

rules and regulations

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each month.

Title 7—Agriculture

CHAPTER IX—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS; FRUITS, VEGETABLES, NUTS), DEPARTMENT OF AGRICULTURE

[Valencia Orange Reg. 560, Amdt. 1]

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amendment to final rule.

SUMMARY: This amendment increases the quantity of California-Arizona Valencia oranges that may be shipped to fresh market during the weekly regulation period June 17-23, 1977. The amendment recognizes that demand for Valencia oranges has improved since the regulation was issued. This action will increase the supply of oranges available to consumers.

DATES: Weekly regulation period June 17-23, 1977.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION:

(a) Findings. (1) Pursuant to the amended marketing agreement and Order No. 908, as amended (7 CFR Part 908), regulating the handling of Valencia oranges grown in Arizona and designated part of California, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of recommendations and information submitted by the Valencia Orange Administrative Committee, established under the marketing agreement and order, and other available information, it is found that the limitation of handling of Valencia oranges as provided in this amendment will tend to effectuate the declared policy of the act.

(2) Demand in the Valencia orange markets has improved since the regulation was issued. Amendment of the regulation is necessary to permit orange handlers to ship a larger quantity of Valencia oranges to market to supply the increased demand. The amendment will increase the quantity permitted to be shipped by 100,000 cartons, in the interest of producers and consumers.

(3) It is further found that it is impracticable and is contrary to the public interest to give preliminary notice, engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because the time intervening between the date when information became available upon which this amendment is based and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Valencia oranges.

(b) Order, as amended. The provisions in paragraph (b)(1) (i) and (ii) of § 908.860 Valencia Orange Regulation 560 (42 FR 30600) are hereby amended to read as follows:

§ 908.860 Valencia Orange Regulation 560.

- (b) * * * (1) * * *
- (i) District 1: 308,000 cartons;
- (ii) District 2: 442,000 cartons.

(Secs. 1-19, 48 Stat. 31, as amended; (7 U.S.C. 601-674).)

Dated: June 21, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 77-18226 Filed 6-24-77; 8:45 am]

CHAPTER XIV—COMMODITY CREDIT CORPORATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS, PURCHASES AND OTHER OPERATIONS

PART 1464—TOBACCO

Subpart A—Tobacco Loan Program—Flue-Cured Tobacco

AGENCY: Commodity Credit Corporation, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This rule provides the schedule of grade loan rates which will be used for 1977 crop flue-cured tobacco. This rule is needed to provide the statutory level of support for 1977 crop flue-cured tobacco. Eligible flue-cured tobacco may be delivered for price support at the specified rates.

EFFECTIVE DATE: June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Robert P. Hieronymus, Tobacco and Peanut Division, ASCS, USDA, 5752 South Building, P.O. Box 2415, Washington, D.C. 20013, 202-447-5753.

SUPPLEMENTARY INFORMATION:

On May 27, 1977 Commodity Credit Corporation (CCC) published in the FEDERAL REGISTER (42 FR 27249) a proposed schedule of grade loan rates for providing price support for 1977 crop flue-cured tobacco at the statutory level of support of 113.8 cents per pound. The proposed rule invited the public to submit written data, views and recommendations to be received by June 10. Forty-nine responses were received; 2 recommended that the proposed schedule be adopted; 21 recommended rates lower than proposed for the grades which are normally exported in large quantities; 7 recommended rates lower than proposed for grades to which the special factor "sand" or "dirt" is added to denote a moderate amount of sand or dirt in excess of normal; 1 recommended the rates as proposed for the grades to which the special factor "sand" or "dirt" is added but recommended, further, that corresponding increases be added to other grades to offset the reductions for the excessive sand or dirt reflected in the rates proposed for the grades bearing the special factors; 1 recommended less difference between the rates for certain primings grades (P grades) and certain lug grades (X grades) as the difference reflected in the proposed rates for such grades exceeds the difference in value; and fifteen recommended that price support not be made available to producers of tobacco because of the health issues associated with the use of tobacco products.

After considering the comments received, it is determined that to reflect proper value relationships, the proposed grade loan rates for the P2F and P2L grades should be increased 3 cents, and the proposed grade loan rates for the P3F and P3L grades should be increased 2 cents with offsetting decreases of 1 cent per pound in the proposed grade loan rates for the X5F, X5L, X4G and M4F grades. It is further determined that no changes should be made in the rates proposed for the other grades. Reductions as recommended in the rates for the grades which are normally exported in large quantity would require increases in the rates for the other grades and such increases could be expected to result in unduly large quantities being delivered for price support. Rates lower than proposed for the grades bearing the special factor "sand" or "dirt" would constitute discounts more than sufficient to reflect the excessive sand or dirt and would require offsetting increases in the grade loan rates for other grades for which many of the respondents recommended decreases. Price support for tobacco is required by Federal law and the grade

loan rates must average the statutory level of support for 1977 crop flue-cured tobacco.

FINAL RULE

Accordingly, 7 CFR 1464.16 is revised to read as set forth below, effective for the 1977 crop of flue-cured tobacco. The material previously appearing under § 1464.16 remains applicable to the crop to which it refers.

(Secs. 4, 5, 62 Stat. 1070, as amended (15 U.S.C. 714b, 714c), secs. 101, 106, 401, 403, 63 Stat. 1051, as amended (7 U.S.C. 1441, 1445, 1421, 1423).)

NOTE.—The Commodity Credit Corporation has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed at Washington, D.C. on June 21, 1977.

KEISTER N. ADAMS,

Acting Executive Vice President,
Commodity Credit Corporation.

