§ 0.15 [Removed and reserved]

4. Section 0.15 is removed and reserved.

PART 1—GENERAL PROCEDURES

5. The authority for Part 1 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

Subpart B—Rules and Rulemaking Under Section 18(a)(1)(B) of the FTC Act

§ 1.13 [Amended]

Section 1.13 is amended by revising paragraph (c)(5) to read as follows:

§ 1.13 Rulemaking proceeding.

* * * * *

(c) * * *

(5) Organization. In the performance of their rulemaking functions, presiding officers shall be responsible to the chief presiding officer who shall not be responsible to any other officer or employee of the Commission.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 89-11083 Filed 5-8-89; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 145

Commission Western and Southwestern Regional Offices Change of Address; Correction

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule; correction.

SUMMARY: This notice corrects the telephone number of the Commodity Futures Trading Commission Office in Minneapolis, Minnesota, previously published in the **Federal Register** on April 27, 1989 (54 FR 18098).

FOR FURTHER INFORMATION CONTACT: Gerry Smith (202) 254-6090.

In FR Doc. 89-10010, published in the Thursday, April 27, 1989, **Federal Register**, § 145.6(a) on page 18099 is corrected by revising the telephone number for the Commodity Futures Trading Commission Office in Minneapolis, Minnesota, to read (612) 370-3255.

Dated: May 3, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-11045 Filed 5-8-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R-89-1355; FR-2025]

RIN No. 2502-AC92

Scope and Nature of FHA Appraisals and Property Inspections

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: As part of its mortgage insurance underwriting procedure, in both single and multifamily programs, HUD requires that a property be appraised and, in the case of single family properties, requires that a statement of appraised value be delivered to the homebuyer before sale. HUD also requires an inspection of properties involving new construction, repairs or rehabilitation. This rule codified HUD's longstanding position that: (1) Appraisals are made for the purpose of aiding the Department in determining the maximum insurable mortgage amount, and (2) inspections are required to protect the interests of HUD as mortgage insurer. The appraisals and inspections are not performed for the benefit of purchasers, or otherwise to be regarded as a HUD warranty to purchasers of the value or condition of the property.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Stephen Martin, Director, Office of Insured Single Family Housing, Room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-3046. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Before issuing a commitment for multifamily or single family mortgage insurance on a newly constructed or existing property, HUD requires that (except for certain refinancing cases) the property be appraised to assist HUD in determining the maximum insurable mortgage amount. With respect to one- to four-family properties, HUD also requires lenders to provide purchasers with a form that advises them of HUD's appraised valuation of their property. This form clearly notifies the purchaser that HUD's appraisal was made for mortgage insurance purposes and is not a warranty as to the value or condition of the property. *See* copy #3 of HUD Form 92800.5B (3-87). HUD also may require that a property be inspected to determine whether construction or other defects exist that would make it ineligible for mortgage insurance. The objective of these required appraisals and inspections is to protect the government and the FHA insurance funds.

This rule sets forth in the Code of Federal Regulations a statement describing the limited function of HUD appraisals and inspections. The rule does not establish new policy, nor does it modify existing policy. It reaffirms and codifies what has always been the position of the Department as to the limited function of the appraisals and inspections it requires. The rule is intended more fully to inform prospective FHA mortgagors and the public of the limited role of HUD-ordered appraisals and inspections.

On April 14, 1988, a proposed rule, identical to this final rule, was published in the **Federal Register** (53 FR 12431). The Department invited comments from the public on the proposed rule and received three.

One commenter stated that:

> Although we can understand HUD's desire to limit its liability in certain areas, we are concerned that appraiser liability may be extended. For example, in the case of an altered value determination by a review appraiser, the question arises as to whose report it is, particularly if the value is increased by the reviewer and the loan ultimately goes into default. The proposal goes to great lengths to explain the limited function of a HUD-ordered appraisal, yet the appraiser's responsibilities and liabilities in the matter are left unclear. We suggest that if a review appraiser changes the value, then the review appraiser will be responsible for that appraisal, and liability would be removed from the original appraiser. The Uniform Standards of Professional Appraisal Practice lay out requirements in this regard.

Response: It is the Department's position that regardless of whether a review appraiser changes the value in an appraisal report, upon signing the report the reviewer clearly and unambiguously accepts responsibility for the value shown.

The same commenter also said:

> Another area of concern is that additional costs may be incurred for inspection, appraisal and reinspection under the mortgage insurance programs. Costs

associated with these requirements may in some cases be considerable, *i.e.*, when the appraiser needs to make a full reinspection of a property. The initial appraisal fee and subsequent fees become a factor in the funding of the program. Further study in this regard is needed.

Response: Costs associated with an inspection or reinspection of a property are nominal fees usually ranging from $35.00 to $50.00. However, if the appraiser is requested to perform a reconsideration appraisal predicated on new information which was not previously available, the appraiser is entitled to one half of the original appraisal fee. The initial appraisal fee and subsequent fees are in no way related to the funding of the program.

A second commenter urged that a lender should have the benefit of having a copy of the appraisal or, in the alternative, the underwriter review of the appraisal report. It is observed that, although HUD is insuring the loan, the lender is still put in a risk position and acts many times as an agent or associate of HUD in following regulations. "Many times a lender must evaluate its and HUD's risk position by determining a property's condition for security purposes."

Response: With respect to the commenter's urging that non-direct endorsement mortgagees be provided a copy of the appraisal report, field offices have been advised to instruct appraisers to mail a copy of the appraisal report to the mortgagee at the same time the original is sent to the field office. This procedure took effect on January 1, 1989.

The third commenter makes a recommendation which does not relate directly to the proposed rule:

> We would like to make the suggestion that HUD address the impact of deficient appraisal work. To do this, HUD should allow documented requests from lenders to suspend uncooperative or substandard appraisers from being assigned to future appraisals for those particular companies. The appraiser should be deleted from that company's appraisal requests until such time as HUD can review the complaints. Upon review, HUD could either reinstate the appraiser or permanently remove the appraiser from the fee panel.

Response: If an appraiser is found to be uncooperative or substandard, a *general* suspension or other sanction is in order—not a suspension which follows automatically from a "documented request" from a single lender and applies only with respect to that lender. If a lender believes an appraiser to be uncooperative or substandard, the lender should notify the local evaluation branch of its HUD field office. An investigation could then be initiated and appropriate administrative action taken.

None of the commenters had a problem with the purpose of HUD's long-standing position that appraisals are made for the purpose of aiding the Department in determining the maximum insurable mortgage amount, that inspections are required to protect the interest of HUD as mortgage insurer, and that appraisals and inspections are not performed for the benefit or purchaser or otherwise to be regarded as a HUD warranty to purchasers on the value or condition of the property.

The Department finds no reason, as a result of the public comments received, to make any substantive change in the proposed rule, and is promulgating it today as a final rule.

Procedural Requirements

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it does not (1) have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule merely restates existing HUD policy with respect to appraisals and inspections in its mortgage insurance programs.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

The intent of this rule is to make explicit in the Code of Federal Regulations the nature and intent of HUD appraisals and inspections. The rule sets forth the position the Department has consistently taken on these matters, reflects longstanding administrative practices, and involves no change or modification of HUD policy or practice. It was first published in the **Federal Register** as a proposed rule in order to provide the public full opportunity, through the public comment procedure, to raise questions and to receive the benefit of further explanation from the Department where needed.

This rule was listed as item H–1–85 (Sequence Number 950) under Office of Housing in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708, 16727) under Executive Order 12291 and the Regulatory Flexibility Act.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule merely restates in the Code of Federal Regulations longstanding HUD policy and practice. Its promulgation should not have any effect on the family.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies stated in this rule do not have federalism implications and, thus, are not subject to review under the Order.

List of Subjects in 24 CFR Part 200

Mortgage insurance.

PART 200—[AMENDED]

1. The authority citation for Part 200 is revised to read as follows:

Authority: Secs. 2, 211, 807, National Housing Act (12 U.S.C. 1703, 1715b, and 1748f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 200.145, the section heading is revised and a new paragraph (c) is added, to read as follows:

§ 200.145 Technical analysis, underwriting processing and inspections.

