

\$1.90 per sheet due to increased costs of providing this service.

The fee for a review classification is being increased from \$1.00 to \$1.05 per sample. In order to avoid a policy that could encourage the unnecessary mutilation of cotton bale packaging by repeated resampling of bales when multiple classifications are desired, the Department will return the samples submitted for review classification if the producer so requests. To defray the costs of handling and returning these samples and to account for the loss in revenue which would have defrayed a portion of the costs of the review classification if the samples had been sold as baled loose cotton, a fee of 25 cents per sample will be charged for those samples returned at the request of the producer. This provision adheres to the policy of the Joint Cotton Industry's Bale Packaging Committee which represents all segments of the United States cotton industry and was formed to promote the improved condition and hence the marketability of United States cotton bales as they pass through marketing channels.

Since the harvesting of the 1983 cotton crop will begin in mid or late July, it is necessary to implement these revisions in fees on July 15, 1982 to insure that uniform fees are paid by all participating growers during the 1982 cotton season. Accordingly, William T. Manley, Deputy Administrator for Marketing Program Operations (AMS), has determined that the existing situation warrants this revision be made effective no later than July 15, 1982.

For the foregoing reasons it is hereby found, pursuant to the administrative procedure provisions of 5 U.S.C. 553, that, for good cause, prior notice and public procedure on this revision are impracticable, unnecessary and contrary to the public interest, and good cause exists for making the amendments effective on July 15, 1982. The Department will, however, accept public comments concerning these amendments until, and will consider revising these amendments should such comments demonstrate a need therefor.

List of Subjects in 7 CFR Part 28

Cotton, Cotton linters, Market news, Grades, Samples, Standards, Staples, Testing.

Accordingly, 7 CFR Part 28 is amended as follows:

PART 28—COTTON CLASSING, TESTING, AND STANDARDS

1. Section 28.909 is amended by revising paragraph (b) to read as follows:

§ 28.909 Costs.

(b) The Division will periodically bill producers or the agents designated by the producers for the cost of classification. The cost for cotton classification service to producers is 67 cents per sample.

2. Section 28.910 is amended by revising paragraph (b) to read as follows:

Classification

§ 28.910 Classification of samples and issuance of memoranda.

(b) Upon the request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be \$1.90 per sheet.

3. Section 28.911 is revised to read as follows:

§ 28.911 Review classification.

A producer may request one review classification for each bale of eligible cotton. The fee for review classification is \$1.05 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to §§ 28.20–28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment for samples for review classification shall be assumed by the producer. After classification the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds of the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 25 cents per sample in addition to the fee established above in this section.

(Sec. 10, 42 Stat. 1519, sec. 3c, 50 Stat. 62; 7 U.S.C. 61, 473c, and sec. 156, 95 Stat. 357, unless otherwise noted)

Dated: July 14, 1982.

John Ford,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 82-19478 Filed 7-16-82; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Reg. 368]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period July 18–24, 1982. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: July 18, 1982.

FOR FURTHER INFORMATION CONTACT:

William J. Doyle, Acting Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202-447-5975.

SUPPLEMENTARY INFORMATION:

This final rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "non-major" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact on a substantial number of small entities. This action is designed to promote orderly marketing of the California-Arizona lemon crop for the benefit of producers, and will not substantially affect costs for the directly regulated handlers.

This final rule is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee and upon other available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1981–82. The marketing policy was recommended by the committee following discussion at a public meeting on July 7, 1981. The

committee met again publicly on July 13, 1982, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the *Federal Register* (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

Section 910.668 is added as follows:

§ 910.668 Lemon regulation 368.

The quantity of lemons grown in California and Arizona which may be handled during the period July 18, 1982, through July 24, 1982, is established at 280,000 cartons.

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

Dated: July 15, 1982.

D. S. Kuryloski,

Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 82-19556 Filed 7-15-82; 12:39 pm]

BILLING CODE 3410-02-M

Rural Electrification Administration

7 CFR Part 1701

Public Information; Appendix A—REA Bulletins Specification for Expanded Dielectric Coaxial Cable, PE-84

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: REA hereby amends Appendix A—REA Bulletins by revising REA Bulletin 345-84, REA Specification for Expanded Dielectric Coaxial Cable, PE-84, to include two additional cable sizes and to require lower attenuation

values for all sizes of coaxial cable. The large diversity of population densities served by REA borrowers makes a larger selection of cable desirable, and technology has advanced to where low-loss cables are readily available. By making these changes, cable will be available to permit REA borrowers to more cost effectively design systems.

