

# Rules and Regulations

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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.

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 2

#### Revision of Delegation of Authority; Correction

AGENCY: Department of Agriculture.

ACTION: Final rule; correction.

**SUMMARY:** In FR Document 80-32745 appearing at page 60405 in Federal Register of October 21, 1980, the reference to "(15) thru (27)" was incorrectly used. The reference should read "(16) thru (27)" in the ninth line of paragraph (a) of § 2.68. The purpose of this document is to correct that error.

**EFFECTIVE DATE:** January 14, 1981.

**FOR FURTHER INFORMATION CONTACT:** Charles E. Soisson, Personnel Programs, Personnel Division, Foreign Agricultural Service, U.S. Department of Agriculture, Washington, D.C. 20250, 447-7073.

(5 U.S.C. 301 of Reorganization Plan #2 of 1953)

Issued at Washington, D.C. this 8th day of January 1981.

Bob Bergland,

Secretary.

[FR Doc. 81-1300 Filed 1-13-81; 8:45 am]

BILLING CODE 3410-10-M

## Agricultural Marketing Service

### 7 CFR Part 27

#### Cotton Classification Under Cotton Futures Legislation; Action To Rescind Removal of Augusta, Georgia, From the List of Bona Fide Spot Cotton Markets

AGENCY: Agricultural Marketing Service.

ACTION: Final rule.

**SUMMARY:** A notice published August 6, 1979 (44 FR 45917) deferred the effective date for the removal of Augusta, Georgia, from the list of bona fide spot cotton markets in § 27.93 of the Regulations for Cotton Classification Under Cotton Futures Legislation (7 CFR Part 27) from August 1, 1979 to August 1, 1981. This two-year deferral provided additional time to further evaluate the market information needs in the state of Georgia and to allow development of a responsive program to meet those needs. During this interim period the quotations functions of the Augusta market were strengthened to the extent that it now meets the criteria for bona fide spot cotton markets, and evaluation indicated that continuing to publish August spot market quotations would be an asset to the cotton market news program. The action to remove Augusta is rescinded.

**EFFECTIVE DATE:** February 13, 1981.

**FOR FURTHER INFORMATION CONTACT:** Loyd Frazier, Marketing Services Branch, Cotton Division, Agricultural Marketing Service, Washington, D.C. 20250 (202/447-2147).

**SUPPLEMENTARY INFORMATION:** The U.S. Cotton Futures Act (90 Stat. 1841-46; 7 U.S.C. 15b) requires the Secretary of Agriculture to designate bona fide spot markets which may be used to establish settlement differences for futures contracts. The previous action taken to delete Augusta from the list of designated bona fide spot markets (42 FR 56949) was based upon the lack of information supporting the ability of the Augusta market to meet the criteria for such designation.

Since August 1979, Augusta spot quotations have been strengthened by additional participation of members of the Augusta Cotton Exchange who were not active in the spot cotton quotations and related market news work two years ago. This has improved the quality of Augusta quotations by increasing the amount of market information with which the quotations committee has to work. Analysis and evaluation have found that with this increased participation, the Augusta market meets the criteria for designated spot markets. It is with the expectation that this level of participation will continue that the removal order is rescinded. USDA remains responsible for the validity of all designated spot cotton quotations and will continue to monitor all bona

fide spot markets to determine that each continues to meet the criteria for designation.

USDA views the continuation of Augusta as a designated spot cotton market as a contribution to the overall cotton market news program which serves the needs of the state of Georgia.

**Note.**—This action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified "not significant." It has been determined that no impact would result as (i) the continuation of Augusta as a designated spot cotton market will not require that any new or additional requirements be met by members of the private sector currently participating in the spot quotations program; (ii) the cotton market information published for public benefit will not be altered; and (iii) no additional procedures will be required of USDA at public expense.

#### § 27.93 [Amended]

Accordingly, § 27.93 of the regulations (7 CFR 27.93) governing cotton classification under cotton futures legislation will continue to list Augusta, Georgia in the list of bona fide spot cotton markets and the prior determination for removal of Augusta, Georgia, from the list, effective August 1, 1981, is rescinded.

Dated: January 8, 1981.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 81-1245 Filed 1-13-81; 8:45 am]

BILLING CODE 3410-02-M

## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1512

#### Correction of Amendments to Bicycle Regulation; Retroreflective Rims

AGENCY: Consumer Product Safety Commission.