* * * * *

(c)(1) As part of its underwriting processing for single and multifamily mortgage insurance programs, HUD may require an appraisal and inspection of the property covered by the mortgage. These appraisals and inspections are performed to determine the maximum insurable mortgage amount and to

protect the Government and its insurance funds. Appraisals and inspections neither create nor imply a duty or obligation from HUD to the mortgagor or to any other party, and are not to be regarded as a warranty by HUD to the mortgagor, or to any other party, of the value or condition of the property. The mortgagor is responsible for making those investigations and inspections it deems necessary for protecting its interests in the property.

(2) In connection with the insurance of mortgages covering single family homes, HUD requires the seller or builder, or such other person as HUD may designate, to deliver to the purchaser before the sale a written statement of appraised value. This estimate of value is used by HUD in determining the maximum mortgage amount it will insure. The written statement of appraised value is not to be regarded as a warranty by HUD to the mortgagor or any other party as to the value or condition of the property. The purchaser must satisfy himself or herself that the price of the property is reasonable and that its condition is acceptable.

Date: May 1, 1989.

James E. Schoenberger,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 89-10982 Filed 5-8-89; 8:45 am]

BILLING CODE 4210-27-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-35679]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Final Exclusion

AGENCY: Environmental Protection Agency.

ACTION: Final Rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is granting a final exclusion from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32 for specified wastes to be generated by CF&I Steel Corporation, Pueblo, Colorado. This action responds to a delisting petition submitted under 40 CFR 260.20, which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists.

EFFECTIVE DATE: May 9, 1989.

ADDRESSES: The public docket for this final rule is located at the U.S. Environmental Protection Agency, 401 M Street SW., Room M-2427, Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The reference number for this docket is "F-89-CFEF-FFFFF." The public may copy material from any regulatory docket at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline, toll free at (800) 424-9346, or at (202) 382-3000. For technical information concerning this notice, contact James Kent, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-4488.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

Under 40 CFR 260.20 and 260.22, facilities may petition the Agency to remove their wastes from hazardous waste control by excluding them from the lists of hazardous wastes contained at 40 CFR 261.31 and 261.32. Petitioners must provide sufficient information to EPA to allow the Agency to determine that (1) the waste to be excluded is not hazardous based upon the criteria for which it was listed, and (2) that no other hazardous constituents are present in the wastes at levels of regulatory concern.

B. History of this Rulemaking

CF&I Steel Corporation (CF&I), located in Pueblo, Colorado, petitioned the Agency to exclude from hazardous waste control a specific waste it intends to generate. After evaluating the petition, on August 2, 1988, EPA proposed to exclude CF&I's waste from the lists of hazardous waste under 40 CFR 261.31 and 261.32, conditional upon CF&I meeting certain sampling, analysis, and reporting requirements. See 53 FR 29067.

CF&I petitioned the Agency for an "upfront" exclusion. A petitioner requests an upfront exclusion for wastes that have not yet been generated or that will be subject to further treatment. When treatment is planned, an upfront delisting petition requests that an exclusion be granted based on untreated waste characteristics, pilot-scale treatment data if available, and process descriptions. As a condition of an upfront exclusion, the Agency may impose batch testing requirements, which often include analytical testing of representative samples obtained from the full-scale system. These data can be used to verify that the treatment system, once on-line, is operating as described in the petition. The Agency may also specify verification testing limitations (*i.e.*, the maximum allowable levels of hazardous constituents of concern in the waste) in the conditions of the granted exclusion. When the actual levels of the constituents of concern are below these levels, the waste will not be considered hazardous. If the actual levels of the constituents are above these levels, the waste is still considered to be hazardous and must be retreated or disposed in accordance with RCRA Subtitle C requirements.

This rulemaking addresses public comments received on the proposal and finalizes the proposed exclusion.

II. Disposition of Petition

CF&I Steel Corporation, Pueblo, Colorado

1. Proposed Exclusion

CF&I petitioned the Agency for an upfront exclusion of its chemically stabilized electric arc furnace dust (CSEAFD), presently listed as EPA Hazardous Waste No. K061. CF&I based its petition on the claim that the constituents of concern, although present in the waste, were in an essentially immobile form (*i.e.*, cement-like). Furthermore, to support its claim that both the non-listed and listed constituents of concern would not be present in the fully-cured CSEAFD above health-based levels of concern, CF&I submitted results from total constituent, EP toxicity, and multiple extraction procedure (MEP) analysis (used to assess stabilized wastes) for all the EP toxic metals, nickel and cyanide. The total constituent analyses were performed on representative samples of the untreated electric arc furnace dust. The EP and MEP leachate analyses were performed on representative samples of the fully-cured CSEAFD as generated using a laboratory-scale treatment system.

The Agency evaluated the information and analytical data provided by CF&I for its untreated electric arc furnace dust and its fully-cured CSEAFD generated from a laboratory-scale waste treatment process and determined that the hazardous constituents found in the waste would not pose a threat to human health and the environment. Specifically, the Agency used its vertical

and horizontal spread (VHS) model to predict the potential mobility of the hazardous constituents in the petitioned waste. Based on this evaluation, the Agency determined that the constituents in CF&I's waste would not leach and migrate at concentrations above the health-based levels used in delisting decision-making. Since CF&I's petition was based on a laboratory-scale waste treatment system, the Agency further used the VHS model to establish concentration levels (*i.e.*, delisting levels) for the hazardous constituents in the waste to be generated from the full-scale waste treatment process. The proposed exclusion set maximum constituents concentration levels permissible in the CSEAFD generated from the full-scale waste treatment process and established testing conditions to verify that the levels of hazardous constituents in the petitioned waste do not exceed permissible levels. The verification testing conditions attached to the exclusion are designed to ensure that these constituents will not be present in the fully-cured CSEAFD at concentrations above the health-based levels used in delisting decision-making. See 53 FR 29067, August 2, 1988, for a more detailed explanation of why EPA proposed to grant CF&I's petition for its fully-cured CSEAFD.

2. Agency Response to Public Comments

The Agency received public comments on the proposed rule from two commenters. One commenter supported the Agency's proposed decision to exclude the fully-cured CSEAFD and the second commenter opposed the Agency's decision. The objections and comments raised by the commenters are discussed below.

Petition-Specific Comments. One commenter opposed the Agency's handling of information on CF&I's stabilization process as proprietary. The commenter believed that without specific details concerning CF&I's stabilization process and the physical/chemical composition of the stabilized waste, their ability to provide "meaningful" public comment was seriously restricted.

The Agency disagrees with the commenter. As specified in 40 CFR 260.2(b), CF&I is entitled to assert a claim of business confidentiality covering part or all of the information submitted to EPA in fulfillment of the information requirements of §§ 260.20 and 260.22. Furthermore, CF&I followed the procedures set forth in 40 CFR 2.203(b) pertaining to confidential business information. CF&I provided the Agency confidential information detailing the "Solifix" stabilization process. Substantial resources have been invested to develop the stabilization process, and CF&I is required to protect this information in order to operate the licensed process. Furthermore, CF&I did not seek to protect as confidential any waste-specific information. Data characterizing the physical and chemical composition of both the untreated waste and the CSEAFD were provided in the exclusion petition. The Agency evaluated all information submitted. Information that was not claimed to be confidential is available in the RCRA public docket for public inspection.

The same commenter stated that it strongly opposed the Agency's proposal to grant CF&I an exclusion for the reasons discussed below.

The commenter stated that the CSEAFD still exhibits one of the criteria for which it was listed—the presence of significant concentrations of the inorganic constituents of concern (*i.e.*, cadmium, chromium, and lead). The commenter also stated that the waste contains significant concentrations of nickel.

The Agency agrees that the presence in K061 wastes of significant total constituent concentrations of the inorganic constituents of concern was one of the criteria for listing K061 wastes as "T" (toxic) wastes. See 40 CFR 261.11(a)(3)(ii) and "Background Document, Resource Conservation and Recovery Act, Subtitle C, Hazardous Waste Management, section 3001, Identification and Listing of Hazardous Waste," 1980. The Agency, however, believes that data presented in the Background Document characterize the physical/chemical nature of untreated electric arc furnace dusts and that these data are not representative of the physical/chemical nature of stabilized electric arc furnace dust having a cement-like waste matrix. Specifically, EPA believes it is reasonable to expect that, as the total constituent concentration of an unbound or loosely bound metal present in a waste increases, the potential for the metal to leach from the waste also increases (generally, the higher the total constituent concentration of an unbound or loosely bound metal, the higher the potential EP leachate concentration). Thus, wastes having significant total constituent concentrations of unbound or loosely bound metals are more likely to impact the underlying ground water than wastes having lower total constituent concentrations of unbound or loosely bound metals. In this case, because the metals in CF&I's waste are tightly within the waste's cmement-like matrix, the Agency believes that the elevated levels of the metals present in CF&I's waste should not pose a threat to either human health or the environment. The Agency's conclusion that the inorganic constituents of concern (including nickel) are bound in the waste matrix and thus are not available for leaching is supported by the results of the EP and MEP leachate analyses.

