For the reasons stated herein, Part 271 of Subchapter I, Title 18, *Code of Federal Regulations,* is amended as set forth below, effective April 29, 1981.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (24) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation

* * * * *

(24) *The Mancos "B" Formation in Colorado.* RM79-76 (Colorado-13).

(i) *Delineation of formation.* The Mancos "B" Formation is found in Rio Blanco County, Colorado, Approximately 70 miles northwest of Grand Junction, Colorado, on the northeast flank of the Douglas Creek Arch in the Piceance Basin.

(ii) *Depth.* The Mancos "B" Formation is a member of the Mancos Shale of upper Cretaceous age, occurring in the approximate upper third of the Mancos sequence. The thickness of the Mancos "B" Formation ranges from 400 to 700 feet. The depth to the top of the Mancos "B" Formation ranges from 1,500 to 8,400 feet and averages 3,500 feet.

[FR Doc. 81-13162 Filed 4-30-81; 8:45 am]
BILLING CODE 6450-85-M

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18 CFR Part 271

[Docket No. RM79-76 (Louisiana-2); Order No. 141]

High-Cost Gas Produced From Tight Formations; Louisiana

Issued April 29, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR § 271.703). This rule established procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This final order adopts the recommendation of the State of Louisiana Office of Conservation that the Haynesville Formation be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective April 29, 1981.

FOR FURTHER INFORMATION CONTACT: Leslie Lawner, (202) 357-8307, or Ting Chin, (202) 357-8595/John Bassett, (202) 357-8589.

The Commission hereby amends § 271.703(d) of its regulations to include the Haynesville Formation in Louisiana as a designated tight formation eligible for incentive pricing under § 271.703. The amendment was proposed in a Notice of Proposed Rulemaking by Director, OPPR, issued January 21, 1980 (46 F.R. 8568, January 27, 1981) [1] based on a recommendation by the State of Louisiana Office of Conservation (Louisiana) in accordance with § 271.703(c), that the Haynesville Formation be designated as a tight formation.

Evidence submitted by Louisiana supports its assertion that the Haynesville Formation meets the guidelines contained in § 271.703(c)(2). The Commission adopts the Louisiana recommendation.

This amendment shall become effective immediately. The Commission has found that the public interest dictates that new natural gas supplies be developed on an expedited basis, and therefore, incentive prices should be made available as soon as possible. The need to make incentive prices available immediately establishes good cause to waive the thirty-day publication period.

(Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.;* Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553)

For the reasons stated herein, Part 271 of Subchapter I, Title 18, *Code of Federal Regulations,* is amended as set forth below, effective April 29, 1981.

[1] Comments on the proposed rule were invited and none were received. No party requested a public hearing in this matter, and no hearing was held.

By the Commission.
Kenneth F. Plumb,
Secretary.

PART 271—CEILING PRICES

Section 271.703(d) is amended by adding new subparagraph (22) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* The following formations are designated as tight formations. A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, subindexed as indicated, and is also located in the official files of the jurisdictional agency that submitted the recommendation.

* * * * *

(22) *The Haynesville Formation in Louisiana.* RM79-76 (Louisiana-2)

(i) *Delineation of formation.* The Haynesville Formation is found in the northern portion of Bossier Parish, Louisiana, on the Arkansas border.

(ii) *Depth.* The top of the Haynesville Formation is located at a depth of 10,360 feet and the base is located at 10,845 feet. In the Arkana Field, the Haynesville Formation consists of three members. The upper member is predominantly shale, 120 feet to 220 feet thick; the middle member is a sand, 120 feet to 220 feet thick with shale stringers varying from 2 feet to 15 feet in thickness; and the lower member is 200 feet to 400 feet thick, consisting of shale and anhydrite.

[FR Doc. 81-13103 Filed 4-30-81; 8:45 am]
BILLING CODE 6450-85-M

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18 CFR Part 282

[Docket No. RM79-14]

Implementing the Incremental Pricing Provisions of the Natural Gas Policy Act of 1978

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Order prescribing incremental pricing thresholds.

SUMMARY: The Director of the Office of Pipeline and Producer Regulation is issuing the incremental pricing acquisition cost thresholds prescribed by Title II of the Natural Gas Policy Act and 18 CFR 282.304. The Act requires the Commission to compute and publish the threshold prices before the beginning of each month for which the figures apply.

Any cost of natural gas above the applicable threshold is considered to be an incremental gas cost subject to incremental pricing surcharging.

EFFECTIVE DATE: May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Kenneth A. Williams, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426 (202) 357-8500.

SUPPLEMENTARY INFORMATION:

In the matter of publication of prescribed incremental pricing acquisition cost threshold of the NGPA of 1978.

Order of the Director, OPPR

Issued: April 22, 1981.

Section 203 of the NGPA requires that the Commission compute and make available incremental pricing acquisition cost threshold prices prescribed in Tile II before the beginning of any month for which such figures apply.

Pursuant to that mandate and pursuant to § 375.307(1) of the Commission's regulations, delegating the publication of such prices to the Director of the Office of Pipeline and Producer Regulation, the incremental pricing acquisition cost threshold prices for the month of May 1981, is issued by the publication of a price table for the applicable month.

Kenneth A. Williams,

Director, Office of Pipeline and Producer Regulation.