ACTION: Correction of final amendment.

**SUMMARY:** This document corrects two errors that appeared in the document amending the Commission's bicycle safety regulation, published December 16, 1980 (45 FR 82625). The first correction adds a decimal point to the metric equivalent of an English measurement. The second correction replaces an incorrect word in the title of a table.



**SUPPLEMENTARY INFORMATION:****§ 1512.18 [Corrected]**

Section 1512.18(r)(3)(v) is corrected to read: (v) The abrader shall be a cup brush having bristles that are 0.005 in. (approx. 0.13 mm) diameter \* \* \*.

The title of table 3 is corrected to read: Table 3—*Minimum acceptable values for the quantity A defined in the retroreflective tire and rim test procedure.*

Dated: January 8, 1981.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 81-1326 Filed 1-13-81; 8:45 am]

BILLING CODE 6355-01-M

## **SECURITIES AND EXCHANGE COMMISSION**

### **17 CFR Part 241**

[Release No. 34-17424]

#### **Interpretive Release Concerning Distribution of Proxy Materials to Beneficial Shareowners**

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Interpretation of rules.

**SUMMARY:** The Securities and Exchange Commission today authorized the Division of Corporation Finance (1) to remind issuers of their obligations with respect to the distribution of proxy materials to the beneficial shareowners of securities held in the name of a broker-dealer ("street name"), bank or other nominee and the distribution of annual reports to security holders, and (2) to remind brokers of their obligations to respond to issuer inquiries concerning the beneficial owners of the issuer's securities and to forward promptly proxy and other material to such beneficial owners. This information is being published because of serious concerns regarding compliance with these aspects of the proxy rules.

**DATE:** January 7, 1981.

#### **FOR FURTHER INFORMATION CONTACT:**

Gregory H. Mathews, (202) 272-2589, Division of Corporation Finance, Securities and Exchange Commission, Washington, D.C. 20549.

**SUPPLEMENTARY INFORMATION:** In September 1980, the Commission authorized publication of the *Staff Report on Corporate Accountability* ("Staff Report")<sup>1</sup> in which the staff of the Division of Corporation Finance addresses a number of issues relating to

the operation of Regulation 14A (the "proxy rules"), including the process by which issuers communicate with beneficial owners of securities registered in street or other nominee name. With respect to the dissemination of proxy materials to beneficial shareowners, the Staff Report found, among other things, that many issues fail to comply with Rule 14a-3(d).<sup>2</sup>

Rule 14a-3(d) requires that if an issuer knows that voting securities are held of record by a broker, dealer, bank, voting trustee, or a nominee of such person, the issuer shall inquire of such intermediaries to determine whether other persons beneficially own such securities, and, if so, the number of copies of the proxy, annual report to security holders and other soliciting material needed by the intermediary in order to supply such material to all beneficial owners. Customarily, this inquiry is made by means of a "search card." If certain of the issuer's securities are registered in the name of a clearing agency or depository, the inquiry must initially be made to the agency or depository and thereafter to its participants who hold securities on behalf of beneficial owners.<sup>3</sup> Issuers must make the Rule 14a-3(d) inquiry at least ten days before the record date for the meeting of security holders.<sup>4</sup>

As noted earlier, it has come to the Division's attention that many issuers are not making the inquiry required by Rule 14a-3(d). Nearly 30 percent of all equity securities are not registered in street or other nominee name,<sup>5</sup> and it is expected that such registration will continue to grow. The efficacy of street and other nominee registration is beyond dispute. However, any practice which may delay or prevent receipt of proxy materials by beneficial shareowners is inconsistent with Section 14(a) of the Securities Exchange

Act of 1934 ("Exchange Act"), which is designed to assure fair corporate suffrage.<sup>6</sup> The Division, therefore, reminds issuers of their obligation to make the inquiry required by Rule 14a-3(d).

Rule 14a-3(d) not only assures that issuers make timely distribution of proxy material to all beneficial shareholders, but also assists issuers in obtaining necessary quorums and votes. As a practical matter, non-compliance with Rule 14a-3(d) can make it impossible for broker-dealers to vote the uninstructed proxies of their customers pursuant to the rules of the New York Stock Exchange<sup>7</sup> and the American Stock Exchange.<sup>8</sup> Ultimately, it may be difficult or impossible to obtain a quorum for the meeting of security holders or to generate the votes needed to act on important matters to be considered at the meeting if beneficial owners do not receive proxy materials.