EPA evaluated the potential mobility of CF&I's stabilized waste using the maximum EP or MEP leachate concentrations and the vertical and horizontal spread (VHS) model. For the volume of waste to be generated by CF&I's, the VHS model predicted a dilution factor of approximately 6.3. The Agency believes that the VHS model analysis provides a conservative and reasonable worst-case evaluation of the waste's effect on the underlying aquifer. The predicted compliance-point concentrations resulting from this conservative analysis were below the levels of concern used for delisting purposes. See 53 FR 29071, August 2, 1988, for a description of the modeling analysis of CF&I's waste.

Furthermore, in delisting evaluations, EPA considers all the factors for which the waste was listed, as well as factors other than those for which the waste was originally listed that could cause the waste to be hazardous. See 42 U.S.C. 6921(f). For this specific wastestream, based on the above discussion, EPA does not believe that any other factors, including elevated total constituent concentrations of the inorganic constituents of concern and nickel, could cause this wastestream to present a hazard to human health and the environment.

The commenter also asserted that the Agency only considered the leachable levels of hazardous constituents and did not consider airborne and waterborne dispersal of the waste.

With regard to possible airborne dispersal, the Agency believes that the commenter's concern was based primarily on the characterization of K061 wastes in the listing background document as being fine particles or dusts. The Agency believes that airborne exposure to hazardous contaminants from CF&I's EAF dust (fine particles) is not probable because CF&I's untreated EAF dust will be regulated as a hazardous waste, thus releases of the EAF dust to the atmosphere should be controlled. Additionally, due to the physical and chemical nature of CF&I's stabilized waste (*i.e.*, monolithic and nonfriable), the Agency believes that direct contact from airborne exposure to hazardous

contaminants from the CSEAFD is unlikely.

With regard to waterborne dispersal of the waste, it is important to note that CF&I's waste will be stabilized to produce a cement-like waste matrix and handled as hazardous until it is fully cured. The VHS model analysis described in the proposal shows that leachate from the waste that travels through ground water will not exceed health based levels.

The Agency acknowledges that it may also be possible for surface water runoff to transport contaminants from the waste to a nearby surface water body. However, the Agency does not believe that anlysis of such overland transport of contaminants as a reasonable exposure route for the petitioned waste would compel a different result for this petition. First, as described in the proposed rule, the Agency believes that landfill disposal is a reasonable worst-case management scenario for CF&I's solidified waste. Contamination of surface water might occur, therefore, through runoff from the petitioned waste. However, EPA believes that the concentrations of any hazardous constituents in that runoff will tend to be lower than the levels in the EP leachate analyses reported in the proposal due to the acidic medium of the EP test. Furthermore, any transported constituents would be further diluted in the surface water body.

Second, the Agency believes that, in general, the leachate derived from this waste will not directly enter a surface water body without first traveling through the saturated (subsurface) zone where dilution and attenuation of hazardous constituents may occur. The VHS model takes this saturated zone into account as it predicts the ultimate fate and transport of hazardous constituents. Last, if the wastes were exposed to any long-term weathering, the Agency believes that any significant overland transport of hazardous constituents through erosion and runoff is highly unlikely for solidified (cement-like) wastes such as CF&I's waste.

The commenter further asserted that the at-the-well contribution of cadmium, chromium, lead, nickel, and selenium from CF&I's waste alone would be substantially more than half of the amount allowed in drinking water under the current standards for these contaminants (*i.e.*, the predicted compliance-point concentrations (CPCs) for cadmium, chromium, lead, nickel, and selenium are very close to their respective regulatory standards). The commenter, therefore, stated that disposing of this waste with any other contaminant source within the same landfill could readily cause exceedences of the standards.

As the Agency discussed in the **Federal Register** on February 26, 1985 and November 13, 1986 (50 FR 7900 and 51 FR 41085), the VHS model analysis assumes that there are no potential contaminant sources at the disposal site (*i.e.*, leachate from the waste mixes with non-contaminated ground water). Additionally, without specifying management conditions or considering site-specific characteristics, the Agency cannot modify the VHS model to assess the effects of additional contaminant sources on the underlying aquifer within the same disposal site. The commenter is inferring that wastes should not be delisted unless the predicted at-the-well concentrations of the contaminants are significantly less than their respective health-based levels. The Agency does not have any technical basis to support a determination of an appropriate percentage reduction and believes that any resulting percentage reduction would be arbitrary. Furthermore, the commenter did not suggest any technical basis for such a reduction. Therefore, in light of the conservative nature of the VHS model, EPA will continue to allow wastes to exhibit CPC's up to 100 percent of the health-based standard.

The commenter was further troubled by the CPC for lead since EPA is considering lowering the drinking water standard for lead to 0.005 mg/l. The commenter believes that the waste should be considered hazardous since, if the 0.005 mg/l standard is adopted, the calculated CPC would exceed the standard by nearly a factor of eight.

In making delisting decisions, the Agency uses the existing health-based levels cited in "Docket Report on Health-Based Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988 (located in the RCRA public docket). EPA has no way of predicting the final drinking water standard until it is actually promulgated (the standard could be less than or greater than the proposed level or the 0.005 mg/l level cited by the commenter). Neither can the Agency be certain exactly when the new standard might be promulgated. Without a new final drinking water standard, the Agency does not believe it is fair to the petitioner to postpone a final rulemaking until a new drinking water standard for lead is promulgated.

Lastly, the commenter believed that the Agency did not consider the possibility of dioxin contamination. The commenter based its concern of the possibility of dioxin contamination on data obtained through the Agency's National Dioxin Study, Tier 4 Combustion Report. (See "National Dioxin Study Tier 4 Combustion Sources: Engineering Analysis Report," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, EPA–450/4–84–014h, September 1987.)

The Agency disagrees with the commenter. EPA evaluated CF&I's petition and did not believe that any other hazardous constituents, including dioxins, were present in CF&I's waste. In response to the commenter's specific concern regarding the possibility of dioxin contamination, EPA reviewed the Tier 4 report cited by the commenter. Although data presented in the Tier 4 report indicated that dioxins were present in wastes generated by secondary copper smelters and wire reclamation incinerators, the Agency does not consider it likely for dioxins to be present in CF&I's waste. As discussed in the Tier 4 report, the principal reasons for the possible presence of dioxins in wastes generated by secondary copper smelters and wire reclamation incinerators are the presence of dioxin-forming precursors in raw materials and low combustion temperatures.

Specifically, the report noted that secondary copper smelters' raw materials can contain quantities of polyvinyl chloride wire insulation (telephone wire), electrical parts, and other sources of copper (including circuit boards and electrical switches). Wire reclamation incinerators can process polyvinyl chloride wire insulation and polychlorinated biphenyls (PCBs)-containing transformer cores and parts. These types of raw materials contain dioxin-forming precursors.

The report also found that combustion temperatures maintained by both secondary copper smelters and wire reclamation incinerators are low enough to promote the formation of dioxins. Surveyed secondary copper smelting furnaces operated at approximately 1500 °F, and wire reclamation incinerators operated at approximately 1000 °F (some had afterburners operating at 1900 °F).

The Agency reviewed the list of scrap materials CF&I reported it uses to charge its furnaces, and the Agency does not believe that CF&I uses wire or electronic scrap. The Tier 4 report states that secondary copper smelters and wire reclamation incinerators are less likely to generate dioxin-containing wastes if they do not use polyvinyl coated wire and low combustion temperatures. Additionally, the Tier 4 report stated that dioxins generally are destroyed at temperatures above 800 °C (1472 °F),

especially in incinerators with residence times of 1.5–2.0 seconds or more. CF&I's furnaces heat the molten steel to 3000 °F. Therefore, CF&I's furnaces run at more than two times the temperature required to destroy polychlorinated dibenzo-p-dioxins (PCDDs), PCBs, and polychlorinated dibenzofurans (PCDFs). EPA, based on the above discussion, does not believe that it is reasonable to expect dioxins to be present in CF&I's waste.