7 CFR 1464.16 is revised as follows:

§ 1464.16 1977 Crop flue-cured tobacco, types 11-14, loan schedule.¹

(Cents/lb, farm sales weight)

Grade	Loan rate	Grade	Loan rate	Grade	Loan rate
A1F....	147	B3K....	125	B3KR....	124
A1L....	147	B4K....	121	B4KR....	120
B1L....	137	B5K....	117	B5KR....	116
B2L....	138	B6K....	112	B6KR....	110
B3L....	130	B3V....	121	B3KV....	106
B4L....	126	B4V....	116	B4KV....	101
B5L....	122	B5V....	112	B5GV....	111
B6L....	117	B3S....	118	B3G....	107
B1F....	137	B4S....	114	B6G....	102
B2F....	133	B5S....	110	B5GR....	99
B3F....	130	B3KL....	118	B4GK....	108
B4F....	126	B4KL....	114	B5GK....	104
B5F....	122	B5KL....	111	B6GK....	99
B6F....	117	B6KL....	106	B5GG....	95
B1FR....	135	B3KF....	118	H3L....	132
B2FR....	131	B4KF....	114	H4L....	129
B3FR....	128	B5KF....	111	H5L....	124
B4FR....	125	B6KF....	106	H6L....	119
B5FR....	121	B3KM....	121	H1F....	139
B6FR....	116	B4KM....	118	H2F....	135
B4R....	117	B5KM....	114	H3F....	132
B5R....	111	B6KM....	108	H4F....	129

¹ The loan rates listed are applicable to tied and untied flue-cured tobacco which is (1) eligible tobacco as defined in the regulations and (2) identified by a marketing card which does not bear the notation "Discount Variety-Limited Support." Rates for eligible tobacco identified by a marketing card, which bears the notation "Discount Variety-Limited Support," are 50 percent of the loan rates listed plus fifty cents (\$0.50) per hundred pounds. Any grade to which the special factor "sand" or "dirt" is added (denoting a moderate amount of sand or dirt in excess of normal) may be accepted at 90 percent, rounded to the nearest cent, of the loan rate listed. Tobacco graded "W" (doubtful keeping order), "U" (unsound), "N2", "No-G", "No-G-F", "No-G-F-sand", "No-G-F-dirt" or "scrap" will not be accepted. Tobacco is eligible for advance only if consigned by the original producer. The cooperative association through which advances are made available is authorized to deduct 1 cent per pound to apply against overhead costs.

Grade	Loan rate	Grade	Loan rate	Grade	Loan rate
H5F....	124	X2L....	128	P2F....	103
H6F....	119	X3L....	123	P3F....	103
H4FR....	127	X4L....	118	P4F....	97
H5FR....	122	X5L....	110	P5F....	92
H6FR....	117	X1F....	132	P4G....	88
H4K....	125	X2F....	128	P5G....	82
H5K....	120	X3F....	127	M4F....	112
H6K....	115	X4F....	118	M5F....	108
C1L....	136	X5F....	110	M4KR....	107
C2L....	133	X3V....	115	M4KM....	105
C3L....	130	X4V....	110	M5KM....	101
C4L....	127	X3S....	114	M4GK....	100
C5L....	123	X4KL....	110	M5GK....	95
C1F....	136	X4KF....	110	N1L....	84
C2F....	133	X4KV....	105	N1XL....	89
C3F....	130	X3KR....	120	N1K....	95
C4F....	127	X4KR....	115	N1R....	86
C5F....	123	X3KM....	117	N1GL....	78
C4V....	118	X4KM....	111	N1GF....	87
C4S....	117	X4G....	103	N1GR....	82
C4KL....	117	X5G....	99	N1KV....	86
C4KM....	118	X4GK....	103	N1GG....	79
C4KR....	122	P2L....	108	N1BO....	78
C4G....	112	P3L....	103	N1XO....	76
C4GK....	110	P4L....	97	N1XO....	76
X1L....	132	P5L....	92	N1PO....	73

[FR Doc.77-18209 Filed 6-24-77;8:45 am]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

REALIGNMENT OF AGENCY AND PROGRAM RESPONSIBILITIES

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to establish a new chapter in the Code of Federal Regulations for the new Food Safety and Quality Service that was established in the Department of Agriculture on March 14, 1977. Certain functions relating to standardization and inspection and grading of agricultural products formerly under the Agricultural Marketing Service were assigned to the new agency. A new chapter has been designated for the purpose of recodification of these functions.

EFFECTIVE DATE: June 27, 1977.

FOR FURTHER INFORMATION CONTACT:

Mary K. Ritter, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-5401.

SUPPLEMENTARY INFORMATION: On April 18, 1977, a notice was published in the FEDERAL REGISTER (42 FR 20165) transferring the responsibilities relating to meat grading and standardization; grading and standardization of poultry, shell eggs, and rabbits; standardization and inspection and grading of dairy products; standardization and inspection of fresh and processed fruit and vegetable products; and functions authorized by the Egg Products Inspection Act and by Section 32 of the Act of August 24, 1935, as supplemented by the Act of June 28, 1937, and related legislation from the Agricultural Marketing Service to the Food Safety and Quality Service. Accordingly, under Title 7 of the Code of Federal Regulations a new Chap-

ter XXVIII has been designated for the purpose of recodification of these functions.

It has been determined that this document does not substantially affect any member of the public. Under the administrative procedure provisions in 5 U.S.C. 553, it is found to be impracticable, unnecessary, and contrary to the public interest to delay the effectiveness of this rule until 30 days after publication in the FEDERAL REGISTER in that (1) no substantive rule or change of rule is involved, and (2) recodification in the Code of Federal Regulations is an editorial change only.