A companion rule to Rule 14a-3(d) is Rule 14b-1, which requires a broker registered pursuant to Section 15 of the Exchange Act, to "(a) respond to an inquiry made in accordance with Rule 14a-3(d) \* \* \* by promptly indicating, by means of a search card or otherwise, the approximate number of its customers who are beneficial owners of the issuer's securities \* \* \*, and (b) upon receipt of the proxy, other proxy soliciting material, and/or annual report to security holders and of assurance that its reasonable expenses shall be paid by the issuer, forward such materials promptly to such customers." <sup>9</sup> Accordingly, the Division reminds brokers of their obligations pursuant to this rule quickly to respond to issuers' search cards and to send out proxy and other materials.

The Division also reminds issuers of their obligation to comply with Rule 14a-3(b). Rule 14a-3(b) provides that when an issuer's solicitation relates to a meeting at which directors are to be elected, the proxy statement furnished to shareholders must be accompanied or preceded by an annual report to security holders. The staff has received information indicating that in some instances annual reports have been furnished to beneficial owners after the proxy statement has been distributed. In view of the requirement of the rule, the Division notes that it is inappropriate for issuers to mail proxy statements to

<sup>1</sup> Adoption of Rule 14a-3(d) was announced in Securities Exchange Act Release No. 11617 (August 25, 1975), 40 FR 42219. Amendments of Rule 14a-3(d) were announced in Securities Exchange Act Release No. 13719 (July 5, 1977), 42 FR 35953.

<sup>2</sup> Securities Exchange Act Rule 17Ad-8 requires registered clearing agencies to provide issuers, upon request, with a list of their participants' respective positions in the issuer's securities. See Securities Exchange Act Release No. 16443 (December 20, 1979), 44 FR 76774.

<sup>3</sup> Rather than waiting until ten days before the record date to commence the inquiry, issuers are urged in a proxy solicitation manual jointly prepared by the American Society of Corporate Secretaries, the New York Stock Exchange, American Stock Exchange, National Association of Securities Dealers and the Securities Industry Association, to inquire "as far in advance of the record date as possible." *Manual for Proxy Solicitation of Stock in Broker, Bank and Other Nominee Name* 1 (1978).

<sup>4</sup> New York Stock Exchange, 1975 Shareownership 20 (1975).

<sup>5</sup> H.R. No. 1383, 73d Cong. 2d Sess. 13 (1934).

<sup>6</sup> Rule 452 CCH New York Stock Exchange Guide ¶ 2452.

<sup>7</sup> Rule 756 CCH American Stock Exchange Guide ¶ 9528.

<sup>8</sup> Adoption of Rule 14b-1 was announced in Securities Exchange Act Release No. 13719 (July 5, 1977), 42 FR 35953.

<sup>1</sup> Division of Corporation Finance, Securities and Exchange Commission. Printed for the use of the Senate Committee on Banking, Housing and Urban Affairs, 96th Cong. 2d Sess. (September 4, 1980).



security holders prior to mailing annual reports.

The staff will continue to monitor the operation of Rule 14a-3(d) and Rule 14a-3(b) and, if necessary, will make further recommendations, including enforcement recommendations where appropriate, to the Commission as necessary in order to achieve the purposes for which these rules were adopted.

Accordingly, 17 CFR Part 241 is amended by adding this release thereto.

By the Commission.

George A. Fitzsimmons,  
Secretary.

January 7, 1981.

[FR Doc. 81-1244 Filed 1-13-81; 8:45 am]

BILLING CODE 9010-01-M

## DEPARTMENT OF EDUCATION

### Office of the Secretary

#### 34 CFR Part 75

#### Education Department General Administrative Regulations (EDGAR); Annual Funding Priorities

AGENCY: Department of Education.

ACTION: Final regulations.

**SUMMARY:** These final regulations formalize the procedures for the selection and promulgation of annual funding priorities for Department of Education programs. The regulations will provide concerned parties with a common vocabulary and inform applicants about current procedures.