EPA's Modeling Approach. One commenter supported EPA's proposed use of the VHS model as applied to CF&I's petitioned waste, and strongly supported EPA's assertion that "it is inappropriate for the Delisting Program to consider extensive site-specific factors in its evaluation of delisting petitions." See 53 FR 29068. The commenter believed that it is unlawful and inappropriate for EPA to consider any site-specific factors in its evaluation of delisting petitions. This comment does not pertain to this petition or affect the proposed decision since the Agency did not consider any site-specific factors in its evaluation of the petitioned waste. The Agency, therefore, will independently respond to this comment in terms of a separate rulemaking petition raising this issue with the Agency (filed by the Hazardous Waste Treatment Council).

Conditional Testing and Reporting Requirements. One commenter stated that if the Agency granted CF&I an exclusion, the conditional requirements of the exclusion should include analyses for total constituent concentrations and MEP constituent concentrations of the hazardous constituents.

The Agency disagrees with the commenter. The Agency expects that this waste will be disposed of in a municipal landfill, where soil conditions would be mildly acidic. EPA believes that the EP extraction procedure is the most appropriate analytical tool to evaluate the potential leachability of this waste in an acidic environment. For this waste, EPA believes that continued evaluation of the EP leachable concentrations as required by the conditions of this exclusion will be adequate to protect human health and the environment. Furthermore, the Agency does not have health-based standards regulating the total constituent concentrations of any of the EP toxic metals or nickel. To require CF&I to continually monitor for the total constituent concentrations of all the EP toxic metals and nickel will not ensure further protection of human health or the environment.

Lastly, the Agency does not believe it is necessary to require CF&I to perform continuous MEP analyses. First, the Agency's belief that the stabilization process is effective is substantiated by the analytical data obtained from the previous MEP leachate tests. Additionally, if the stabilization process were ineffective and an increase in the leachability of the hazardous constituents from the waste were to occur, the Agency believes that the EP leachate analyses would measure such an increase.

The commenter stated that the proposed testing conditions did not provide a schedule for testing the waste sufficient to ensure that it will continue to meet EPA's delisting criteria. The commenter also stated that, at the very least, a program of periodic retesting should be required to verify the continued effectiveness of the stabilization process, in light of the potential for significant variation in the waste composition.

The Agency, when evaluating CF&I's petition, realized that the concentration of the constituents of concern would vary depending on the type and quality of scrap metal charged in the steel making process. To address the possible variation in constituent concentrations, the Agency limited CF&I's exclusion to cover wastes generated from a specific percentage range of scrap metals, including molds and stools, cast scrap, haystack and pot buttons, mill scrap, ferro process scrap, borings and turnings, miscellaneous furnace scrap, and roll scale briquettes. See 53 FR 29072, August 2, 1988. The Agency reasoned that, by fixing the percentage of each type of steel scrap within the range used by CF&I during the time period when CF&I collected its samples of unstabilized EAF dust, the variation in constituent concentrations would be controlled to within the range that CF&I demonstrated could be rendered non-hazardous. However, while responding to the comments concerning the proposed testing conditions, the Agency realized that the specifications of the Institute of Scrap Iron and Steel (ISIS) for grading scrap metal were voluntary guidelines. The Agency, therefore, agrees with the commenter that potentially significant variation in waste composition may occur due to the potential variation in the specific type of scrap within a particular category (*e.g.*, mill scrap, #1 bundles, #2 bundles). As a result, fixing the percentage of each type of steel scrap using the ISIS grading system would not prevent CF&I's waste from exhibiting variations in constituent concentrations outside of the range addressed by CF&I's petition.

Therefore, the Agency, in promulgating this final rule, has modified condition (1)(B) to require CF&I to collect and analyze weekly composite samples of the treated CSEAFD indefinitely:

> (1)(B) Subsequent Testing: CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all the EP toxic metals and nickel. Analyses must be performed according to SW–846 methodologies. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado.

The Agency believes that it is necessary to require the petitioner to analyze weekly composites of the CSEAFD in order to ensure that the stabilization process effectively handles the potential variation in constituent concentrations. As stated above, the potential variation in constituent concentrations is a result of the potentially changing composition of the scrap charges. The Agency, however, believes that the composition of the scrap charges will not vary abruptly from day-to-day. Rather, the Agency expects that the composition of the scrap charges will change gradually since scrap generally is not purchased every day. Therefore, the Agency believes that collecting composite samples on a weekly basis will be sufficient to ensure that the stabilization process is able to accommodate the potential changes in constituent concentrations and generate non-hazardous CSEAFD.

The commercial availability of different types of scrap metal are subject to change with time. Therefore, as described above, the Agency believes it is possible that the composition of the untreated EAF dust will vary over time. The Agency stated in the proposed rule, that future upfront delisting proposals and decisions may include different testing requirements based on an evaluation of the uniformity of the waste and that wastes with variable constituent concentrations, including those discussed in previous delisting decisions (*e.g.*, 51 FR 41323, November 14, 1986), would require continuous batch testing. See 53 FR 29072, August 2, 1988. In this case, the Agency believes that the potential variations in waste composition (*i.e.*, constituent concentrations) resulting from changing scrap, warrant the requirement for continual testing of weekly composite samples of CSEAFD. As a result, the

Agency removed condition (3) *Termination of Testing* in order to reflect the requirement for continual testing of weekly composite samples of the CSEAFD.

The Agency is requiring the petitioner to compile and store on site, all analytical data obtained through the subsequent testing condition (1)(B). The Agency realized that requiring the petitioner to submit these analytical date every six months, would place an undue burden on both the petitioner and EPA. In addition, the Agency, may at any time, either visit the facility for inspection purposes or request the petitioner to report these data. Therefore, the Agency is maintaining the same level of protection without requiring the petitioner to report these analytical data every six months. Condition (4) *Data submittals* has been renumbered and now reads:

(3) Data submittals: Within one week of system start-up, CF&I must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. All data obtained through the initial testing condition (1)(A), must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1)(A). At the Section Chief's request, CF&I must submit analytical data obtained through condition (1)(B) to the above address, within the time period specified by the Section Chief. Failure to submit the required data obtained from either condition (1)(A) or (1)(B) within the specified time periods will be considered by the Agency sufficient basis to revoke CF&I's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement:

"Under civil and criminal penalty of law for the making or submission of false or fraudulant statements representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete.

As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete.

In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."

(Name of Certifying Person)

Date

(Title of Certifying Person)

Date

Inconsistencies Between the Delisting Program and the Land Disposal Restrictions Program. One commenter believed that the Agency's decision to exclude CF&I's waste was inconsistent with the Land Disposal Prohibition Provisions of the 1984 HSWA amendments. Specifically, the commenter stated that (1) the EP leachate concentration of lead in CF&I's waste exceeded the Agency's promulgated best demonstrated available technology (BDAT) treatment level for lead in KO61 wastes (see 53 FR 31138) and (2) the proposed delisting levels for EP leachate concentrations of lead and nickel also exceeded the BDAT treatment standards (see 53 FR 29071 and 53 FR 31164, respectively).

The Agency agrees with the commenter that there are differences in approach between some of the decision criteria used in individual delisting decisions and those used in the Land Disposal Restrictions Program (LDRP). However, these differences are appropriate given the separate functions of the two programs and their different statutory bases. The Delisting Program and the LDRP are fundamentally different in that the Delisting Program's standards are health-based and the LDRP's treatment standards are technology-based. See RCRA section 3001 (42 U.S.C. 6921) and RCRA section 3004 (42 U.S.C. 6924(m)), respectively. The Agency, however, believes that both the health-based and technology-based approaches of the Delisting Program and the LDRP, respectively, are protective of human health and the environment.