Accordingly, all applicable references to the Agricultural Marketing Service will be changed to read the Food Safety and Quality Service. Pursuant to said notice and the statutory authority under which the provisions were issued the following functions are hereby transferred from Chapter I to Chapter XXVIII of Title 7:

Current 7 CFR Part	Changed to 7 CFR Part
--------------------	-----------------------

SUBCHAPTER A—COMMODITY STANDARDS AND STANDARDS CONTAINER REGULATIONS

42	2842	Standards for Condition of Food Containers.
43	2843	Standards for Sampling Plans.
44	2844	Standards for Determining Net Weight of Food Products.

SUBCHAPTER B—MARKETING OF PERISHABLE AGRICULTURAL COMMODITIES

2850	Rules of Practice Governing Withdrawal of Inspection and Grading Services.
------	--

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

51	2851	Fresh Fruits, Vegetables, and Other Products (Inspection, Certification, and Standards).
52	2852	Processed Fruits, Vegetables, Processed Products Thereof, and Certain Other Processed Food Products.
53	2853	Inspection of Egg Products and Grading.
54	2854	Grading of Shell Eggs and U.S. Standards, Grades, and Weight Classes for Shell Eggs.
55	2855	Grading and Inspection, General Specifications for Approved Plans and Standards for Grades of Dairy Products.
56	2856	Inspection of Eggs and Egg Products (Egg Products Inspection Act of 1970).
57	2857	Voluntary Grading of Poultry Products and Rabbit Products and U.S. Classes, Standards, and Grades.

SUBCHAPTER G—PROCESS OR RENOVATED BUTTER

171	2871	Sanitary Inspection of Process or Renovated Butter.
-----	------	---

¹ To be codified in the CFR books when a final rule is issued.

² Also appears as pt. 50 in ch. I.

Dated: June 21, 1977.

WILLIAM T. MANLEY,
Acting Deputy Administrator,
Commodity Operations.

Part 2850 will read as follows:

PART 2850—RULES OF PRACTICE GOVERNING WITHDRAWAL OF INSPECTION AND GRADING SERVICES

Subpart A—General

- Sec.
2850.1 Meaning of words.
2850.2 Definitions.
2850.3 Scope and applicability of this part.

Subpart B—Conditional Withdrawal of Service Proceedings

- 2850.11 General.
2850.12 Notice.

Subpart C—Rules Applicable To Disciplinary Withdrawal Proceedings

- 2850.21 Stipulations and consent orders.
2850.22 Formal complaints and other moving papers.
2850.23 Docket number.
2850.24 Judges.
2850.25 The answer.
2850.26 Motions and requests.
2850.27 Oral hearings before Judge.
2850.28 Depositions.
2850.29 Prehearing conferences.
2850.30 Post-hearing procedure.
2850.31 Appeal to Secretary.
2850.32 Argument before Secretary.
2850.33 Consideration of appeal by the Secretary and issuance of final order.
2850.34 Rehearing, reargument, reconsideration of orders, and reopening of hearings.
2850.35 Filing; extensions of time; effective date of filing; computation of time.
2850.36 Service; proof of service.
2850.37 Rule applicable to all proceedings.
2850.40 Summary action, general.

AUTHORITY: Sec. 205, 60 Stat. 1090 as amended (7 U.S.C. 1624).

Subpart A—General

§ 2850.1 Meaning of words.

As used in this part words in the singular form shall be deemed to import the plural, and vice versa, as the case may require.

§ 2850.2 Definitions.

(a) The term "Act" means the Agricultural Marketing Act of 1946, approved August 14, 1946, and any legislation amendatory thereof (7 U.S.C. 1621-1627).

(b) "Administrator" means the Administrator, Food Safety and Quality Service, U.S. Department of Agriculture, or any officer or employee to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead.

(c) "Division" means the Division of the Food Safety and Quality Service initiating the withdrawal proceedings.

(d) "Director" means the Director of the Division or any officer or employee to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(e) "Department" means the United States Department of Agriculture.

(f) "Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

(g) "General Counsel" means the General Counsel of the Department or any employee of the Office of the General Counsel to whom the authority to act in his stead has heretofore been or may hereafter be delegated.

(h) "Conditional withdrawal of service" means the withdrawal, not involving disciplinary action, of grading or inspection service from a person for a correctable cause such as failure to pay bills for service, interference with the grading or inspection personnel in the performance of their duties, insanitary or other unsatisfactory plant conditions.

(i) "Disciplinary withdrawal of service" means the withdrawal of grading or inspection service for any reason (other than a conditional withdrawal) due to a violation of the Act or the regulations issued thereunder. The term includes termination of service contracts for cause even though the contract may provide for the unilateral termination by the Food Safety and Quality Service under certain specified conditions.

(j) "Administrative Law Judge." In connection with disciplinary proceedings, the terms "Administrative Law Judge" or "Judge" mean any Administrative Law Judge appointed pursuant to 5 U.S.C. 3105, assigned to conduct the proceeding.

(k) "Initial decision": In connection with disciplinary proceedings, "initial decision" or "decision" means the initial decision of an Administrative Law Judge, and includes the Administrative Law Judge's (1) findings of fact and conclusions with respect to all material issues of fact, law or discretion, as well as the reasons or basis therefor, (2) order, and (3) rulings on findings, conclusions and order submitted by the parties.

(l) "Hearing Clerk" means the Hearing Clerk, United States Department of Agriculture, Washington, D.C. 20250.

(m) "Party" includes the Department in those instances in which a proceeding is instituted upon moving papers filed by an officer or employee of the Department in an official capacity.

(n) "Complainant" means the party upon whose moving paper the proceeding is instituted.

(o) "Respondent" means the party proceeded against.

(p) "Moving paper" means any formal complaint, petition or notice, issued by the Director, by virtue of which a formal proceeding under the Act is instituted.

§ 2850.3 Scope and applicability of this part.