Table I.—*Incremental Pricing Acquisition Cost Threshold Prices*

Calendar Year 1980

	January	February	March	April	May	June	July	August	September	October	November	December
Incremental pricing threshold	$1.702	$1.738	$1.750	$1.762	$1.776	$1.790	$1.804	$1.819	$1.834	$1.849	$1.863	$1.877
NGPA section 102 threshold	.2.358	2.381	2.404	2.428	2.453	2.478	2.504	2.532	2.560	2.588	2.614	2.640
NGPA section 109 threshold	1.786	1.799	1.812	1.825	1.839	1.853	1.867	1.883	1.899	1.915	1.929	1.943
130% of No. 2 fuel oil in New York City threshold	7.170	7.260	7.410	7.110	7.380	8.040	7.840	7.380	7.400	7.400	7.450	7.580

Calendar Year 1981

	January	February	March	April	May
Incremental pricing threshold	$1.891	$1.908	$1.925	$1.942	$1.954
NGPA section 102 threshold	2.667	2.698	2.729	2.761	2.787
NGPA section 109 threshold	1.957	1.975	1.993	2.011	2.024
130% of No. 2 fuel oil in New York City threshold	7.610	7.960	8.260	9.010	9.510

[FR Doc. 81-13164 Filed 4-30-81; 8:45 am]

BILLING CODE 6450-85-M

18 CFR Part 294

[Docket RM 79-52]

Interim Procedures for Shortages of Electric Energy and Capacity Under Section 206 of the Public Utility Regulatory Policies Act of 1978; Extension

Issued April 23, 1981.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Amendment to Extend Interim Regulation.

SUMMARY: The Federal Energy Regulatory Commission hereby adopts regulations which extend, through April 30, 1982, its interim regulations implementing accommodation and reporting procedures for shortages of electric energy and capacity under section 206 of the Public Utility Regulatory Policies Act of 1978. This rulemaking extends the effectiveness of the interim regulations, and make no other changes. Under the extended regulations, each public utility now serving firm power wholesale customers must report any shortages of electric energy or capacity anticipated to occur prior to April 30, 1982, to the Commission, the utility's customers, and appropriate State authorities. Also, the regulations require each public utility to report any modifications of its plans for accommodating shortages which may occur before April 30, 1982.

EFFECTIVE DATE: April 23, 1981.

FOR FURTHER INFORMATION CONTACT:

Bernard B. Chew, Office of Electric Power Regulation, 825 North Capitol Street, NE., Room 504RB, Washington, D.C. 20426 (202) 376-9264

Christine P. Benagh, Office of the General Counsel, 825 North Capitol Street, NE., Room 8104-B, Washington, D.C. 20426 (202) 357-8606

SUPPLEMENTARY INFORMATION: Before Commissioners: Georgiana Sheldon, Acting Chairman; Matthew Holden, Jr., George R. Hall and J. David Hughes.

I. Background

On June 15, 1979, the Commission issued interim regulations implementing, in part, section 206 of the Public Utility Regulatory Policies Act of 1978 (PURPA).[1] Section 206 of PURPA directs the Commission to require public utilities to report anticipated shortages of electric energy or capacity to the Commission and to appropriate State authorities. Section 206 also requires public utilities to submit contingency plans to accommodate any shortages of electric energy or capacity to the Commission and to appropriate State authorities.

Paragraph (b) of the interim regulations requires each public utility serving firm power wholesale customers to submit by July 23, 1979, "a brief statement indicating how it would accommodate any shortages of electric energy or capacity affecting its firm power customers, should such a shortage occur prior to September 30, 1979."[2]

Paragraph (c) of the interim regulations requires each utility to

[1] Interim Regulations, 18 CFR 294.101 (1979), Docket No. RM79-52 (issued June 15, 1979).

[2] This language was adopted by an Amendment to Interim Regulations, 18 CFR 294.101, Docket No. RM79-52 (issued August 1, 1979) in order to make clear the Commission's intent that all public utilities serving firm customers must submit statements concerning the methods by which they accommodate possible shortages. Before this amendment, the language appeared to suggest that only those utilities which anticipated shortages prior to September 30, 1979, were obliged to file accommodation reports under section 206(a) of PURPA.

report immediately any shortage of electric energy or capacity which the utility anticipates will occur. In that report the utility must provide the Commission with certain information, including information regarding any procedures for accommodating a particular shortage, if they differ from the procedures set out in the utility's statement submitted pursuant to paragraph (b) of the interim regulations.

Prior to this amendment, paragraph (a) defined "anticipated shortages of electric capacity or energy" as those situations which would result in shortages "anticipated to occur prior to April 30, 1981." [3] The purpose of this amendment is to extend the reporting requirements through April 30, 1982, so that the Commission will be advised of any anticipated shortages which may occur during the coming year while the Commission considers appropriate action in view of the responses received to the Notice of Inquiry issued in this docket on April 1, 1980.[4]

Accordingly, the Commission hereby amends the interim regulations. First, the reporting requirements of paragraph (c) are extended through April 30, 1982 by amending the definition of "anticipated shortages of electric energy or capacity" in paragraph (a) to include those situations anticipated to occur prior to April 30, 1982. Second, if a plan to accommodate a shortage occurring prior to April 30, 1982, differs from the plan submitted pursuant to paragraph (b) of the interim regulations, the utility is hereby required to file a supplemental statement setting forth those changes. A utility need not file a statement of its plan to accommodate shortages prior to April 30, 1982, if that plan does not vary from that set out in the statement already filed pursuant to paragraph (b).