EFFECTIVE DATE: July 9, 1982.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Flanagan, Director, Telecommunications Engineering and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone (202) 382-8663. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from the above-named individual.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act as amended (7 U.S.C. 901 et seq.). This final action has been reviewed in accordance with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of \$100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity and therefore has been determined to be "not major." This action does not fall within the scope of the Regulatory Flexibility Act and is not subject to OMB Circular A-95 review. This program is listed in the Catalog of Federal Domestic Assistance as 10.853—Community Antenna Television Loans and Loan Guarantees, and 10.851—Rural Telephone Loans and Loan Guarantees.

Background

There have been significant advances in technology since the last issuance of this document, and a wider selection of cable sizes was considered desirable for system design considerations. The existing document is not applicable to much of the new technology and restricts cable availability so that its continuation would have forced REA borrowers to use outmoded less cost-effective technology. If the existing specification was withdrawn rather than revised there would be no REA specification which manufacturers would be required to meet. Unacceptable equipment could be sold to REA borrowers which would result in the loss of system effectiveness and a

threat to REA loan security. As a result, revision of the document along the proposed lines was considered to be in the best interest of the program.

A Notice of Proposed Rulemaking was published in the *Federal Register* on March 9, 1982, Volume 47, Number 46, pages 10057 and 10058. However, no public comments were received in response to the notice.

7 CFR Part 1701, Appendix A—REA Bulletins, is hereby amended by revising REA Bulletin 345-84, REA Specification for Expanded Dielectric Coaxial Cable, PE-84.

List of Subjects in 7 CFR Part 1701

Loan programs—communications, Telecommunications, Telephone.

Dated: July 9, 1982.

Jack Van Mark,

Acting Administrator.

[FR Doc. 82-19206 Filed 7-15-82; 8:45 am]

BILLING CODE 3410-15-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Bank Holding Companies and Change in Bank Control; Statement of Policy on Nonvoting Equity Investments by Bank Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Policy statement.

SUMMARY: In recent months, a number of bank holding companies have made substantial equity investments in banks or bank holding companies located in states other than the home state of the investing bank holding company and have entered into various merger or asset acquisition agreements with these companies or banks that are to be consummated in the event interstate banking is permitted. These investments are accompanied by rights to a substantial amount of the voting shares of the acquiree bank holding company or its subsidiary bank(s). Because of the evident interest in such investments or agreements and because they raise major questions under the Bank Holding Company Act, the Board has issued this statement to provide guidance regarding the consistency of such agreements with the Act.

DATE: July 8, 1982.

FOR FURTHER INFORMATION CONTACT:

James V. Mattingly, Jr., Associate General Counsel (202/452-3430) or Kathleen O'Day, Senior Attorney (202/452-3786) or Scott Alvarez, Attorney (202/452-3583) Legal Division, Board of

Governors of the Federal Reserve System, Washington, D.C. 20551.

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding companies, Securities.

Pursuant to its authority under the Bank Holding Company Act (12 U.S.C. 1841 *et seq.*) and section 225.2 of Regulation Y (12 CFR § 225.2), the Board has amended 12 CFR Part 225 by adding a new § 225.143 to read:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

§ 225.143 Policy statement on nonvoting equity investments by bank holding companies.

(a) Introduction.

(1) In recent months, a number of bank holding companies have made substantial equity investments in a bank or bank holding company (the "acquiree") located in states other than the home state of the investing company through acquisition of preferred stock or nonvoting common shares of the acquiree. Because of the evident interest in these types of investments and because they raise substantial questions under the Bank Holding Company Act (the "Act"), the Board believes it is appropriate to provide guidance regarding the consistency of such arrangements with the Act.

(2) This statement sets out the Board's concerns with these investments, the considerations the Board will take into account in determining whether the investments are consistent with the Act, and the general scope of arrangements to be avoided by bank holding companies. The Board recognizes that the complexity of legitimate business arrangements precludes rigid rules designed to cover all situations and that decisions regarding the existence or absence of control in any particular case must take into account the effect of the combination of provisions and covenants in the agreement as a whole and the particular facts and circumstances of each case. Nevertheless, the Board believes that the factors outlined in this statement provide a framework for guiding bank holding companies in complying with the requirements of the Act.

(b) Statutory and Regulatory Provisions.