The rules of practice in this part shall govern all withdrawals of inspection and grading service furnished by the Food Safety and Quality Service pursuant to the Act. They do not modify existing procedures for refusing to inspect, grade, or certify a specific lot of a product because of adulteration, improper preparation or improper presentation of the lot for grading, or because of failure to comply with any similar requirements set forth in applicable regulations.

Subpart B—Conditional Withdrawal of Service Proceedings

§ 2850.11 General.

The Director may withdraw grading or inspection service from a person for a correctable cause. Such service, after appropriate corrective action is taken, will be restored immediately, or as soon thereafter as a grader or inspector can be made available.

§ 2850.12 Notice.

Written notice shall be given to the person concerned, in advance of a conditional withdrawal, whenever it is feasible to do so. If advance written notice is not given, the conditional withdrawal action shall be promptly confirmed in writing and the reason therefor shall be stated, except in instances where the person has already corrected the deficiency.

Subpart C—Rules Applicable to Disciplinary Withdrawal Proceedings

§ 2850.21 Stipulations and consent orders.

(a) At any time prior to the issuance of the moving paper, the Director may enter into a stipulation with the prospective respondent whereby the latter agrees to discontinue the acts or practices which are violative of the Act and also may agree to withdrawal of grading or inspection service. Such stipulations shall be admissible as evidence of such acts and practices in any subsequent proceeding against such person before the Secretary.

(b) At any time after the issuance of the moving paper and prior to the hearing in any proceeding, the Director, in his discretion, may allow the respondent to consent to an order. In so consenting, the respondent must submit, for filing in the record, a stipulation or statement in which he admits at least those facts necessary to the Secretary's jurisdiction and agrees that an order may be entered against him. Upon a record composed of the moving paper and the stipulations or agreement consenting to the order, the Judge shall enter the order consented to by the respondent, which shall have the same force and effect as an order made after oral hearing.

§ 2850.22 Formal complaints and other moving papers.

(a) *Filing; service; and number of copies.* A formal complaint or other form of moving paper shall be filed, in triplicate, with the Hearing Clerk, who shall promptly serve a true copy thereof upon the respondent, in the manner provided in § 2850.36.

(b) *Who may file.* Disciplinary withdrawal proceedings may be instituted only upon moving papers filed by the Director.

(c) *Contents.* A moving paper shall state briefly and clearly the allegations of fact which constitute a basis for the proceeding and shall specify with particularity the matters or things in issue. Moving papers shall not include charges,

implied charges, or requirements phrased generally in the words of the Act, but the words of the Act may be identified and quoted or used in preliminary recitals. Moving papers which propose to deny applications, petitions, or requests shall specify the reason for denial and shall, so far as practicable, contain suggestions as to further procedures or alternatives available to the persons involved.

(d) *Amendments.* At any time prior to the close of the hearing, the moving paper may be amended, but, in case of an amendment adding new provisions, the hearing shall, at the request of the respondent, be adjourned for a reasonable time to be determined by the Judge. Amendments subsequent to the first amendment or subsequent to the filing of an answer by the respondent may be made only with leave of the Judge or with the written consent of the adverse party.

§ 2850.23 Docket number.

Each proceeding, immediately following the institution, shall be assigned a docket number by the Hearing Clerk, and thereafter the proceeding may be identified by such number.

§ 2850.24 Judges.

(a) *Assignment.* No Judge shall be assigned to serve in any proceeding who (1) has any pecuniary interest in any matter or business involved in the proceeding, (2) is related within the third degree by blood or marriage to any part to the proceeding, or (3) has participated in the investigation preceding the institution of the proceeding or in the determination that it should be instituted or in the preparation of the complaint or in the development of the evidence to be introduced therein.

(b) *Request for disqualification of Judge.* (1) Any party may file with the Hearing Clerk a timely request, in affidavit form, for the disqualification of the Judge, which requests shall set forth with particularity the grounds of alleged disqualification. After such investigation or hearing as the Secretary may deem necessary, he shall either deny or grant the request. If the request is granted, another Judge shall be assigned to the proceeding. If such request is denied, the request, any record made thereon, and the finding and order of the Secretary thereon shall be made a part of the record.

(2) A Judge shall ask to be withdrawn from any proceeding in which he deems himself disqualified for any reason.

(c) *Conduct.* The Judge shall conduct the proceedings in a fair and impartial manner and, save to the extent required for the disposition of ex parte matters as authorized by law, he shall not consult any person or party on any fact in issue unless upon notice and opportunity for all parties to participate.

(d) *Powers.* Subject to review by the Secretary, as provided elsewhere in the regulations in this part, the Judge in any proceeding assigned to him, shall have power to:

(1) Rule upon motions and requests;
(2) Set the time and place of hearing, adjourn the hearing from time to time, and change the time and place of hearing;

(3) Administer oaths and affirmations and take affidavits;

(4) Examine witnesses and receive evidence;

(5) Take, or order (over the facsimile signature of the Secretary) the taking, of depositions;

(6) Admit or exclude evidence;

(7) Hear oral argument on facts or law;

(8) Do all acts and take all measures necessary for the maintenance of order at the hearing and for the efficient conduct of the proceeding.

(e) *Who may act in absence of Judge.* In case of the absence of the Judge or his inability to act, the powers and duties to be performed by him under these rules of practice in connection with a proceeding may, without abatement of the proceeding unless otherwise ordered by the Secretary, be assigned to any other Judge.

§ 2850.25 The answer.

(a) *Filing and service.* Within 20 days after the service of the moving paper, the respondent shall file, in triplicate, with the Hearing Clerk, an answer, signed by the respondent or his attorney: *Provided*, That the Secretary may order that the hearing be held without answer or other pleading. The answer shall be served upon the complainant, and any other party of record, by the Hearing Clerk.