II. Effective Date

Since the Commission is mandated by statute to have in effect rules regarding the continuance of electric service, good cause exists for the immediate effectiveness of this amendment. Therefore, the Commission finds it to be in the public interest to dispense with notice and comment under 5 U.S.C. 553(b) and to make this rule effective immediately.

[3] This date was initially September 30, 1979, but was extended to April 30, 1980, by Interim Regulations, 16 CFR 294.101, Docket No. RM79-52 (issued Oct. 23, 1979). It was extended to April 30, 1981, by Amendment to Extend Interim Regulations, 18 CFR 294.101, Docket No. RM79-52 (issued Apr. 1, 1980).

[4] Inquiry Implementing Section 206 of the Public Utility Regulatory Policies Act of 1978, Continuance of Service, Docket No. RM79-52, issued April 22, 1980, 45 Fed. Reg. 28,162 (April 28, 1980).

(Public Utility Regulatory Policies Act of 1978, Pub. L. 95-617, 92 Stat. 3117 (1978); Federal Power Act, 16 U.S.C. 792-828c; Exec. Order No. 12,009, 3 CFR 142 (Comp. 1977); Administrative Procedure Act, 5 U.S.C. 553)

In consideration of the foregoing, Part 294 of Subchapter K, Chapter I, Title 18 of the Code of Federal Regulations is amended as set forth below, effective April 23, 1981.

By the Commission.

Kenneth F. Plumb,

Secretary.

§ 294.101 [Amended]

1. Section 294.101 of title 18, *Code of Federal Regulations*, is amended in paragraphs (a)(1), (a)(2), and (b)(4) to remove the date "1981" each time it appears and to insert in lieu thereof the date "1982".

[FR Doc. 81-13185 Filed 4-30-81; 8:45 am]

BILLING CODE 6450-85-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 401

42 CFR Part 401

Disclosure of Official Records and Information About Individuals; Correction

AGENCY: Social Security Administration, HHS.

ACTION: Final Rule; Correction.

SUMMARY: On November 13, 1980 we published final regulations on the disclosure of official records and information about individuals (45 FR 74906). In that document we transferred the Social Security Administration's interim regulations on this subject to 42 CFR Part 401 and made them the Health Care Financing Administration's (HCFA) rules on disclosure of official records and information about individuals. Several technical errors were made in redesignating and naming the new HCFA material. This notice corrects the redesignation and naming of the transferred material.

FOR FURTHER INFORMATION CONTACT: Armand Esposito, Legal Assistant, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7455.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 13, 1980 on pages 45 FR 74913 and 74914, item 1 of the amendatory language is changed from:

"1. Subpart A is transferred to 42 CFR Chapter IV and redesignated as Subpart A in new Part 401. A heading is added for 42 CFR 401 Subpart B. The headings for 42 CFR 401 and for Subparts A and B of 401 read as follows:

PART 401—DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

Subpart A—General Provisions

* * * * *

Subpart B—Confidentiality and Disclosure [Reserved]"

To

"1. Subpart A is transferred to 42 CFR Chapter IV and redesignated as Subpart B in new Part 401. A heading is added for 42 CFR 401 Subpart B. The headings for 42 CFR 401 and for Subparts A and B of 401 read as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

Subpart A—[Reserved]

Subpart B—Confidentiality and Disclosure"

Dated: April 14, 1981.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 81-13197 Filed 4-30-81; 8:45 am]

BILLING CODE 4110-07-M

Food and Drug Administration

21 CFR Part 109

[Docket No. 77N-0080]

Polychlorinated Biphenyls (PCB's) in Fish and Shellfish; Reduction of Tolerances; Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice of hearing on objection to final rule.

SUMMARY: The Food and Drug Administration (FDA) announces a formal evidentiary public rulemaking hearing and a prehearing conference for the purpose of resolving a factual issue raised by objections that stayed the final rule reducing the tolerance for polychlorinated biphenyls (PCB's) in fish and shellfish.

DATES: Notices of participation must be received by June 1, 1981. Prehearing conference June 3, 1981, beginning at 10 a.m. Participants other than the Bureau of Foods shall make all submissions required by 21 CFR 12.85 by June 30, 1981.

ADDRESSES: The prehearing conference will be held in the Food and Drug Administration hearing room, 4A-35, 5600 Fishers Lane, Rockville, MD 20857. Written notices of participation should be submitted to the Dockets Management Branch (formerly the Hearing Clerk's office) (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Theodore E. Herman, Regulations Policy Staff (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3480.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1979 (44 FR 38330), FDA issued a final regulation reducing the tolerances for unavoidable residues of the industrial chemicals, PCB's, in several classes of food. Under the final regulation, the reduced tolerances for PCB's were 1.5 parts per million (ppm) in milk (fat basis), 1.5 ppm in dairy products (fat basis), 3 ppm in poultry (fat basis), 0.3 ppm in eggs, and 2 ppm in fish and shellfish (edible portion).