**EFFECTIVE DATE:** These final regulations are expected to take effect forty-five days after they are transmitted to the Congress. Regulations are usually transmitted to the Congress several days before they are published in the *Federal Register*. The effective date is changed if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Depew, Office of the General Counsel, Division of Regulations Management, U.S. Department of Education, Room 2134 FOB-6, 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-7091.

**SUPPLEMENTARY INFORMATION:** A variety of procedures are currently used in the Department of Education to set or implement annual program priorities. Annual priorities are announcements that a program will, for one fiscal year, investigate certain topics, serve certain populations, or otherwise focus the program. The program may accomplish

this objective by inviting applications that meet a priority or by using some or all of its appropriations in a fiscal year to fund applications that meet a priority. Some program regulations list a variety or "menu" of possible priorities and state that the Secretary may choose one or more from the list each year. In other cases, priorities are established on a case-by-case basis. This regulation lists the implementation techniques that may be used to establish priorities in the Department of Education. Placing this list of techniques in EDGAR will give applicants, staff offices, and program officials a common vocabulary and inform applicants about current procedures.

This rule also codifies the Department's position on the occasions when priorities must be published for public comment. Although many program offices find that their priority announcements generate little controversy, it is expected that increased use of priorities will generate greater public interest in them. Three exceptions to publication of proposed annual priorities for public comment are listed in the regulations.

Currently, the Secretary announces competitions for program funds through an application notice published in the *Federal Register*. This notice provides information about each program competition. Under the procedures established by this amendment to EDGAR, proposed priorities will generally be published for public comment a few months before publication of a program's application notice. Final priorities will usually be published in the program's annual application notice. Annual priorities included within the three exceptions to public comment procedures will only be published in the application notice.

Publication of these regulations for public comment is unnecessary. They are procedural and do not authorize any administrative actions not possible now.

A citation of statutory or other legal authority is placed in parentheses after each substantive provision of these regulations.

(Catalog of Federal Domestic Assistance number not applicable)

Dated: January 9, 1981.

Shirley M. Hufstedler,  
Secretary of Education.

The Secretary amends part 75 of Title 34 of the Code of Federal Regulations as follows:

1. Section 75.101(a) is amended by striking the word "and" following paragraph (9), redesignating paragraph (10) as paragraph (11), and adding a new paragraph (10), to read as follows:

**§ 75.101 Information in the application notice that helps an applicant apply.**

(a) \* \* \*

(10) Any priorities established by the Secretary for the program for that year and the method the Secretary will use to implement the priorities (Cross-reference: See § 75.105 Annual priorities); and

(11) \* \* \*

2. A new § 75.105 is added to read as follows:

#### **§ 75.105 Annual priorities.**

(a) *What programs are covered by this section?* This section applies to any program for which the secretary establishes priorities for selection of applications in a particular fiscal year.

(b) *How does the Secretary establish annual priorities?*

(1) The Secretary establishes final annual priorities by publishing the priorities in a notice in the *Federal Register*, usually in the application notice for that program.

(2) The Secretary publishes proposed annual priorities for public comment, unless—

(i) The final annual priorities will be implemented only by inviting applications that meet the priorities (Cross-reference: See 34 CFR § 75.105(c)(1));

(ii) The final annual priorities are chosen from a list of priorities already established in the program's regulations; or

(iii) Publishing proposed annual priorities would seriously interfere with an orderly, responsible grant award process or would otherwise be impracticable, unnecessary, or contrary to the public interest.

(c) *How does the Secretary implement an annual priority?*

The Secretary may choose one or more of the following methods to implement an annual priority:

(1) *Invitations.* The Secretary may simply invite applications that meet a priority. If the Secretary chooses this method, an application that meets the priority receives no competitive or absolute preference over applications that do not meet the priority.

(2) *Competitive preference.* The Secretary may give one of the following kinds of competitive preference to applications that meet a priority.

(i) If a program uses weighted selection criteria, the Secretary may award selection points to an application that meets the priority. These points are in addition to any points the applicant earns under the selection criteria (see § 75.200(b)). The notice states the number of additional points that the



Secretary will award to applications that meet the priority in a particularly effective way.

(ii) The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

(3) *Absolute preference.* The Secretary may give an absolute preference to applications that meet a priority for a program. The Secretary establishes an absolute preference by reserving all or part of a program's funds solely for applications that meet the priority. The Secretary may establish the amount reserved for applications that meet the priority either—

- (i) In the application notice; or
- (ii) After determining the number of high quality applications received.