(b) *Contents; failure to file.* Such answer shall (1) contain a statement of the facts which constitute the grounds of defense, and shall specifically admit, deny, or explain each of the allegations of the moving paper unless the respondent is without knowledge, in which case the answer shall so state; or (2) state that the respondent admits all of the allegations of the moving paper. The answer may contain a waiver of hearing. Failure to file an answer to, or plead specifically to, any allegation of the moving paper shall constitute an admission of such allegation.

(c) *Procedure upon admission of facts.* The admission, in the answer or by failure to file an answer, of all the material allegations of fact contained in the moving papers shall constitute a waiver of hearing. Upon such admission of facts, complainant shall file in triplicate a proposed decision, along with a motion for the adoption thereof, which motion and proposed decision shall be served upon the respondent by the Hearing Clerk. Within 20 days after service of such motion and proposed decision, the respondent may file with the Hearing Clerk objections thereto. In not less than 30 days after service of complainant's motion and proposed decision, the Judge shall issue an initial decision without further procedure or hearing. Absent a waiver by the parties of service of the Judge's initial decision, it shall be served

upon them by the Hearing Clerk. The parties shall be given an opportunity to file appeals to the initial decision, to file briefs in support of such appeals, and to make oral arguments thereon before the Secretary in accordance with § 2850.32.

§ 2850.26 Motions and requests.

(a) *General.* (1) All motions and requests shall be filed with the Hearing Clerk, except that those made during an oral hearing may be stated orally and made a part of the transcript.

(2) The Judge shall rule upon all motions and requests filed or made prior to the issuance of the initial decision. The Secretary shall rule upon all motions and requests filed in connection with an appeal of the initial decision to the Secretary.

(b) *Certification to Secretary.* The submission or certification of any motion, request, objection, or other question to the Secretary prior to the issuance of an initial decision shall be in the discretion of the Judge.

§ 2850.27 Oral hearing before Judge.

(a) *Request for oral hearing.* (1) Any party may request an oral hearing on the facts by including such request in the moving paper or answer or by a separate request in writing filed with the Hearing Clerk.

(2) Waiver of oral hearing shall not be deemed to be a waiver of the right to make oral argument before the Secretary upon appeal of the Judge's initial decision.

(b) *Time and place.* If and when the proceeding has reached the state where oral hearing is to be held, the Judge, upon motion of any of the parties, jointly or individually, stating that the matter is at issue and is ready for hearing, shall set a time and place for hearing giving careful consideration to the convenience of the parties, and shall file with the Hearing Clerk a notice stating the time and place of hearing. If any change in the time or place of the hearing becomes necessary it shall be made by the Judge and notice of such change shall be served upon the parties.

(c) *Appearances—(1) Representation.* In any proceeding under the Act, the parties may appear in person or by the counsel or other representative. The Department, if represented by counsel, shall be represented by an attorney assigned by the General Counsel.

(2) *Debarment of counsel or representative.* (i) Whenever, while a proceeding is pending before him, the Judge finds that a person acting as counsel or representative for any party to the proceeding is guilty of unethical or unprofessional conduct, the Judge may order that such person be precluded from further acting as counsel or representative in such proceeding. An appeal to the Secretary may be taken from any such order, but the proceeding shall not be delayed or suspended pending disposition of the appeal: *Provided*, That the Judge may suspend the proceedings for a reasonable time for the purpose of en-

abling the party to obtain other counsel or representative.

(1) In case the Judge has issued an order precluding a person from further acting as counsel or representative in the proceeding, the Judge, within a reasonable time thereafter, shall submit to the Secretary a report of the facts and circumstances surrounding the issuance of the order and shall recommend what action the Secretary should take respecting the appearance of such person as counsel or representative in other proceedings before the Secretary. Thereafter, the Secretary may, after notice and an opportunity for hearing, issue such order respecting the appearance of such person as counsel or representative in proceedings before the Secretary as the Secretary finds to be appropriate.

(3) *Failure to appear.* (i) If any party to the proceeding, after being duly notified, fails to appear at the hearing, he shall be deemed to have waived the right to an oral hearing in the proceeding. In the event that a party appears at the hearing and no party appears for the opposing side, the Judge may determine whether the party who is present shall present his evidence, in whole or in part, in the form of affidavits or by oral testimony before the Judge.

(ii) Failure to appear at a hearing shall not be deemed to be a waiver of the right to be served with a copy of the Judge's initial decision, to appeal therefrom to the Secretary, and to make oral argument before the Secretary with respect thereto.

(d) *Order of proceeding.* Except as may be determined otherwise by the Judge, the moving party shall proceed first at the hearing.

(e) *Evidence.* (1) *In general.* (i) The testimony of witnesses at a hearing shall be on oath or affirmation, subject to cross-examination, and shall be reported verbatim.

(ii) Any witness may, in the discretion of the Judge, be examined separately and apart from all other witnesses except those who may be parties to the proceeding.

(iii) The Judge shall exclude, insofar as practicable, evidence which is immaterial, irrelevant, or unduly repetitious, or which is not of the sort upon which responsible persons are accustomed to rely.

(2) *Objections.* (i) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, he shall state briefly the grounds of such objections, whereupon an automatic exception will follow if the objection is overruled by the Judge. The transcript shall not include argument or debate thereon except as ordered by the Judge. The ruling of the Judge on any objection shall be a part of the transcript.

(ii) Only objections made before the Judge may subsequently be relied upon in the proceeding.

(3) *Depositions.* The deposition of any witness shall be admitted, in the manner provided in and subject to the provisions of § 2850.28.

(4) *Affidavits.* Except as is otherwise provided in the regulations in this part, affidavits may be admitted only if the evidence is otherwise admissible and the parties agree (which may be determined by their failure to make timely objections) that affidavits may be used.