(1) Under section 3(a) of the Act, a bank holding company may not acquire direct or indirect ownership or control of more than 5 per cent of the voting shares of a bank without the Board's prior approval. (12 U.S.C. 1842(a)(3)). In addition, this section of the Act provides

that a bank holding company may not, without the Board's prior approval, acquire control of a bank; that is, in the words of the statute, "for any action to be taken that causes a bank to become a subsidiary of a bank holding company." (12 U.S.C. 1842(a)(2)). Under the Act, a bank is a subsidiary of a bank holding company if:

(i) The company directly or indirectly owns, controls, or holds with power to vote 25 per cent or more of the voting shares of the bank;

(ii) The company controls in any manner the election of a majority of the board of directors of the bank; or

(iii) The Board determines, after notice and opportunity for hearing, that the company has the power, directly or indirectly, to exercise a controlling influence over the management or policies of the bank. (12 U.S.C. 1841(d)).

(2) In intrastate situations, the Board may approve bank holding company acquisitions of additional banking subsidiaries. However, where the acquiree is located outside the home state of the investing bank holding company, section 3(d) of the Act prevents the Board from approving any application that will permit a bank holding company to "acquire, directly or indirectly, any voting shares of, interest in, or all or substantially all of the assets of any additional bank." (12 U.S.C. 1842(d)(1)).

(c) Review of Agreements.

(1) In apparent expectation of statutory changes that might make interstate banking permissible, bank holding companies have sought to make substantial equity investments in other bank holding companies across state lines, but without obtaining more than 5 per cent of the voting shares or control of the acquiree. These investments involve a combination of the following arrangements:

(i) Options on, warrants for, or rights to convert nonvoting shares into substantial blocks of voting securities of the acquiree bank holding company or its subsidiary bank(s);

(ii) Merger or asset acquisition agreements with the out-of-state bank or bank holding company that are to be consummated in the event interstate banking is permitted;

(iii) Provisions that limit or restrict major policies, operations or decisions of the acquiree; and

(iv) Provisions that make acquisition of the acquiree or its subsidiary bank(s) by a third party either impossible or economically impracticable.

The various warrants, options, and rights are not exercisable by the investing bank holding company unless interstate banking is permitted, but may be

transferred by the investor either immediately or after the passage of a period of time or upon the occurrence of certain events.

(2) After a careful review of a number of these agreements, the Board believes that investments in nonvoting stock, absent other arrangements, can be consistent with the Act. Some of the agreements reviewed appear consistent with the Act since they are limited to investments of relatively moderate size in nonvoting equity that may become voting equity only if interstate banking is authorized.

(3) However, other agreements reviewed by the Board raise substantial problems of consistency with the control provisions of the Act because the investors, uncertain whether or when interstate banking may be authorized, have evidently sought to assure the soundness of their investments, prevent takeovers by others, and allow for sale of their options, warrants, or rights to a person of the investor's choice in the event a third party obtains control of the acquiree or the investor otherwise becomes dissatisfied with its investment. Since the Act precludes the investors from protecting their investments through ownership or use of voting shares or other exercise of control, the investors have substituted contractual agreements for rights normally achieved through voting shares.

(4) For example, various covenants in certain of the agreements seek to assure the continuing soundness of the investment by substantially limiting the discretion of the acquiree's management over major policies and decisions, including restrictions on entering into new banking activities without the investor's approval and requirements for extensive consultations with the investor on financial matters. By their terms, these covenants suggest control by the investing company over the management and policies of the acquiree.

(5) Similarly, certain of the agreements deprive the acquiree bank holding company, by covenant or because of an option, of the right to sell, transfer, or encumber a majority or all of the voting shares of its subsidiary bank(s) with the aim of maintaining the integrity of the investment and preventing takeovers by others. These long-term restrictions on voting shares fall within the presumption in the Board's Regulation Y that attributes control of shares to any company that enters into any agreement placing long-term restrictions on the rights of a

holder of voting securities. (12 CFR 225.2(b)(4)).

(6) Finally, investors wish to reserve the right to sell their options, warrants or rights to a person of their choice to prevent being locked into what may become an unwanted investment. The Board has taken the position that the ability to control the ultimate disposition of voting shares to a person of the investor's choice and to secure the economic benefits therefrom indicates control of the shares under the Act.¹ Moreover, the ability to transfer rights to large blocks of voting shares, even if nonvoting in the hands of the investing company, may result in such a substantial position of leverage over the management of the acquiree as to involve a structure that inevitably results in control prohibited by the Act.