(20 U.S.C. 3474)

[FR Doc. 81-1189 Filed 1-13-81; 8:43 am]

BILLING CODE 4000-01-M

## Office of Special Education and Rehabilitative Services

### 34 CFR Part 332

#### Instructional Media for the Handicapped

**AGENCY:** Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary of Education issues final regulations governing the selection criteria for Educational Media Research, Production, Distribution, and Training Grants under the Instructional Media for the Handicapped Program authorized by Part F of the Education for the Handicapped Act. This criteria will govern grants that promote the educational advancement of handicapped persons through the use of media.

**EFFECTIVE DATE:** These regulations are expected to take effect 45 days after they are transmitted to Congress. They are transmitted to Congress several days before they are published in the *Federal Register*. The effective date is changed by statute if Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

**FOR FURTHER INFORMATION CONTACT:** Malcolm J. Norwood, Department of Education, 400 Maryland Avenue, S.W. (Room 4821, Donohoe Building), Washington, D.C. 20202, telephone (202) 472-4640.

**SUPPLEMENTARY INFORMATION:** On August 5, 1980, the Secretary of

Education published in the *Federal Register* (45 FR 52132-52133) final regulations governing the Educational Media Research, Production, Distribution, and Training Program. Those regulations, published as 45 CFR Part 121q, contained final selection criteria applicable to fiscal year 1980 awards only. On that same date, the Secretary published a proposed regulation which would establish selection criteria for the program for fiscal year 1981 and subsequent fiscal years (45 FR 52136-52137). Interested persons were given 60 days to comment on the proposed regulation. No comments were received.

This final regulation contains no changes from the proposed selection criteria. These final weighted selection criteria conform to the requirements of the Education Division General Administrative Regulations (EDGAR) and require that applications be evaluated on the basis of point scores.

Please note that on November 21, 1980, the Secretary of Education published a final regulation in the *Federal Register* (45 FR 77368-77370) which redesignated and transferred the former 45 CFR Part 121q (which governed the Educational Media Research, Production, Distribution, and Training Program) to Title 34 of the CFR as the new Part 332. This change reflects no substantive change in the regulations governing the program.

#### Applicable Regulations

The Educational Media Research, Production, Distribution and Training Program is subject to the following regulations:

(1) EDGAR Direct Project Grant and Contract Programs regulations (34 CFR Part 75);

(2) EDGAR General Regulations (34 CFR Part 77); and

(3) The applicable program regulations (34 CFR Part 332). In addition to the final regulation contained in this document, final regulations governing this program were published in the *Federal Register* on August 5, 1980 (45 FR 52132-52133).

#### Citation of Legal Authority

The reader will find a citation of statutory or other legal authority in parentheses on the line following each substantive provision.

Dated: January 9, 1981.  
Shirley M. Hufstedler,  
Secretary of Education.

(Catalog of Federal Domestic Assistance No. 84.026, Instructional Media Services for the Handicapped)

The Secretary amends Title 34 of the Code of Federal Regulations Part 332 by revising § 332.32 to read as follows:

#### § 332.32 What selection criteria does the Secretary use?

- (a) *Plan of Operation.* (25 points)
  - (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.
  - (2) The Secretary looks for information that shows—
    - (i) High quality in the design of the project;
    - (ii) An effective plan of management that insures proper and efficient administration of the project;
    - (iii) A clear description of how the objectives of the project relate to the purpose of the program;
    - (iv) The way the applicant plans to use its resources and personnel to achieve each objective;
    - (v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally under represented, such as—
      - (A) Handicapped persons;
      - (B) Members of racial or ethnic minority groups;
      - (C) Women; and
      - (D) The elderly.
  - (b) *Quality of key personnel.* (20 points)
    - (1) The Secretary reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.
    - (2) The Secretary looks for information that shows—
      - (i) The qualifications of the project director (if one is to be used);
      - (ii) The qualifications of each of the other key personnel to be used in the project;
      - (iii) The time that each person referred to in paragraphs (b)(2)(i) and (ii) of this section plans to commit to the project; and
      - (iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally under represented, such as—
        - (A) Handicapped persons;
        - (B) Members of racial or ethnic minority groups;