(5) *Proof and authentication of official records or documents.* An official record or document, if admissible for any purpose, shall be admissible in evidence without the production of the person who made or prepared the same. Such record or document shall be evidenced by an official publication thereof or by a copy attested by the person having legal authority to make such attestation. The person attesting the copy shall make a certificate showing such authority.

(6) *Exhibits.* (i) All written statements, charts, tabulations, or similar data offered in evidence at the hearing shall, after identification by the proponent and upon a satisfactory showing of the admissibility of the contents thereof, be numbered as exhibits, received in evidence, and made a part of the record. Unless the Judge finds that the furnishing of copies is impracticable, a copy of each exhibit shall be filed with the Judge for the use of each other party to the proceeding. The Judge shall advise the parties as to the exact number of copies which will be required to be filed and shall make and have noted on the record the proper distribution of the copies.

(ii) If the testimony of a witness refers to a statute, a report, document, or transcript, the Judge, after inquiry relating to the identification of such statute, report, document, or transcript, shall determine whether a copy of the same shall be produced at the hearing and physically be made a part of the evidence as an exhibit, or whether it shall be incorporated into the evidence by reference. If relevant and material matter offered in evidence is embraced in a report, document, or transcript containing immaterial or irrelevant matter, such immaterial or irrelevant matter shall, insofar as practicable, be designated by the party and segregated and excluded.

(7) *Official notice.* Official notice shall be taken of such matters as are judicially noticed by the courts of the United States and of any other matter of technical, scientific, or commercial fact of established character: *Provided*, That the parties shall be given adequate notice of matters so noticed, and shall be given adequate opportunity to show that such facts are erroneously noticed.

(8) *Offer of proof.* Whenever evidence is excluded from the record, the party offering such evidence may make an offer of proof, which shall be included in the transcript. The offer of proof shall consist of a brief statement describing the evidence to be offered. If the evidence consists of a brief oral statement or of an exhibit, it shall be inserted into the transcript in toto. In such event, it shall be considered a part of the transcript if the Secretary decides that the Judge's ruling in excluding the evidence was erroneous. The Judge shall not allow the insertion of such evidence in toto if the

taking of such evidence will consume a considerable length of time at the hearing. In the latter event, if the Secretary decides that the Judge erred in excluding the evidence, and that such error was substantial, the hearing will be reopened to permit the taking of such evidence.

(1) *Oral argument before Judge.* Oral argument before the Judge shall not be allowed unless the Judge finds that the denial of such argument will be likely to deprive the parties of an adequate opportunity for oral argument subsequently in the proceeding. Such argument, which shall be reduced to writing and made part of the transcript, may be limited by the Judge to any extent that he finds necessary for the expeditious disposition of the proceeding.

§ 2850.28 Depositions.

(a) *Procedure in lieu of deposition.* Before taking testimony by deposition, a party may execute and submit to the other party an affidavit which shall set forth the facts to which the witness would testify, if the deposition should be taken. If, after examination of such affidavit, the other party agrees to the use of the affidavit in lieu of a deposition, the Judge shall admit the affidavit in evidence and shall not order the deposition to be taken.

(b) *Application for taking deposition.* Upon the application of a party to the proceeding, the Judge may, at any time after the filing of the moving papers, order, over the facsimile signature of the Secretary, the taking of testimony by deposition. The application shall be in writing, shall be filed with the Hearing Clerk, and shall set forth: (1) The name and address of the proposed deponent; (2) the name and address of the person (referred to hereinafter in this section as the "officer") qualified under the regulations in this part to take depositions, before whom the proposed examination is to be made; (3) the proposed time and place of the examination, which shall be at least 15 days after the date of the mailing of the application; and (4) the reasons why such deposition should be taken.

(c) *Judge's order for taking deposition.* If, after examination of the application, the Judge is of the opinion that the deposition should be taken, he shall order its taking. The order shall be filed with the Hearing Clerk, shall be served upon the parties, and shall state: (1) The time and place of the examination (which shall not be less than 7 days after the filing of the order); (2) the name of the officer before whom the examination is to be made; (3) the name of the deponent. The officer and the time and place need not be the same as those suggested in the application.

(d) *Qualifications of officer.* The deposition shall be made before the Judge or before an officer authorized by the law of the United States or by the law of the place of the examination to administer oaths, or before an officer authorized by the Secretary to administer oaths.

(e) *Procedure on examination.* (1) Deponent shall be examined under oath or affirmation and shall be subject to cross-examination. The testimony of the deponent shall be recorded by the officer or by some person under his direction and in his presence. In lieu of oral examination, parties may transmit written questions to the officer prior to the examination and the officer shall propound such questions to the deponent.

(2) The applicant shall arrange for the examination of the witness either by oral examination or by written questions. If the place of business of the opposing party is more than 100 miles from the place of the examination, the applicant will be required to conduct the examination by means of written questions, unless the parties otherwise agree. If the examination is conducted by means of written questions, copies of the questions shall be served upon the other party to the proceeding at least 10 days prior to the date set for the examination unless otherwise agreed, and the other party shall be afforded an opportunity to file with the officer cross-questions at any time prior to the time of the examination.

(f) *Certification by officer.* The officer shall certify on the deposition that the deponent was duly sworn by him and that the deposition is a true record of the deponent's testimony. He shall then securely seal the depositions, together with one copy thereof (unless there are more than two parties in a proceeding, in which case there should be another copy for each additional party), in an envelope and mail the same by registered mail to the Hearing Clerk.

(g) *Use of depositions.* A deposition ordered and taken in accordance with the provisions of this section may be used in a proceeding under the Act if the Judge finds that the evidence is otherwise admissible and (1) that the witness is dead; or (2) that the witness is at a distance greater than 100 miles from the place of hearing, unless it appears that the absence of the witness was procured by the party offering the deposition; or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has endeavored to procure the attendance of the witness, but has been unable to do so; or (5) that such exceptional circumstances exist as to make it desirable, in the interests of justice, to allow the deposition to be used. If a deposition has been taken and the party upon whose application it was taken refuses to offer it in evidence, the other party may offer the deposition or any part thereof in evidence.