FDA received over 20 objections to the final regulation, all of which dealt with the tolerance for fish and shellfish (21 CFR 109.30(a)(7)). Only one objection, submitted by the National Fisheries Institute, Inc., (NFI) in concert with several other organizations, was coupled with a request for a formal hearing as provided for in 21 U.S.C. 371(e)(2).

NFI objected that the projected $5.7 million worth of fish loss that FDA relied on as part of the basis for reducing the fish tolerance from 5 ppm to 2 ppm understated the amount of food loss that will actually occur under a 2 ppm tolerance. FDA's alleged understatement of fish loss is the sole basis upon which NFI requested a hearing. NFI contended that the actual loss will range from $7.3 million to $10.1 million, as compared to FDA's estimate of $5.7 million.

In the **Federal Register** of October 5, 1979 (44 FR 57389), FDA announced that, as provided by statute, the NFI objection and request for hearing automatically stayed the effective date of the tolerance for fish and shellfish. The agency also announced that, because no objections or requests for hearing had been filed on other provisions of the final regulation, the other reduced tolerances had become effective, as scheduled, on August 28, 1979.

Hearing Issue

A formal evidentiary public hearing is being granted on NFI's objection. The hearing will consider the following factual issue only: what is the magnitude of the human food loss (in terms of dollars, poundage, percentage of catch, etc.) that would result from lowering the tolerance of PCB's in fish from 5 ppm to 2 ppm?

Evidence may not be presented at the hearing on other issues, as on no others were there requests for a hearing. The Administrative Law Judge shall decide only the single hearing issue and shall not decide what the tolerance should be.

Hearing Record, Rulemaking Record, and § 12.85 Submissions

Because other questions related to the tolerance, including the toxicity of PCB's, are not to be considered at the hearing, data and information on such questions are not to be made part of the administrative record of the hearing (hearing record) but will remain part of the entire administrative record of the rulemaking proceeding (rulemaking record). Toxicity data and information that are not in the rulemaking record and that were not reasonably available at the time of the notice-and-comment portion of this proceeding may nevertheless be submitted for the rulemaking record and commented on to the Commissioner of Food and Drugs in the post-hearing briefs described below if the Commissioner finds good cause for their late inclusion in the rulemaking record.

All data and information on the subject of human food loss that would result from lowering the tolerance from 5 ppm to 2 ppm shall be made part of the hearing record pursuant to 21 CFR 12.85 whether or not they are now a part of the rulemaking record.

The portions of the present rulemaking record that FDA's Bureau of Foods (the Bureau) considers relevant at this time are the economic data and evaluations already gathered, prepared, and included in this record.

Pursuant to 21 CFR 12.85, the Bureau has filed with the Dockets Management Branch a narrative statement of its position on the hearing issue and a summary of the evidence it intends to introduce at the hearing in support of that position. Interested persons may obtain a copy of this narrative statement and summary of the evidence from the Dockets Management Branch (address above). Participants other than the Bureau shall make all submissions required by 21 CFR 12.85 by June 30, 1981. Interested persons may also examine the rulemaking record, including the hearing record, in that office from 9 a.m. to 4 p.m., Monday through Friday.

Hearing Procedure

Because this matter is a rulemaking hearing pursuant to 5 U.S.C. 553, 556(d), and 557, the hearing shall consist of the submission of evidence in written form only, unless otherwise ordered by the Administrative Law Judge. If the hearing is to include any oral testimony, that testimony shall be taken at the FDA hearing room (address above). The presiding Administrative Law Judge will be Daniel J. Davidson. Parties to the hearing shall be the Bureau and NFI. Parties and others who wish to be participants must file written notices of participation with the Dockets Management Branch (address above) not later than June 1, 1981. Written notices of participation should be identified by the docket number found in brackets in the heading of this document; also, to aid in identification, the envelope containing notices of participation should be clearly labeled "PCB in Fish Hearing."

The hearing will be open to the public. Any participant may appear in person, or by or with counsel or other qualified representatives, and may make known his or her views on matters relevant to the issue under consideration.

In the **Federal Register** notice announcing the stay of the tolerance for PCB's in fish (44 FR 57389), FDA reported that one of the objections expressed a concern that not all persons interested in commercial or sport fishing had had an opportunity to comment on the final regulation reducing the tolerances during the 30 days allowed for the filing of objections. The objection requested that FDA hold a hearing, in the Great Lakes region if possible, "to give the people most directly affected a chance to participate." FDA stated in the stay notice that it does not interpret this request as a request for the formal, trial-type hearing provided for in 21 U.S.C. 371(e)(2), but rather as a request that FDA (1) extend the period for filing objections and (2) hold informal hearings as a mechanism for receiving additional comments and objections on the final rule. The agency stated that it would respond to this request at the same time it responds to NFI's request for a formal hearing.

FDA believes that ample time has been provided for the filing of comments on the proposed regulation and objections and requests for a hearing on the final regulation. The proposal to reduce the tolerance from 5 ppm to 2 ppm, which was published on April 1, 1977, contained an official 60-day comment period, and the agency accepted all relevant information received during the 2 years that elapsed before the final rule published on June 29, 1979. Most of the correspondence received in response to the final rule during the 30-day period for objections repeated the comments received in 1977, and there is no indication that extending opportunity for public participation would produce new information. Therefore, the agency is not extending the comment period or allowing time for additional objections or requests for a hearing. Because the opportunities for public participation that FDA has already provided and will provide under this notice are sufficient and appropriate, the agency is denying the request for an oral hearing, preferably in the Great Lakes region. Although FDA is not holding the requested hearing in the Great lakes region, the agency will take steps to publicize in affected regions the hearing announced in this notice.