3. Final Agency Decision

For the reasons stated in the proposal, the Agency believes that the CSEAFD, when subject to the verification testing requirements specified in the exclusion, should be excluded from hazardous waste control. The Agency, therefore, is granting a final conditional exclusion to CF&I Steel Company, located in Pueblo, Colorado, for its fully-cured chemically stabilized electric arc furnace dust treatment residue, described in its petition as EPA Hazardous Waste No. K061. The exclusion only applies to the processes covered by the original demonstration. The facility would require a new exclusion if either its manufacturing or treatment processes are significantly altered such that an adverse change in waste composition occurred. Accordingly, the facility would need to file a new petition for the altered waste. The facility must treat waste generated from changed processes as hazardous until a new exclusion is granted.

Although management of the waste covered by this petition is relieved from Subtitle C jurisdiction, the generator of a delisted waste must either treat, store, or dispose of the waste in an on-site facility, or ensure that the waste is delivered to an off-site storage, treatment, or disposal facility, either of which is permitted, licensed, or registered by a State to manage municipal or industrial solid waste. Alternatively, the delisted waste may be delivered to a facility that beneficially uses or reuses, or legitimately recycles or reclaims the waste, or treats the waste prior to such beneficial use, reuse, recycling or reclamation.

III. Limited Effect of Federal Exclusion

The final exclusion being granted today is being issued under the Federal (RCRA) delisting program. States, however, are allowed to impose their own, non-RCRA regulatory requirements that are more stringent than EPA's, pursuant to section 3009 of RCRA. These more stringent requirements may include a provision which prohibits a Federally-issued exclusion from taking effect in the State. Since a petitioner's waste may be regulated under a dual system (*i.e.*, both Federal (RCRA) and State (non-RCRA) programs), petitioners are urged to contact their State regulatory authority to determine the current status of their wastes under State law.

IV. Effective Date

This rule is effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here because this rule reduces, rather than increases, the existing requirements for persons generating hazardous wastes. In light of the unnecessary hardship and expense that would be imposed on this petitioner by an effective date six months after promulgation and the fact that a six-month deadline is not necessary to achieve the purpose of section 3010, EPA believes that this rule should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative

Procedures Act, pursuant to 5 U.S.C. 553(d).

V. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This rule to grant an exclusion is not major since its effect is to reduce the overall costs and economic impact of EPA's hazardous waste management regulations. This reduction is achieved by excluding waste generated at a specific facility from EPA's lists of hazardous wastes, thereby enabling the facility to treat its waste as non-hazardous. There is no additional economic impact, therefore, due to today's rule.

VI. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601–612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment will not have an adverse economic impact on small entities since its effect will be to reduce the overall costs of EPA's hazardous waste regulations and is limited to one facility. Accordingly, I hereby certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VII. Paperwork Reduction Act

Information collection and recordkeeping requirements associated with this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (P.L. 96–511, 44 U.S.C. § 3501 *et. seq.*) and have been assigned OMB Control Number 2050–0053.

List of Subjects in 40 CFR Part 261

Hazardous materials, Waste Treatment and disposal, Recycling.

Date: May 1, 1989.

Jeffery D. Denit,

Deputy Director, Office of Solid Waste.

For the reasons set out in the preamble, 40 CFR Part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

1. The authority citation for Part 261 continues to read as follows:

Authority: Secs. 1006, 2002(a), 3001, and 3002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6905, 6912(a), 6921, and 6922).

2. In Table 2 of Appendix IX, add the following wastestream in alphabetical order:

Appendix IX—Wastes Excluded Under §§ 260.20 and 260.22.

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES

Facility	Address	Waste Description
*	*	*
CF&I Steel Corporation	Pueblo, Colorado	Fully-cured chemically stabilized electric arc furnace dust/sludge (CSEAFD) treatment residue (EPA Hazardous Waste No. K061) generated from the primary production of steel after May 9, 1989. This exclusion is conditioned upon the data obtained from CF&I's full-scale CSEAFD treatment facility because CF&I's original data was obtained from a laboratory-scale CSEAFD treatment process. To ensure that hazardous constituents are not present in the waste at levels of regulatory concern once the full-scale treatment facility is in operation, CF&I must implement a testing program for the petitioned waste. This testing program must meet the following conditions for the exclusion to be valid: (1) *Testing:* (A) *Initial Testing:* During the first four weeks of operation of the full-scale treatment system, CF&I must collect representative grab samples of each treated batch of the CSEAFD and composite the grab samples daily. The daily composites, prior to disposal, must be analyzed for the EP leachate concentrations of all the EP toxic metals, nickel, and cyanide (using distilled water in the cyanide extractions), and the total constituent concentrations of reactive sulfide and reactive cyanide. Analyses must be performed according to SW–846 methodologies. CF&I must report the analytical test data obtained during this initial period no later than 90 days after the treatment of the first full-scale batch. (B) *Subsequent Testing:* CF&I must collect representative grab samples from every treated batch of CSEAFD generated daily and composite all of the grab samples to produce a weekly composite sample. CF&I then must analyze each weekly composite sample for the EP leachate concentrations of all of the EP toxic metals and nickel. Analyses must be performed according to SW–846 methodologies. The analytical data, including all quality control information, must be compiled and maintained on site for a minimum of three years. These data must be furnished upon request and made available for inspection by any employee or representative of EPA or the State of Colorado. (2) *Delisting levels:* If the EP extract concentrations determined in conditions (1)(A) or (1)(B) for chromium, lead, arsenic, or silver exceed 0.315 mg/1; for barium exceeds 6.3 mg/1; for cadmium or selenium exceed 0.063 mg/1; for mercury exceeds 0.0126 mg/1; for nickel exceeds 3.15 mg/1; or for cyanide exceeds 4.42 mg/1, or total reactive cyanide or total reactive sulfide levels exceed 250 mg/kg and 500 mg/kg, respectively, the waste must either be re-treated or managed and disposed in accordance with Subtitle C of RCRA.

TABLE 2. WASTES EXCLUDED FROM SPECIFIC SOURCES—Continued

Facility	Address	Waste Description
		(3) *Data submittals:* Within one week of system start-up, CF&I must notify the Section Chief, Variances Section (see address below) when their full-scale stabilization system is on-line and waste treatment has begun. All data obtained through the initial testing condition (1)(A), must be submitted to the Section Chief, Variances Section, PSPD/OSW, (OS-343), U.S. EPA, 401 M Street, SW., Washington, DC 20460 within the time period specified in condition (1)(A). At the Section Chief's request, CF&I must submit analytical data obtained through condition (1)(B) to the above address, within the time period specified by the Section Chief. Failure to submit the required data obtained from either condition (1)(A) or (1)(B) within the specified time periods will be considered by the Agency sufficient basis to revoke CF&I's exclusion to the extent directed by EPA. All data must be accompanied by the following certification statement: "Under civil and criminal penalty of law for the making of submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code which include, but may not be limited to, 18 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. In the event that any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of wastes will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion."
*	*	* * * * *

[FR Doc. 89-11085 Filed 5-8-89; 8:45 am]

BILLING CODE 6560-50-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1115

[Ex Parte No. 55 (Sub 75)]

Deadline for Requesting Commission Review of Arbitration Decisions

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is codifying its policy set forth in *Norfolk & W. R. Co. and New York C. & St. L. R. Co.—Merger,* 5 I.C.C.2d 234 (1989), that appeals from decisions of an arbitrator or neutral referee must be filed within 20 days of the arbitration decision. It is also deleting reference to the divisions and panels of the Commission at 49 CFR 1115.2.

EFFECTIVE DATE: The rules are effective May 9, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 (TDD for hearing impaired: (202) 275-1721).

SUPPLEMENTARY INFORMATION: In *Norfolk & W. R. Co. and New York C. & St. L. R. Co.—Merger,* 5 I.C.C.2d 234 (1989), the Commission found, for the future, that appeals from arbitration decisions must be filed within 20 days. Codification of this requirement at 49 CFR 1115.8 will ensure notice to all potentially affected persons. Notice and comment is not necessary, as the rule simply reflects precedent established in that proceeding.

We are also deleting the word "division" and the phrase "panel of the Commission" from 49 CFR 1115.2 because divisions and panels no longer exist within the Commission's structure. Since this is a final action undertaken to revise an internal, organizational matter, formal comments are unnecessary under 5 U.S.C. 553(b)(A).

This action will not significantly affect either the quality of the human environment or the conservation of energy resources. This action will not have a significant impact on a substantial number of small entities.

