustee. The person

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designated as trustee shall execute the declaration of trust.

§ 714.43 Recommendation by county committee.

Immediately upon receipt of a claim, the date of receipt shall be recorded on the face thereof. The county committee shall determine, on the basis of all available information, if the data and representations on the claim are correct. The county committee shall recommend approval or disapproval of the claim, and attach a statement to the claim, signed by a member of the committee, giving the reasons for their action. After the recommendation of approval or disapproval is made by the county committee, the claim shall be promptly sent to the State committee.

§ 714.44 Recommendation by State committee.

A representative of the State committee shall review each claim referred by the county committee. If a claim is sent initially to the State committee, it shall be referred to the appropriate county committee for recommendation as provided in § 714.43 prior to action being taken by the State committee. Any necessary investigation shall be made. The State committee shall recommend approval or disapproval of the claim, attaching a statement giving the reasons for their action, which shall be signed by a representative of the State committee. After recommending approval or disapproval, the claim shall be promptly sent to the Deputy Administrator.

§ 714.45 Approval by Deputy Administrator.

The Deputy Administrator shall review each claim forwarded to him by the State committee to determine whether, (a) the penalty was erroneously, illegally, or wrongfully collected, (b) the claimant bore the burden of the payment of the penalty, (c) the claim was timely filed, and (d) under the applicable law and regulations the claimant is entitled to a refund. If a claim is filed initially with the Deputy Administrator, he shall obtain the recommendations of the county committee and the State committee if he deems such action necessary in

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arriving at a proper determination of the claim. The claimant shall be advised in writing of the action taken by the Deputy Administrator. If disapproved, the claimant shall be notified with an explanation of the reasons for such disapproval.

§714.46 Certification for payment.

An officer or employee of the Department of Agriculture authorized to certify public vouchers for payment shall, for and on behalf of the Secretary of Agriculture, certify to the Secretary of the Treasury of the United States for payment all claims for refund which have been approved.

PART 717—HOLDING OF REFERENDA

GENERAL

Sec.

- 717.1 Definitions.
- 717.2 Supervision of referenda and prescribed method of balloting.
- 717.3 Voting eligibility.
- 717.4 Register of eligible voters.

HOLDING REFERENDA AT POLLING PLACES

- 717.5 Community referendum committees.
- 717.6 Place for balloting.
- 717.7 Time of voting.
- 717.8 Notice of referendum.
- 717.9 Manner of voting.
- 717.10 Local arrangements for holding the referendum.
- 717.11 Issuing ballots.
- 717.12 Community referendum committee's canvass of ballots.
- 717.13 Community committee's reporting and record of results of referendum.
- 717.14 County committee's canvass of ballots.
- 717.15 County committee's reporting and record of results of the referendum.
- 717.16 Investigation as to correctness of summary of the referendum.
- 717.17 State committee's reporting and record of result of the referendum.

HOLDING REFERENDA BY MAIL BALLOT

- 717.18 Issuing ballots.
- 717.19 Manner of voting.
- 717.20 Receiving and tabulating voted ballots.
- 717.21 Canvassing voted ballots.
- 717.22 Reporting and record of result of the referendum.

MISCELLANEOUS

- 717.23 Applicability of this part to Puerto Rico.
- 717.24 Result of referendum.
- 717.25 Disposition of ballots and records.
- 717.26 Applicability.

AUTHORITY: Secs. 312, 317, 336, 343, 344a, 358, 376, 52 Stat. 46, as amended; 79 Stat. 66, as amended; 52 Stat. 55, as amended, 56, as amended; 79 Stat. 1197, as amended; 55 Stat. 88 as amended; 52 Stat. 66, as amended; 7 U.S.C. 1312, 1314c, 1336, 1343, 1344b, 1358, 1376.

SOURCE: 33 FR 18345, Dec. 11, 1968, unless otherwise noted.

GENERAL

§717.1 Definitions.

In determining the meaning of the provisions in this part, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular, words importing the masculine gender include the feminine as well, and words used in the present tense include the future as well as the present.

(a) *General terms.* The definitions in part 719 of this chapter shall apply to this part. The provisions of part 720 of this chapter concerning the expiration of time limitations shall apply to this part.

(b) *Act.* The Agricultural Adjustment Act of 1938 and any amendments or supplements thereto.

(c) *Referendum community.* For referenda conducted by mail ballot, the entire county shall be the referendum community. For referenda conducted at polling places, the referendum community shall conform with the community established by the State committee for purposes of elective areas under the regulations in the subpart—Selection and Functions of Agricultural Stabilization and Conservation County and Community Committees in part 7, subtitle A, of this title (§7.7, 33 FR 12955), as amended from time to time: *Provided*, That a referendum community may be composed of an area differing from the community so established in the following cases:

(1) A referendum community may be established by the county committee, with the approval of a representative of the State committee, to conform to a