Post-Hearing Briefs

Participants may argue in post-hearing briefs to the Commissioner that, based on the rulemaking record including the hearing record, the same or a different tolerance should be set. These briefs are to be due on the same date that exceptions to the Initial Decision are due under 21 CFR 12.125. Reply briefs are also authorized and are to be submitted on the same date as replies to exceptions under 21 CFR 12.125.

FDA has established a pilot program for financial assistance to participants in certain agency proceedings, including hearings under Part 12. This program is described in regulations published in 21 CFR Part 10, Subpart C. Subject to the availability of funds and other factors, FDA may reimburse participants meeting the criteria set forth in these regulations for certain costs of participating in this proceeding. For more information regarding the reimbursement program, contact Alexander Grant, Office of Consumer Affairs (HFE–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 701(e), 52 Stat. 1049 as amended, 70 Stat. 919 as amended (21 U.S.C. 346, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), FDA orders that a public hearing be held on the issue set forth in this notice.

Dated: April 21, 1981.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 81-13160 Filed 4-30-81; 8:45 am]

BILLING CODE 4110-03-M

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21 CFR Part 522

Animal Drugs, Feeds, and Related Products; Methocarbamol Injection

Correction

In FR Doc. 81–9307 appearing on page 18964 in the issue of Friday, March 27, 1981 make the following correction:

On page 18964, first column, in the second line under **"FOR FURTHER INFORMATION CONTACT:"** the bracketed material reading "(HFB–112)" should have read "(HFV–112)".

BILLING CODE 1505-01-M

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21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) amends the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by the Upjohn Co., providing a revised cautionary statement for use of a complete swine feed containing lincomycin hydrochloride.

EFFECTIVE DATE: May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Bureau of Veterinary Medicine (HFV–147), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4317.

SUPPLEMENTARY INFORMATION: The Upjohn Co., Kalamazoo, MI 49001, is sponsor of an NADA (97–505) providing for use of a 20-gram-per-pound lincomycin premix to manufacture complete swine feeds. The feeds are indicated for treatment and control of swine dysentery at drug levels of 100 grams and 40 grams per ton of feed, respectively. The supplemental NADA does not change the approved use of the feed. It merely revises the cautionary statement by including a restriction that the feed may be used only in swine weighing no more than 250 pounds. The approval deletes the prior restriction which provided that the feed was not for use in breeding swine. This change should not be interpreted as permitting the use of the feed in breeding swine. It does not permit such use. The revision is acceptable and not misleading because, as producers are well aware, breeding swine all weigh more than 250 pounds.

Approval of this supplemental NADA poses no increased human risk from exposure to residues of the new animal drug, lincomycin hydrochloride, because the revised cautionary statement will not change the premix's approved conditions of use. Accordingly, under the Bureau of Veterinary Medicine's supplemental approval policy (42 FR 64367; December 23, 1977), this is a Category II supplemental approval which does not require reevaluation of the safety and effectiveness data in the original approval.

The agency has determined pursuant to 21 CFR 25.24(d)(1)(i) (proposed December 11, 1979; 44 FR 71742) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This action is governed by the provisions of 5 U.S.C. 556 and 557 and is therefore excluded from Executive Order 12291 by section 1(a)(1) of the Order.

§ 558.325 [Amended]

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) and redelegated to the Bureau of Veterinary Medicine (21 CFR 5.83), Part 558 is amended in § 558.325 *Lincomycin* by removing from paragraph (f)(2)(i)(*b*), and (ii)(*b*), and (iii)(*b*) the statement "not for use in breeding swine" and inserting in its place "not to be fed to swine that weigh more than 250 pounds."

Effective date. May 1, 1981.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)))

Dated: April 24, 1981.

Robert A. Baldwin,

Associate Director for Scientific Evaluation.

[FR Doc. 81-12983 Filed 4-30-81; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 35

[T.D. 7773]

Temporary Employment Tax Regulations Under the Act of December 24, 1980 (Pub. L. 96-601); Voluntary Withholding From Sick Pay

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document provides temporary regulations governing voluntary withholding from sick pay. Changes to the applicable tax law were

made by the Act of December 24, 1980 (Pub. L. 96-601). These regulations affect third party payors of sick pay, payees of sick pay, and employers of payees, and provide them with the guidance needed to comply with the law. In addition, the text contained in the temporary regulations set forth in this document serves as the text of the proposed regulations cross-referenced in the notice of proposed rulemaking in the Proposed Rules section of this issue of the **Federal Register.**

DATE: The regulations apply to sick pay payments made by someone other than the payee's employer on or after May 1, 1981.