List of Subjects in 49 CFR Part 1115

Administrative practice and procedure.

Authority: 49 U.S.C. 10321, 10322 and 5 U.S.C. 559.

For the reasons set out in the preamble, Title 49, Chapter X, Part 115 of the Code of Federal Regulations is amended as follows:

PART 1115—APPELLATE PROCEDURES

1. The authority citation for Part 1115 continues to read as follows:

Authority: 49 U.S.C. 10321, 10322, and 10377; 5 U.S.C. 559.

§ 1115.2 [Amended]

2. Section 1115.2 is amended by revising the introductory paragraph to read as follows:

§ 1115.2 Initial decisions.

This category includes the initial decision of an administrative law judge, individual Commissioner, employee board, or joint board.

* * * * *

3. A new § 1115.8 is added to read as follows:

§ 1115.8 Petitions to review arbitration decisions.

An appeal of right is permitted. The appeal must be filed within 20 days of a final arbitration decision, unless a later date is authorized by the Commission, and is subject to the page limitations of § 1115.2(d). Standards for Commission review of arbitration decisions are set forth in *Chicago and North Western Transp. Co.—Abandonment,* 3 I.C.C.2d 729 (1987), *aff'd sub nom. International Brotherhood of Electrical Workers* v. *ICC,* No. 87-1629 (D.C. Cir. November 25, 1988). The timely filing of a petition will not automatically stay the effect of the arbitration decision. A stay may be requested under § 1115.5.

Decided: April 28, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary.

[FR Doc. 89-10988 Filed 5-8-89; 8:45 pm]

BILLING CODE 7035-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 301

[Docket No. 90514-9114]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of final rule.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission, publishes notice of regulations promulgated by that Commission and approved by the United States Government to govern the Pacific halibut fishery. These regulations are intended to enhance the conservation of Pacific halibut stocks in order to help rebuild and sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 3, 1989.

FOR FURTHER INFORMATION CONTACT: J. Craig Hammond, Special Agent in Charge, Law Enforcement Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802, telephone 907–586–7225; or Executive Director, International Pacific Halibut Commission, P.O. Box 5009, University Station, Seattle, Washington 98105, telephone 206–624–1838.

SUPPLEMENTARY INFORMATION: The International Pacific Halibut Commission (IPHC), under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has promulgated new regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America and by the Governor-General of Canada by Order-in-Council. On behalf of the IPHC, these regulations are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements established therein.

The substantive changes from the previous regulations, published at 53 FR 10536 (April 1, 1988), are as follows: (1) New halibut fishing seasons and area catch limits are established; (2) all bearings specified in the regulations are changed from magnetic to true; (3) procedures for specifying fishing period limits are codified; (4) new sport fishing seasons and bag limits are established; (5) check-in and check-out requirements for certain vessels fishing in Regulatory Area 4 are modified; and (6) fishing in more than one regulatory area in a fishing period for which a fishing period limit is in effect is prohibited.

The Northern Pacific Halibut Act of 1982 (the Act), Pub. L. 97–176, 16 U.S.C. 773c(c), authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters which are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, the Under Secretary of Oceans and Atmosphere directed the Pacific and North Pacific Fishery Management Councils to allocate halibut catches should such allocations be necessary.

The Pacific Fishery Management Council (PFMC) developed a 1989 Catch Sharing Plan (Plan) to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian, non-Indian commercial, and non-Indian sport fisheries in the Commission statistical Area 2A off Washington, Oregon, and California. The 1989 Plan for Area 2A is the result of a process that included development of a proposed Plan by a Halibut Managers Group consisting of state, federal and treaty Indian fishery managers, and a Council advisory panel and select group consisting of user group representatives and fishery managers. The proposed Plan was adopted for public review by the PFMC at its November 16–18, 1988 public meeting. The proposed Plan, a description of the need for the Plan, and a description of the Council's process for developing the proposed Plan was published in the **Federal Register** with a request for public comments on January 10, 1989 (54 FR 834). The PFMC, at its January 12, 1989, public meeting, adopted the final 1989 Catch Sharing Plan following review and consideration of the recommendations of its advisory bodies and comments made by the public. The final Plan was forwarded to the Secretary for review and approval and to the IPHC for implementation. The Secretary approved the Plan and published notice of approval on March 1, 1989 (54 FR 8542). The Plan is for 1989 only and distributes the 650,000 pound TAC in Area 2A as sub-quotas between the three groups as follows: treaty Indian fisheries—152,000 pounds; non-Indian commercial fishery—274,000 pounds; and non-Indian sport fisheries—224,000 pounds. The Plan also has provisions for the treaty Indian commercial and ceremonial and subsistence fisheries, and the non Indian sport fisheries which were adopted by the IPHC and are included in this action.

The North Pacific Fishery Management Council voted to retain the allocative regulations it adopted in 1988 for certain vessels fishing in Regulatory Area 4. Those regulations were approved by the Secretary of Commerce and were published in the **Federal Register** as a final rule on June 3, 1988 (53 FR 20327). These regulations are renumbered in this action to conform to the IPHC final rule.

At its January, 1989 meeting, the IPHC expressed its concern that the catch limit established for Regulatory Area 4E in 1989 could not be harvested under the regulations developed by the North Pacific Fishery Management Council and approved by the Secretary of Commerce on June 3, 1988 (53 FR 20327). The Council's regulations restrict vessels fishing in Regulatory Area 4E to a maximum catch of 6,000 pounds of halibut per fishing period. The IPHC noted that in 1988, the Council's catch restriction prevented the full harvest of the catch limit for Regulatory Area 4E; in that year, fishing vessels harvested only about 5 per cent (5,000 pounds) of the 4E catch limit of 100,000 pounds. The IPHC determined that if the Council's fishing period limit were to remain in effect after August 10, 1989, the catch limit for 4E would likely remain unharvested in 1989 as well. Consequently, the IPHC adopted a regulation suspending the Council's fishing period limit in Regulatory Area 4E after August 10, 1989. That regulation is approved. This action modifies only that portion of the Council's regulation which, in the opinion of the IPHC, would interfere with the full harvest of the 4E catch limit. Under section 5(c) of the Northern Pacific Halibut Act of 1982, 16 U.S.C. 773c(c), the Council's 4E fishing period limit regulation is superseded to the extend that it is in conflict with the IPHC's regulation.

The IPHC adopted and submitted for approval regulations virtually identical to the North Pacific Fishery Management Council's fishing period limits in Regulatory Areas 4C and 4E. The primary purpose of the Council's regulations is to provide economic protection for halibut fishermen who land all of their halibut catch at ports within Areas 4C and 4E. *See* 53 FR 20327 (June 3, 1987). Because allocation of halibut resources among domestic

fishermen is the primary purpose, the IPHC's regulations concerning fishing period limits in Areas 4C and 4E are rejected. However, the Council's regulations remain in effect and are renumbered in this action to conform to the IPHC's regulations. The net regulatory effect is the same.

This action also includes a Secretarial final rule modifying the North Pacific Fishery Management Council's check-in and check-out requirements at 50 CFR 301.13 for vessels fishing in Regulatory Area 4. *See* 53 FR 20327 (June 3, 1988). The current regulations require certain vessels to obtain hold inspections from a fishery officer in Dutch Harbor or Akutan before and after fishing in Regulatory Area 4. The Secretary has determined that the Council's enforcement objectives may be met more cheaply by replacing the mandatory hold inspection requirement with the vessel clearance procedure prescribed in this Secretarial final rule.

Classification

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, *Jensen* vs. *National Marine Fisheries Service*, 512 F. 2d 1189 (9th Cir. 1975), 5 U.S.C. 553 of the Administrative Procedure Act, Executive Order 12291, and the Regulatory Flexibility Act do not apply to this notice of the effectiveness and content of the regulations. These regulations do not contain collection of information requirements subject to the Paperwork Reduction Act.

The Secretarial rule included at § 301.19 merely provides notice of the boundaries of the treaty Indian tribes' usual and accustomed fishing places as prescribed under Federal judicial decisions. The Secretarial rule deleting the hold inspection requirement from the regulations at § 301.13 affects agency enforcement procedure and relieves a restriction. Therefore, opportunity for prior public comment and a delayed effectiveness period are unnecessary and are not being provided under the Administrative Procedure Act, 5 U.S.C. 553. Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not apply. No collection of information under the Paperwork Reduction Act is included in the Secretarial rule.