§ 2850.29 Prehearing conferences.

In any proceeding in which it appears that such procedure will expedite the proceeding, the Judge, at any time prior to or during the course of the oral hearing, may request the parties or their counsel to appear at a conference before him to consider (a) the simplification of issues; (b) the necessity or desirability

of amendments to pleadings; (c) the possibility of obtaining stipulations of fact and of documents which will avoid unnecessary proof; (d) the limitation of the number of expert or other witnesses; and (e) such other matters as may expedite and aid in the disposition of the proceeding. No transcript of such conference shall be made, but the Judge shall prepare and file for the record a written summary of the action agreed upon or taken at the conference, which shall incorporate any written stipulations or agreements made by the parties at the conference or as a result of the conference. If the circumstances are such that a conference is impracticable, the Judge may request the parties to correspond with him for the purpose of accomplishing any of the objects set forth in this section. The Judge shall forward copies of letters and documents to the parties as the circumstances require. Correspondence in such negotiations shall not be a part of the record, but the Judge shall submit a written summary for the record if any agreement is reached or action is taken.

§ 2850.30 Post-hearing procedure.

(a) *Corrections to and certification of transcript.* (1) At such time as the Judge may specify, but not later than the time fixed for filing proposed findings of fact, conclusions and order, or briefs, as the case may be, the parties may file with the Judge proposed corrections to the transcript.

(2) As soon as practicable after the filing of proposed findings of fact, conclusions and orders, or briefs, as the case may be, the Judge shall file with the hearing clerk his certificate indicating any corrections to be made in the transcript, and stated that, to the best of his knowledge and belief, the transcript, as corrected, is a true, correct, and complete transcript of the testimony given at the hearing, and that the exhibits are all the exhibits properly a part of the hearing record. The original of such certificate shall be attached to the original transcript and copy of such certificate shall be served upon each of the parties by the Hearing Clerk who shall also enter onto the transcript (without obscuring the text) any correction noted in the certification.

(b) *Proposed findings of fact, conclusions, orders, and briefs.* Each party may file with the Hearing Clerk proposed findings of fact, conclusions and orders, based solely upon the record, and on matters subject to official notice, and a brief in support thereof. The Judge shall announce at the hearing a definite calendar day as the time within which these documents may be filed.

(c) *Administrative Law Judge's initial decision.* The Judge, within a reasonable time after the termination of the period allowed for the filing of proposed findings of fact, conclusions and orders, and briefs in support thereof, shall prepare, upon the basis of the record and on matters officially noticed and shall file with the Hearing Clerk, his initial decision, a copy of which shall be served by the

Hearing Clerk upon each of the parties. Such decision shall become final without further proceedings 35 days after the date of service thereof, unless there is an appeal to the Secretary by a party to the proceeding pursuant to § 2850.31(a): *Provided, however,* That no decision shall be final for purposes of judicial review except a final decision of the Secretary upon appeal.

§ 2850.31 Appeal to Secretary.

(a) *Filing of petition.* Any party who disagrees with a Judge's decision, or any part thereof, may appeal the decision to the Secretary by transmitting an appeal petition to the Hearing Clerk within 30 days after service of said decision upon said party. Each issue set forth in the appeal, and the arguments thereon, shall be separately numbered; shall be plainly and concisely stated; and shall contain detailed citations of the record, statutes, regulations and authorities being relied upon in support thereof. The appeal petition shall be served upon the other party to the proceeding by the Hearing Clerk.

(b) *Response to appeal petition.* Within 20 days after the service of an appeal brought by a party to the proceeding, any other party may file with the Hearing Clerk a response in support of or in opposition to such appeal which shall be served upon the appellant.

(c) *Transmittal of record.* Whenever an appeal of an initial decision is filed and a response thereto has been filed or the time for filing a response has expired, the Hearing Clerk shall transmit to the Secretary the record of the proceeding. Such record shall include: The pleadings; motions, and requests filed and ruling thereon; the transcript of the testimony taken at the hearing, together with the exhibits filed therein; any documents or papers filed in connection with prehearing of fact, conclusions and orders, and briefs in support thereof, as may have been filed in connection with the hearings; the Judge's initial decision; and the appeal petition; briefs in support thereof and responses thereto as may have been filed in the proceeding.

§ 2850.32 Argument before Secretary.

(a) *Oral argument.* A party bringing an appeal may request, within the prescribed time period for filing such appeal, an opportunity for oral argument before the Secretary. Failure to make such request in writing, within the prescribed time period shall be deemed a waiver of oral argument. The Secretary, in his discretion, may grant, refuse, or limit any request for oral argument on appeal.

(b) *Briefs.* The Secretary may allow or refuse to allow briefs to be filed, either in lieu of or in addition to oral argument.

(c) *Scope of argument.* Argument to be heard on appeal whether oral or in a written brief, shall be limited to the issues raised in the appeal, except that if the Secretary determines that additional issues should be argued, the par-

ties shall be given reasonable notice of such determination, so as to permit preparation of adequate arguments on all issues to be argued.

§ 2850.33 Consideration of appeal by the Secretary and issuance of final order.

As soon as practicable after the receipt of the record from the Hearing Clerk, or, in case oral argument was had, as soon as practicable thereafter, the Secretary, upon the basis of and after due consideration of the record, shall rule on the appeal. If the Secretary decides that no change or modification of the Judge's decision is warranted, he may adopt the Judge's decision as the final order of the Secretary, preserving any right of the party bringing the appeal to seek judicial review of such decision in the proper forum.