FOR FURTHER INFORMATION CONTACT: Barry L. Wold of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations relating to voluntary withholding from sick pay under sections 3402(o) and 6051(f) of the Internal Revenue Code of 1954, as amended by the Act of December 24, 1980 (Pub. L. 96-601, 94 Stat. 3495). These statutory changes are effective with respect to sick pay payments made on or after May 1, 1981. Further, a new Part 35, Temporary Employment Tax Regulations under the Act of December 24, 1980 (Pub. L. 96-601), is added by this document to Title 26 of the Code of Federal Regulations. The temporary regulations provided by this document will remain in effect until superseded by final regulations on this subject.

General Rule

The temporary regulations would permit a payee of sick pay to request that the payor (other than his employer) of his sick pay withhold a specific whole dollar amount from each sick pay payment. The payor must comply with this request until the payee terminates the request. The payor must furnish written statements to the employer for all sick pay paid. The employer must furnish a written statement to each employee who receives a sick pay payment.

Evaluation of the effectiveness of these regulations will be based on comments received from offices within the Treasury and the Internal Revenue Service, other governmental agencies, and the public. These regulations will not impose substantial new reporting or recordkeeping requirements.

Drafting Information

The principal author of these regulations is Barry L. Wold of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, on matters of both substance and style.

Adoption of amendments to the regulations

Accordingly, a new Part 35, Temporary Employment Tax Regulations under the Act of December 24, 1980 (Pub. L. 96-601), is added to Title 26 of the Code of Federal Regulations. Part 35 reads as follows:

PART 35—TEMPORARY EMPLOYMENT TAX REGULATIONS UNDER THE ACT OF DECEMBER 24, 1980 (PUB. L. 96-601)

Sec.
35.1 Extension of withholding to sick pay.
35.2 Statements required in case of sick pay paid by third parties.

Authority: Secs. 3402(o) and 7805 Internal Revenue Code of 1954 (94 Stat. 3495, 26 U.S.C. 3402(o); 68A Stat. 917; 26 U.S.C. 7805).

§ 35.1 Extension of withholding to sick pay.

(a) *In general.* Under section 3402(o) of the Internal Revenue Code of 1954 and this section, the payee (as defined in subparagraph (h)(2) of this section) of sick pay (as defined in subparagraph (h)(1) of this section) may request the payor (as defined in subparagraph (h)(3) of this section) of the sick pay to withhold income tax with respect to payments of sick pay made on or after May 1, 1981. If such a request is made, the payor must deduct and withhold as requested.

(b) *Manner of making request.* A payee who wishes a payor to deduct and withhold income tax from sick pay shall file a written request with the payor to deduct and withhold a specific whole dollar amount (subject to the limitations of paragraph (c) of this section) from each sick pay payment. The request shall be made on Form W-4P in accordance with the instructions applicable thereto, and shall set forth fully and clearly the data therein called for. In lieu of Form W-4P, payors may prepare and use a form the provisions of which are identical to those of Form W-4P. The payee must include his social security account number in the request.

(c) *Amount requested to be withheld.* The payee shall request that the payor withhold a specific whole dollar amount. The specific whole dollar amount shall be at least $20 per weekly payment of sick pay. If the payee is paid sick pay computed on a daily basis, the specific whole dollar amount shall be at least $4 per daily payment of sick pay. If the payee is paid sick pay on a biweekly basis, the specific whole dollar amount shall be at least $40 per 2 week payment of sick pay. If the payee is paid sick pay on a basis other than weekly, daily, or biweekly, the specific whole dollar amount shall be the equivalent of at least $4 per day, assuming a 5 day work week of 8 hours per day (40 hours total) in each 7 day calendar week. In the case of a payment which is greater or less than a full payment, the amount withheld is to bear the same relation to the specific whole dollar amount requested to be withheld as such payment bears to a full payment. For example, assume an individual receives sick pay of $100 per week and requests that $25 per week be withheld for taxes. After 4 full weeks of absence, the individual returns to work on a Wednesday (having been absent on sick leave Monday and Tuesday). For the week the individual returns to work, the individual would be entitled to $40 of sick pay, $10 of which would be withheld for taxes. If the amount requested to be withheld reduces the net amount of a sick pay payment received by the payee to below $10, no income tax shall be withheld from that payment by the payor.

(d) *When request takes effect.* The payor must deduct and withhold the amount specified in the request with respect to payments made more than 7 days after the date on which the request is received by the payor. At the election of the payor, the request may take effect before this deadline.

(e) *Duration and termination of request.* A request under this section shall continue in effect until changed or terminated. The payee may change the request by filing a new written request that meets all of the requirements of paragraphs (b) and (c) of this section. The new request shall take effect as specified in paragraph (d) of this section and the old request shall be deemed terminated when the new request takes effect. The payee may terminate the request by furnishing the payor a signed written notice of termination containing both a request to terminate withholding and all the information contained in the request to withhold. This written notice of termination shall take effect with respect to payments made more than 7 days after the date on which the notice of termination is received by the payor. At the election of the payor, the request may take effect before this deadline.

(f) *Special rules.* For purposes of chapter 24 of subtitle C of the Internal Revenue Code of 1954 (relating to collection of income tax at source on wages) and of subtitle F of the Code (relating to procedure and administration), and the regulations thereunder—

(1) An amount which is requested to be withheld pursuant to this section shall be deemed a tax required to be deducted and withheld under section 3402.

(2) An amount deducted and withheld pursuant to this section shall be deemed an amount deducted and withheld under section 3402.