This notice of final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

List of Subjects in 50 CFR Part 301

Fish, Fisheries.

Dated: May 3, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, Part 301 is revised to read as follows:

PART 301—PACIFIC HALIBUT FISHERIES

Sec.

301.1 Short title.
301.2 Interpretation.
301.3 In-season actions.
301.4 Application.
301.5 Regulatory areas.
301.6 Fishing periods.
301.7 Closed periods.
301.8 Closed area.
301.9 Catch limits.
301.10 Fishing period limits.
301.11 Size limits.
301.12 Licensing of vessels.
301.13 Vessel clearance.
301.14 Logs.
301.15 Receipt and possession of halibut.
301.16 Fishing gear.
301.17 Retention of tagged halibut.
301.18 Supervision of unloading and weighing.
301.19 Fishing by United States treaty Indian tribes.
301.20 Sport fishing for halibut in all waters.
301.21 Previous regulations superseded.

Appendix to Part 301

Authority: 5 UST 5; TIAS 2900; 16 U.S.C. 773–773k.

§ 301.1 Short title.

This part may be cited as the Pacific Halibut Fishery Regulations.

§ 301.2 Interpretation.

(a) In this part—

Automated hook stripper (commonly known as a crucifier) means a device through which the groundline can be passed during gear retrieval which allows the groundline and hooks to pass freely, but does not allow fish to pass, thereby removing fish from the hooks;

Charter vessel means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

Commercial fishing means fishing the resulting catch of which either is or is intended to be sold or bartered;

Commission means the International Pacific Halibut Commission;

Fishery officer means any State, Federal, or Provincial officer authorized to enforce this part, including, but not limited to, the National Marine Fisheries Service (NMFS), Canadian Department of Fisheries and Oceans (DFO), Alaska Department of Fish and Wildlife Protection (ADFWP), and the United States Coast Guard (USCG);

Fishing means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

Fishing period limit means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

Land with respect to halibut means to bring to shore and to offload;

License means a halibut fishing license issued by the Commission pursuant to §§ 301.12 and 301.20 of this part;

Maritime area, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea of internal waters of that Party;

Operator, with respect to any vessel, means the master or other individual on board and in charge of that vessel;

Overall length of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

Person includes an individual, corporation, firm, or association;

Regulatory area means an area referred to in § 301.5 of this part;

Setline gear means one or more stationary, buoyed, and anchored lines with hooks attached;

Sport fishing means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

Tender means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor.

(b) In this part, all bearings are true and all positions are determined by the most recent charts issued by the United States National Ocean Service or the Canadian Hydrographic Service.

§ 301.3 In-season actions.

(a) The Commission is authorized to establish or modify regulations during the season after determining that such action

(1) Will not result in exceeding the catch limits established preseason for each regulatory area;

(2) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea, and applicable

domestic law of either Canada or the United States; and

(3) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(b) In-season actions may include, but are not limited to, establishment or modification of the following:

(1) Fishing periods;
(2) Fishing period limits;
(3) Recreational bag limits;
(4) Closed areas;
(5) Size limits;
(6) Gear restrictions; or
(7) Vessel clearances.

(c) In-season changes will be effective at the time and date specified by the Commission.

(d) The Commission will announce in-season actions under this section by providing notice to major halibut processors; Federal, State, United States treaty tribal, and Provincial fishery officials; and the media.

§ 301.4 Application.

(a) This part applies to persons and vessels fishing for halibut in waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(b) Sections 301.5 to 301.18 of this part apply to commercial fishing for halibut.

(c) Section 301.19 applies to fishing for halibut by United States treaty Indian tribes in the State of Washington.

(d) Section 301.20 of this part applies to sport fishing for halibut.

(e) This part does not apply to fishing operations authorized or conducted by the Commission for research purposes.

§ 301.5 Regulatory areas.

The following areas shall be regulatory areas for the purposes of the Convention:

(a) Area 2A includes all waters off the coasts and inland marine waters of the States of California, Oregon, and Washington.

(b) Area 2B includes all waters off the coast of British Columbia.

(c) Area 2C includes all waters off the coast of Alaska that are east of a line running 340° true from Cape Spencer Light (latitude 58°11'57" N., longitude 136°38'18" W.), and south and east of a line running 205° true from said light.

(d) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (latitude 57°41'15" N., longitude 155°35'00" W.) to Cape Ikolik (latitude 57°17'17" N., longitude 154°47'18" W.), then along the Kodiak Island coastline to Cape Trinity (latitude 56°44'50" N., longitude 154°08'44" W.), then 140° true.

(e) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (latitude 54°29'00" N., longitude 164°20'00" W.) and south of latitude 54°49'00" N. in Isanotski Pass.

(f) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in § 301.8 of this part that are east of longitude 172°00'00" W. and south of latitude 56°20'00" N.

(g) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of latitude 56°20'00" N.

(h) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in § 301.8 of this part which are east of longitude 171°00'00" W., south of latitude 58°00'00" N., and west of longitude 168°00'00" W.

(i) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of longitude 168°00'00" W.

(j) Area 4E includes all waters in the Bering Sea north of the closed area defined in § 301.8 of this part, east of longitude 168°00'00" W., and south of latitude 65°34'00" N.

§ 301.6 Fishing periods.

(a) The fishing periods for each regulatory area are set out in the following table and apply where the catch limits specified in § 301.9 of this part have not been taken.

2A	2B	2C-3A-3B	4A	4B	4D
6/27-6/29	4/25-5/03	5/15-5/16	5/15-5/16	5/15-5/17	8/08-8/14
7/24-7/26	(1)-6/18	6/12-6/13	6/12-6/13	5/27-5/28	9/21-(1)
8/28-8/30	(1)-9/12	9/07-9/08	8/11-8/12	6/03-6/04	
	(1)-10/10	10/10-1	9/07-9/08	6/12-6/14	
			9/21-1	6/17-6/18	
			10/10-1	6/24-6/25	
				7/22-7/23	
				7/29-7/30	
				8/09-8/13	
				8/25-8/26	
				9/07-9/09	
				9/21-(1)	
				10/10-(1)	

4C				4E	
6/12-6/13	7/18-7/19	8/23-8/24	9/28-9/29	5/26-5/28	7/07-7/09
6/14-6/15	7/20-7/21	8/25-8/26	9/30-10/01	5/29-5/31	7/10-7/12
6/16-6/17	7/22-7/23	8/27-8/28	10/02-10/03	6/01-6/03	7/13-7/15
6/18-6/19	7/24-7/25	8/29-8/30	10/04-10/05	6/04-6/06	7/16-7/18
6/20-6/21	7/26-7/27	8/31-9/01	10/06-10/07	6/07-6/09	7/19-7/21
6/22-6/23	7/28-7/29	9/02-9/03	10/08-10/09	6/10-6/12	7/22-7/24
6/24-6/25	7/30-7/31	9/04-9/05	10/10-10/11	6/13-6/15	7/25-7/27
6/26-6/27	8/01-8/02	9/06-9/07	10/12-10/13	6/16-6/18	7/28-7/30
6/28-6/29	8/03-8/04	9/08-9/09	10/14-10/15	6/19-6/21	7/31-8/02
6/30-7/01	8/05-8/06	9/10-9/11	10/16-10/17	6/22-6/24	8/03-8/05
7/02-7/03	8/07-8/08	9/12-9/13	10/18-10/19	6/25-6/27	8/06-8/08
7/04-7/05	8/09-8/10	9/14-9/15	10/20-10/21	6/28-6/30	8/09-8/11
7/06-7/07	8/11-8/12	9/16-9/17	10/22-10/23	7/01-7/03	8/12-10/31
7/08-7/09	8/13-8/14	9/18-9/19	10/24-10/25	7/04-7/06	
7/10-7/11	8/15-8/16	9/20-9/21	10/26-10/27		
7/12-7/13	8/17-8/18	9/22-9/23	10/28-10/29		

4C			4E
7/14–7/15	8/19–8/20	9/24–9/25	10/30–10/31
7/16–7/17	8/21–8/22	9/26–9/27	

[1] Date to be announced by the Commission.