(a) *Issuance of final order.* A final order issued by the Secretary shall be filed with the Hearing Clerk, who shall serve it forthwith upon the parties.

§ 2850.34 Rehearing, reargument, reconsideration of orders, and reopening of hearings.

(a) *Petitions to rehear, reargue, and reconsider.* A petition for rehearing or reargument of the proceeding, or for reconsideration of the order, shall be made by petition to the Secretary filed with the Hearing Clerk within 10 days after the date of service of the order. Every such petition shall state specifically the matters claimed to have been erroneously decided and the alleged errors. If the Secretary concludes that the questions raised by the petition have been sufficiently considered in the issuance of the order, he shall dismiss the petition without service on the other party. Otherwise he shall direct that a copy of the petition be served upon such party. The filing of a petition to rehear or reargue a proceeding or to reconsider an order shall automatically operate to set aside the order pending final action on the petition.

(b) *Petition to reopen.* A petition to reopen a hearing to take further evidence may be filed at any time prior to the issuance of the final order. Every such petition shall state briefly the nature and purpose of the evidence to be adduced, shall show that such evidence is not merely cumulative, and shall set forth a good reason why such evidence was not adduced at the hearing. Every such petition shall be served by the Hearing Clerk on the other party in the proceeding.

(c) *Procedure for disposition of petitions.* Within 20 days following the service of any petition provided for in this section, the other party to the proceeding may file with the Hearing Clerk an answer thereto. In the event that any such petition is granted the applicable rules of practice shall be followed.

§ 2850.35 Filing; extensions of time; effective date of filing; computation of time.

(a) *Filing; number of copies.* Except as is provided otherwise herein, all documents or papers required or authorized

by the regulations in this part to be filed with the Hearing Clerk shall be filed in triplicate: *Provided*, That, where there are more than two parties to the proceeding, a sufficient number of copies shall be filed so as to provide for service upon all the parties to the proceeding. Any document or paper required or authorized by the regulations in this part to be filed with the Hearing Clerk shall, during the course of an oral hearing, be filed with the Judge.

(b) *Extensions of time.* The time for the filing of any document or paper (except an informal complaint) required or authorized under the regulations in this part to be filed may be extended by the Judge (before the transmittal of the record to the Secretary) or by the Secretary (after such transmittal) upon request, if, in the judgment of the Judge or the Secretary, as the case may be, there is good reason for the extension.

(c) *Effective date of filing.* Any document or paper required or authorized under the regulations in this part to be filed shall be deemed to be filed when it reaches the Hearing Clerk.

(d) *Computation of time.* Sundays and holidays shall be included in computing the time allowed for the filing of any document or paper: *Provided*, That when such time expires on a Sunday or Federal holiday, the period shall be extended to include the next following business day.

§ 2850.36 Service; proof of service.

Service of all papers and documents required to be served on the parties in any proceeding under these rules shall be made by the Hearing Clerk, unless otherwise provided herein or directed by a Judge or the Secretary, and shall be made either (a) by registering or certifying and mailing a copy of the document or paper, addressed to the individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence; or (b) if such registered or certified matter is returned undelivered for any reason, by mailing by regular mail a copy of the document or paper, addressed to such individual, partnership, corporation, organization, or association, or to his or its attorney or agent of record, at his or its last known principal office, place of business, or residence; or (c) by leaving a copy of the document or paper at the principal office, or place of business, or residence, of such individual, partnership, corporation, organization, or association, or of his or its attorney or agent of record and by mailing by regular mail another copy to such person at such address; or (d) by delivering a copy of the document or paper to the individual to be served, or to a member of the partnership to be served, or to the president, secretary, or other executive officer or any director of the corporation, organization, or association to be served, or to the attorney or agent of record of such individual, partnership, corporation, organization, or association. Proof of service hereunder by a person other

than an employee of the Department or a United States Marshal or his deputy shall be made by the affidavit of the person who actually made the service. Proof of service hereunder by an employee of the Department or a United States Marshal or his deputy shall be made by the certificate of the person who actually made the service: *Provided*, That if the service be made by registered or certified mail, as outlined in paragraph (a) of this section, proof of service shall be made by the return post-office receipt, except that, if the registered or certified matter is returned undelivered for any reason, proof of service may be made by the certificate of the person who thereafter mailed the same matter by regular mail. The affidavit, certificate, or post-office receipt contemplated herein shall be filed with the Hearing Clerk.

§ 2850.37 Rule applicable to all proceedings.

The Secretary may act in the place and stead of an examiner or Judge in any proceeding hereunder. When he so acts, the Hearing Clerk shall transmit the record to the Secretary at the expiration of the period provided for the filing of proposed findings of fact, conclusions and orders, and the Secretary shall thereupon, after due consideration of the record, issue his final order in the proceeding: *Provided*, That he may issue a tentative order in which event the parties shall be afforded an opportunity to file exceptions before the issuance of the final order.

§ 2850.40 Summary action, general.

(a) *General.* In any situation where the integrity of the service would be seriously jeopardized if service were continued pending a decision in the proceeding, service to respondent may be suspended effective on or after the third day after mailing of notice thereof to respondent's last known or designated address or upon actual receipt of such notice, whichever is earlier.

(b) *Actual or threatened physical violence.* In any case of actual or threatened physical violence to an inspector or grader, service to respondent may be suspended prior to the transmittal of written notice to respondent. A written notice shall be given as promptly as circumstances permit.

[FR Doc.77-18241 Filed 6-24-77;8:45 am]

Title 14—Aeronautics and Space

CHAPTER I—FEDERAL AVIATION ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. 16960; Amdt. 39-2938]

PART 39—AIRWORTHINESS DIRECTIVES

British Aircraft Corporation BAC 1-11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adds a new airworthiness directive (AD) that requires inspection and replacement, if necessary, of the whiffletree lever in the