(3) The term "wages" includes the gross amount of a sick pay payment with respect to which there is in effect a request for withholding under this section. However, references to the definition of wages in section 3401(a) which are made in section 6014 (relating to election by the taxpayer not to compute the tax on his annual return) and section 6015(a) (relating to declaration of estimated tax by individuals) shall not be deemed to include any portion of such a sick pay payment.

(4) The term "employer" includes a payor with respect to whom a request for withholding is in effect under this section.

(5) The term "employee" includes a payee with respect to whom a request for withholding is in effect under this section.

(6) The term "payroll period" includes the period of accrual with respect to which payments of sick pay which are subject to withholding under this section are ordinarily made.

(g) *Statements required to be furnished to payees.* See section 6051(f) and the regulations thereunder for requirements relating to statements required to be furnished to payees.

(h) *Definitions.* (1)(i) The term "sick pay" means any payment made to an individual which does not constitute wages (determined without regard to section 3402(o) and this section), which is paid to an employee pursuant to a plan to which the employer is a party, and which constitutes remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries. An employee is temporarily absent if his absence is not described in section 105(d)(4) (relating to the definition of permanent and total disability) and the regulations thereunder. An employer is not a party to the plan if the plan is a contract between only employees and a third party payor and the employer makes no contributions to the plan, even if the employer withholds amounts from the employees' salaries and pays the amounts over to the third party payor.

(ii) This subparagraph (1) may be illustrated by the following examples:

Example (1). Employee A works for P Company and Employee B work for Q Company. P Company has contracted with R Insurance Company for R to pay P's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Q Company has neither entered into such a contract, nor will it make such payments directly from its own funds. B consequently goes to S Insurance Company and purchases directly an insurance policy which will pay him the equivalent of his normal wages when he is unable to work because of sickness or personal injury. Both A and B are subsequently temporarily absent from work on account of sickness or personal injuries. A receives payments from R and B receives payments from S. Neither the payments made by R to A nor the payments made by S to B constitute wages (determined without regard to section 3402(o) and this section). A may request that R withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are sick pay as defined in section 3402(o) and this section. B may not request that S withhold income taxes under section 3402(o) and this section from the payments he receives because the payments are not paid pursuant to a plan to which Q Company is a party and thus are not sick pay as defined in section 3402(o) and this section.

Example (2). Employees C and D both work for T Company, which has contracted with U Insurance Company for U to pay T's employees for all sickness or injury claims. Employee C is sick and out from work for a month. U pays C the equivalent of C's regular pay. Employee D loses his arm in an accident and U pays D $10,000. C may request that U withhold income taxes under section 3402(o) and this section from the payments he receives because the payments constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries. D may not request that U withhold taxes from the payments he receives because the payments do not constitute remuneration or a payment in lieu of remuneration for any period during which the employee is temporarily absent from work on account of sickness or personal injuries.

(2) The term "payee" means an individual who is a citizen or resident of the United States and who receives a sick pay payment.

(3)(i) The term "payor" means any person making a sick pay payment who is not the employer (as defined in section 3401 and the regulations thereunder) of the payee. If however the person making the payment is acting solely as an agent for another person, the term "payor" shall mean the other person and not the person actually making the payment.

(ii) This subparagraph (3) may be illustrated by the following examples:

Example (1). X Company contracts with Y Insurance Company for Y to pay X's employees the equivalent of their normal wages when they are temporarily absent from work because of sickness or personal injury. Y computes the amount to be paid and determines the date payment is to be made for each of X's employees. Y then instructs Z Bank to issue a check for that amount on that date. Y reimburses Z for the amount of the check plus Z's administrative costs. Under these circumstances, Z is the agent of Y and Y is the payor under section 3402(o) and this section.

Example (2). V Company contracts with W Company for W to pay V's employees the equivalent of their normal wages when they are temporarily absent from work on account of sickness or personal injury. Under the contractual arrangement, V advises W of the wages normally paid to each of V's employees. V tells W when an employee of V is temporarily absent from work on account of sickness or personal injury, and W computes the amount to be paid the employee and makes payments of sick pay to the employee during the period of the employee's absence. V subsequently reimburses W for the amount of those payments and pays W a fee for W's services. Under these circumstances, W is acting solely as the agent of V, and a payee may not request under section 3402(o) and the regulations thereunder that W withhold income taxes from his payments. However, see section 3401 and the regulations thereunder for the obligation of V to withhold income taxes from the payments that W makes as the agent of V, which are income under section 105 and the regulations thereunder and which are wages under section 3401 and the regulations thereunder.

Example (3). Assume the same facts as in Example (2), except that the consideration for W's services is a set insurance premium paid in advance rather than reimbursement for costs plus a fee. Under these circumstances, W is the payor and is not acting solely as the agent of V. An employee of V to whom W makes payments under the agreement may request under section 3402(o) and the regulations thereunder that W withhold income taxes from those payments.

(i) *Special rules for sick pay paid pursuant to certain collective-bargaining agreements.* (1) Special rules (enumerated in subparagraph (2)) apply to sick pay where all of the following tests are met.

(i) The sick pay must be paid pursuant to a collective-bargaining agreement between employee representatives and one or more employers.