(d) *Provisions That Avoid Control.*

(1) In the context of any particular agreement, provisions of the type described above may be acceptable if combined with other provisions that serve to preclude control. The Board believes that such agreements will not be consistent with the Act unless provisions are included that will preserve management's discretion over the policies and decisions of the acquiree and avoid control of voting shares.

(2) As a first step towards avoiding control, covenants in any agreement should leave management free to conduct banking and permissible nonbanking activities. Another step to avoid control is the right of the acquiree to "call" the equity investment and options or warrants to assure that covenants that may become inhibiting can be avoided by the acquiree. This right makes such investments or agreements more like a loan in which the borrower has a right to escape covenants and avoid the lender's influence by prepaying the loan.

(3) A measure to avoid problems of control arising through the investor's control over the ultimate disposition of rights to substantial amounts of voting shares of the acquiree would be a provision granting the acquiree a right of first refusal before warrants, options or other rights may be sold and requiring a public and dispersed distribution of these rights if the right of first refusal is not exercised.

(4) In this connection, the Board believes that agreements that involve rights to less than 25 percent of the voting shares, with a requirement for a

dispersed public distribution in the event of sale, have a much greater prospect of achieving consistency with the Act than agreements involving a greater percentage. This guideline is drawn by analogy from the provision in the Act that ownership of 25 percent or more of the voting securities of a bank constitutes control of the bank.

(5) The Board expects that one effect of this guideline would be to hold down the size of the nonvoting equity investment by the investing company relative to the acquiree's total equity, thus avoiding the potential for control because the investor holds a very large proportion of the acquiree's total equity. Observance of the 25 percent guideline will also make provisions in agreements providing for a right of first refusal or a public and widely dispersed offering of rights to the acquiree's shares more practical and realistic.

(6) Finally, certain arrangements should clearly be avoided regardless of other provisions in the agreement that are designed to avoid control. These are:

(i) Agreements that enable the investing bank holding company (or its designee) to direct in any manner the voting of more than 5 per cent of the voting shares of the acquiree;

(ii) Agreements whereby the investing company has the right to direct the acquiree's use of the proceeds of an equity investment by the investing company to effect certain actions, such as the purchase and redemption of the acquiree's voting shares; and

(iii) The acquisition of more than 5 per cent of the voting shares of the acquiree that "simultaneously" with their acquisition by the investing company become nonvoting shares, remain nonvoting shares while held by the investor, and revert to voting shares when transferred to a third party.

(e) *Review by the Board.* This statement does not constitute the exclusive scope of the Board's concerns, nor are the considerations with respect to control outlined in this statement an exhaustive catalog of permissible or impermissible arrangements. The Board has instructed its staff to review agreements of the kind discussed in this statement and to bring to the Board's attention those that raise problems of consistency with the Act. In this regard, companies are requested to notify the Board of the terms of such proposed merger or asset acquisition agreements or nonvoting equity investments prior to their execution or consummation.

Board of Governors of the Federal Reserve System, July 8, 1982.

William W. Wiles,
Secretary of the Board.

[FR Doc. 82-19275 Filed 7-15-82; 8:45 am]

BILLING CODE 6210-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230 and 240

[Release Nos. 33-6413; 34-18842; 35-22547; IC-12504; FR-2; File No. S7-906]

Instructions for the Presentation and Preparation of Pro Forma Financial Information and Requirements for Financial Statements of Businesses Acquired or To Be Acquired

Correction

In FR Doc. 82-18570, beginning on page 29832 in the issue of Friday, July 9, 1982, the following corrections should be made:

1. On page 29840, in the first column, the first line of the paragraph designated "15." should read, "By revising paragraph (t)(1) of the" and the paragraph designation "(t) * * *" should be inserted between the paragraph designated "(1)" and the five stars that precede it.

2. On page 29841, in the third column, the first line of the paragraph designated "21." should read, "By revising paragraph (r)(1) of the" and the paragraph designation "(r) * * *" should be inserted between the paragraph designated "(1)" and the five stars that precede it.

BILLING CODE 1505-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 522

New Animal Drugs; Change of Sponsor; Wendt Laboratories, Inc.

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for phenylbutazone tablet and injection products from Western Serum Co. to Wendt Laboratories, Inc. Western Serum Co. filed supplemental new animal drug applications (NADA's) that provide for this change.

¹ See Board letter dated March 18, 1982, to C. A. Cavendes, Sociedad Financiera.