

§711.20 Continuances.

Hearings shall be held at the time and place set forth in the notice of hearing or in any subsequent notice amending or superseding the prior notice, but may without notice other than an announcement at the hearing by the chairman of the review committee, be continued from day to day or adjourned to a different place in the county or to a later date or to a date and place to be fixed in a subsequent notice to be issued pursuant to §711.19. In the event a full committee of three is not present, those members present, or in the absence of the entire committee, the clerk, shall postpone the hearing unless the hearing is held pursuant to §711.9 (b) or (c). There shall not be a continuance for lack of a full committee in the case of a reopened or remanded hearing where the hearing was initially held pursuant to §711.9 (b) or (c) and the two review committeemen who previously held the hearing are present and eligible to serve.

§711.21 Conduct of hearing.

(a) *Open to public.* Except as otherwise provided in §§711.1 to 711.50, each hearing shall take place before the entire review committee and shall be presided over by the chairman of such committee. The hearing shall be open to the public and shall be conducted in a fair and impartial manner and in such a way as to afford the applicant, members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture, and all persons appearing on behalf of such parties, reasonable opportunity to give and produce evidence relevant to the quota being reviewed.

(b) *Consolidation of hearings.* Whenever practicable, two or more applications relating to the same commodity and the same farm shall be consolidated by the review committee on its own motion or at the request of the State executive director and heard at the same time on the same record. In any case involving two or more farms resulting from reconstitution by division of a parent farm, the hearing shall be consolidated.

(c) *Representation.* The applicant and the Secretary may be represented at

the hearing. The county committee shall be present or represented at the hearing.

(d) *Order of procedure.* At the commencement of the hearing, the chairman of the review committee shall read or cause to be read the pertinent portions of the application for review. The written answer of the county committee shall be submitted and shall be made a part of the record of the hearing. If the applicant asserts and shows to the satisfaction of the review committee that he has not been informed of the county committee's position in time to afford him adequate opportunity to prepare and present his case, the review committee shall continue the hearing, without notice other than announcement thereof at the hearing, for such period of time as will afford the applicant reasonable opportunity to meet the issues of fact and law involved. After answer by the county committee and following such continuance, if any, as may be granted by the review committee, evidence shall be received with respect to the matters relevant to the quota under review in such order as the chairman of the review committee shall prescribe. The review committee may take official notice of relevant publications of the Department of Agriculture and regulations of the Secretary.

(e) *Submission of evidence.* The burden of proof shall be upon the applicant as to all issues of fact raised by him. Each witness shall testify under oath or affirmation administered by the member of the review committee who is presiding at the hearing. The review committee shall confine the evidence to pertinent matters and shall exclude irrelevant, immaterial, or unduly repetitious evidence. Interested persons shall be permitted to present oral and documentary evidence, to submit rebuttal evidence and to conduct such cross-examination as may be required for a full and true disclosure of the facts. The hearing shall be concluded within such reasonable time as may be determined by the review committee.

(f) *Transcript of testimony.* The review committee shall provide for the taking of such notes including but not limited to stenographic reports or recordings at the hearing as will enable it to make

a summary of the proceedings and the testimony received at the hearing. The testimony received at the hearing shall be reported verbatim by a representative of a private firm under an existing Departmental contract for such services if the review committee, the State Executive Director, or the applicant, requests such transcript be made. If such transcript is so requested, the State Executive Director shall advise the Deputy Administrator, State and County Operations, prior to the hearing date who will then arrange for the service. A copy of such transcript shall be furnished to each of the following: The review committee, the State Executive Director, and the Regional Attorney, Office of the General Counsel, United States Department of Agriculture. The applicant or his representative may obtain a copy from the firm at his own expense.

(g) *Written arguments and proposed findings.* The review committee shall permit the applicant, the members of the appropriate county and community committees, and appropriate officers and agents of the Department of Agriculture to file written arguments and proposed findings of fact and conclusions, based on the evidence adduced at the hearing, for the consideration of the review committee within such reasonable time after the conclusion of the hearing as may be prescribed by the review committee. Such written arguments and proposed findings shall be filed in triplicate with the clerk and an additional copy thereof shall be provided to the other party.

[35 FR 15355, Oct. 2, 1970, as amended by Amdt. 5, 38 FR 16989, June 28, 1973]

§ 711.22 Nonappearance of applicant.

(a) *Original hearing.* If, at the time of the hearing, the applicant is absent and no appearance is made on his behalf, the review committee shall, after a lapse of such period of time as it may consider proper and reasonable, have the name of the absent applicant called in the hearing room. If, upon such call, there is no response, and no appearance on behalf of such applicant and no continuance has been requested by the applicant, the review committee shall thereupon close the hearing, as to such applicant, and, without further pro-

ceedings in the case, make a determination dismissing the application.

(b) *Reopened or remanded hearing.* If, at a hearing which is reopened pursuant to § 711.25 or remanded by a court, the applicant is absent and no appearance is made on his behalf, the review committee shall continue the hearing for a reasonable period of time and if the applicant does not appear at such continued hearing, the review committee shall make a determination.

§ 711.23 Determination by review committee.

As soon as practicable after hearing on an application, including a hearing on the sole issue of timely filing, the review committee shall make a determination upon the application. If it is determined by the review committee that the application should be dismissed for untimely filing or denied, the review committee shall so indicate. If it is determined that the application should be granted in whole or in part, the review committee shall establish the quota which it finds to be proper. Each determination made by the review committee shall be in writing, shall contain specific findings of fact and conclusions together with the reasons or basis therefor, and shall be based upon and made in accordance with reliable, probative, and substantial evidence adduced at the hearing. The concurrence of two members of the review committee shall be sufficient to make a determination. The written determination shall contain such subscription by each member of the review committee as will indicate his concurrence therein or his dissent therefrom. In case of an increase in the quota, the review committee shall specifically state in the determination in what respect, if any, the county committee has failed properly to apply the act and regulations thereunder. If such increase is based upon evidence not available to the county committee, the findings of the review committee shall so indicate. The appropriate county executive director shall make available to the review committee such clerical and stenographic assistance as may be required.