(ii) The agreement must contain a provision that section 3402(o)(5) is to apply to sick pay paid pursuant to the agreement.

(iii) The agreement must contain a provision for determining the amount to be deducted and withheld from each payment of sick pay.

(iv) The social security number of the payee must be furnished to the payor. The agreement may provide that the employer will furnish this or the payee may furnish his social security number directly to the payor.

(v) The payor must be furnished with information that is necessary for the payor to determine whether the payment is pursuant to the agreement and to determine the amount to be deducted and withheld. The agreement may provide that the employer will furnish this information directly to the payor.

(2) The following special rules apply to sick pay where all of the tests of subparagraph (1) are met.

(i) The requirement of section 3402(o)(1)(c) and this section that a request for withholding be in effect does not apply.

(ii) The amount to be deducted and withheld from the sick pay shall be determined according to the provisions of the agreement and not according to this section. This rule shall not however apply to payments enumerated in section 3402(n) (relating to employees incurring no income tax liability) and the regulations thereunder.

§ 35.2 Statements required in case of sick pay paid by third parties.

(a) *Statements required from payor.* Every payor of sick pay shall furnish to the employer of the payee of sick pay a written statement. The written statement must contain the following information:

(1) The name and, if there is withholding from sick pay under section 3402(o) and the regulations thereunder, the social security account number of the payee,

(2) The total amount of sick pay paid to the payee during the calendar year, and

(3) The total amount (if any) deducted and withheld from sick pay under section 3402(o) and the regulations thereunder.

The statement must be furnished to the employer on or before January 15 of the year following the calendar year in which any sick pay was paid. These reporting requirements are in lieu of the requirements of sections 6051(a) (relating to written statements for employees) and 6041 (relating to information returns). Statements required to be furnished by this paragraph shall be treated as statements required under section 6051 to be furnished to employees for purposes of sections 6674 (relating to fraudulent statement or failure to furnish statement to employee) and 7204 (relating to fraudulent statement or failure to make statement to employees).

(b) *Information required to be furnished by employer.* Every employer of a payee of sick pay who receives a statement under paragraph (a) from a payor of sick pay shall furnish to each payee of sick pay a written statement, which must be furnished on Form W-2. The written statement must contain the following information:

(1) All of the information required to be furnished under paragraph (a).

(2) The name, the address, and the Employer Identification Number (EIN) of the employer,

(3) The words "sick pay", which shall be written in the box labelled "Employer's use", and

(4) If any portion of the sick pay is excludable from gross income under section 104(a)(3), the amount of the portion which is not so excludable and of the portion which is so excludable. Only sick pay payments includable in gross income shall be reported in the box labelled "Wages, tips, other compensation" on Form W-2. Any amount excludable from gross income under section 104(a)(3) shall be reported in the box labelled "Employer's use" on Form W-2.

To the extent practicable, this statement should be furnished to the payee along with the statement (if any) required under section 6051(a) (relating to written statements for employees). The statement must be furnished to the payee on or before January 31 of the year following the calendar year in which any sick pay was paid. The employer shall file copy A of Form W-2 and Form W-3 with the Social Security Administration in accordance with section 6051(d) (relating to statements to constitute information returns) and the regulations thereunder.

(c) *Definitions.* For purposes of this section, the terms "payor", "payee", and "sick pay" shall have the same meaning as ascribed thereto in section 3402(o) and the regulations thereunder. For purposes of this section, the term "employer" shall have the same meaning as ascribed thereto in section 3401(d) and the regulations thereunder.

(d) *Additional requirements.* (1) Statements furnished to payees under this section must also comply with all requirements of section 6051 (c) and (d) and the regulations thereunder.

(2) The provisions of § 1.9101-1 (relating to permission to submit information required by certain returns and statements on magnetic tape) shall be applicable to the information required by this section to be furnished on Form W-2 if the employer properly complies with those provisions.

(3) The provisions of section 6109 (relating to identifying numbers) and the regulations thereunder shall be applicable to Form W-2 and to any payee of sick pay to whom a statement on Form W-2 is required by this section to be furnished. Thus the employer must include the social security account number of the payee on all Forms W-2.

(e) *Effective date.* The provisions of this section shall apply to payments of sick pay made on or after May 1, 1981.

(f) *Transitional rule.* Payors may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on the same Form W-2 as is used to report sick pay paid to a payee on or after May 1, 1981. If the payor reports on Form W-2, he shall not report sick pay paid after December 31, 1980, and before May 1, 1981, on Form 1099, if otherwise required to do so. If no sick pay is paid on or after May 1, 1981, the payor may report all sick pay paid to a payee after December 31, 1980, and before May 1, 1981, on Form W-2. If he reports on Form W-2, he shall not report sick pay paid on Form 1099, if otherwise required to do so.

There is a need for immediate guidance with respect to the provisions contained in this Treasury decision. For this reason, it is found impracticable to issue it with notice and public procedure under subsection (b) of section 553 of title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

Roscoe L. Egger, Jr.,
Commissioner of Internal Revenue.

Approved: April 27, 1981.

John E. Chapoton,
Assistant Secretary of the Treasury.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

Occupational Safety and Health Standards—Fire Protection; Means of Egress; Hazardous Materials; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Corrections.

SUMMARY: This notice announces corrections to the Fire Protection; Means