(b) Each fishing period in Areas 2A and 2B shall begin and terminate at 1200 hours Pacific Standard Time or Pacific Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(c) Each fishing period in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin and terminate at 1200 hours Alaska Standard or Daylight Time, as applicable, on the date set out in the table to this section, unless the Commission specifies otherwise.

(d) All commercial fishing for halibut in Areas 2A and 2B shall cease at 1200 hours Pacific Standard Time on October 31.

(e) All commercial fishing for halibut in Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours Alaska Standard Time on October 31.

§ 301.7 Closed periods.

(a) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in § 301.6 of this part in respect of that area.

(b) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(c) Subject to §§ 301.16 (f) and (g) of this part, this part does not prohibit fishing for any species of fish other than halibut during the closed periods.

(d) Notwithstanding paragraph (c) of this section, no person shall have halibut in his possession while fishing for any other species of fish during the closed periods.

(e) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(f) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies a fishery officer or representative of the Commission prior to that retrieval.

(g) After retrieval of halibut gear in accordance with paragraph (f) of this section, the vessel shall submit to a hold inspection at the discretion of the fishery officer or representative of the Commission.

(h) No person shall retain any halibut caught on gear retrieved under paragraph (f) of this section.

(i) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

§ 301.8 Closed area.

All waters in the Bering Sea that are east of a line from Cape Sarichef Light (latitude 54°36'00" N., longitude 164°55'42" W.) to a point at latitude 56°20'00" N., longitude 168°30'00" W., south of a line from the latter point to Cape Newenham (latitude 58°39'00" N., longitude 162°10'25" W.), and north of latitude 54°49'00" N. in Isanotski Pass are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his possession while in those waters except in the course of a continuous transit across those waters.

§ 301.9 Catch limits.

(a) The total allowable catch of halibut to be taken during the halibut fishing periods specified in § 301.6 of this part shall be limited to the weight expressed in pounds or metric tons shown in the following table:

Regulatory area	Catch limits	
	Pounds	Metric tons
2A	274,000	124
2B	10,000,000	4,536
2C	9,500,000	4,309
3A	31,000,000	14,061
3B	8,500,000	3,856
4A	1,800,000	816
4B	1,900,000	862
4C	600,000	272
4D	600,000	272
4E	100,000	45

(b) The weights in each catch limit shall be computed on the basis that the heads of the fish are off and their entrails removed.

(c) The Commission shall determine and announce to the public the date on which the catch limit for each regulatory area will be taken and the specific dates during which fishing will be allowed in each regulatory areas.

(d) If the Commission determines that the catch limit specified in paragraph (a) of this section would be exceeded in an unrestricted 24-hour fishing period in any regulatory area, the catch limit for that area shall be considered to have been taken, unless fishing period limits are implemented.

(e) Notwithstanding paragraph (a) of this section, Areas 3A and 3B shall both be closed if the catch limit of 39,500,000 pounds (17,917 metric tons) for the combined areas is taken.

(f) Notwithstanding paragraph (a) of this section, Areas 4A and 4B shall both be closed if the catch limit of 3,700,000 pounds (1,687 metric tons) for the combined areas is taken.

(g) When under paragraphs (c), (d), (e), or (f) of this section the Commission has announced a date on which the catch limit for a regulatory area will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

§ 301.10 Fishing period limits.

(a) It shall be unlawful for any vessel to retain or land more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(b) When fishing period limits are in effect, a vessel's maximum allowable catch will be determined by the Commission based on:

(1) The vessel's overall length in feet and associated length class;

(2) The average performance of all vessels within that class; and

(3) The remaining catch limit.

(c) Length classes are shown in the following table:

Overall length	Vessel class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56– +	H

(d) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4C shall be limited to a maximum catch of 10,000 pounds (4.5 metric tons) of halibut per fishing period for the first 50 percent (300,000 pounds) and 20,000 pounds (9 metric tons) of halibut for the

last 50 percent of the catch limit specified in § 301.9(a) of this part.

(e) Notwithstanding paragraph (b) of this section, all vessels fishing in Area 4E shall be limited to a maximum catch of 6,000 pounds (2.7 metric tons) of halibut per fishing period.

(f) Notwithstanding paragraph (e) of this section, a vessel will be permitted to make multiple fishing trips in Area 4E during the fishing period between August 12 and October 31, but each trip shall be limited to a maximum catch of 6,000 pounds (2.7 metric tons) of halibut and each trip shall be subject to the vessel clearance requirements in § 301.13(c) of this part.

(g) A vessel that fishes during a fishing period when fishing period limits are in effect must offload its catch before fishing in any subsequent fishing period.

(h) A vessel that fishes during a fishing period when fishing period limits are in effect will not be allowed to serve as a tender until its catch has been landed and sold.

(i) No vessel which fishes for halibut in a regulatory area for which a fishing period limit is in effect shall fish in any other regulatory area during that fishing period.

§ 301.11 Size limits.

(a) No person shall take or possess any halibut that

(1) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail, as illustrated in the schedule following § 301.18 of this part, or

(2) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail, as illustrated in the Appendix following § 301.21 of this part.

(b) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of the minimum size of the halibut for the purpose of paragraph (a) of this section.

§ 301.12 Licensing of vessels.

(a) No person shall fish for halibut from a vessel, nor possess halibut aboard a vessel used to fish for halibut, unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(b) A license issued in respect of a vessel referred to in paragraph (a) of this section must be carried on that vessel at all times and the holder of it shall permit its inspection by fishery officers of the Contracting Parties.

(c) The Commission shall issue a license, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(d) Application forms may be obtained from fishery officers of either Contracting Party, or from the Commission.

(e) Licenses issued under this section shall be valid only during the year in which they are issued.

(f) A new license is required for a vessel that is sold, transferred, renamed, or redocumented.

(g) The license required under this section is in addition to any license, however designated, that is required under the laws of Canada or any of its Provinces or the United States or any of its States.

(h) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in 15 CFR Part 904.

§ 301.13 Vessel clearance.

(a) No person other than a person who lands his total annual halibut catch at ports within Areas 4A, 4B, 4C, 4D, 4E, or the closed area defined in § 301.8 of this part shall fish for halibut in Areas 4A, 4B, or 4D from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing and before the unloading of any halibut caught in Areas 4A, 4B, or 4D.

(b) No person other than a person who lands his total annual halibut catch at a port within Area 4C may fish for halibut in Area 4C from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing in each fishing period that applies to Area 4C and before the unloading of any halibut caught in that Area.

(c) No person other than a person who lands his total annual halibut catch at a port within Area 4E, or the closed area defined in § 301.8 of this part may fish for halibut in Area 4E from any vessel, unless the operator of that vessel obtains a vessel clearance both before such fishing in each fishing period that applies to Area 4E and before the unloading of any halibut caught in that Area.

(d) The vessel clearances required under paragraphs (a), (b), and (c) of this section are mutually exclusive.

(e) The vessel clearances required under paragraphs (a), (b), and (c) of this section may be obtained only at Dutch Harbor or Akutan, Alaska, from a fishery officer of the United States, a representative of the Commission, or a designated fish processor.

(f) The vessel operator shall specify the specific fishing period and regulatory area(s) in which fishing will take place.

(g) Vessel clearances required under paragraphs (a), (b), and (c) of this section prior to fishing in Area 4 shall be obtained within the 120-hour period before each of the openings in that Area, between 0800 and 1800 hours, local time.

(h) No halibut shall be on board at the time of clearance required by paragraph (e) of this section.

(i) Vessel clearances required under paragraphs (a), (b), and (c) of this section after fishing in Area 4 shall be obtained within the 120-hour period after each of the closings in that Area, between 0800 and 1800 hours, local time.

(j) The vessel clearances required under paragraphs (b) and (c) of this section are not valid if the vessel has fished for halibut in Areas 4A, 4B, or 4D after obtaining the clearance required for such fishing.

§ 301.14 Logs.

(a) The operator of any vessel five (5) net tons or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality.

(b) The log referred to in paragraph (a) of this section shall be:

(1) Separate from other records maintained aboard the vessel;

(2) Updated not later than 24 hours after midnight local time for each day fished, within 24 hours following the end of the fishing period in the area in which the vessel is fishing, and prior to the offloading or sale of halibut taken during that fishing period;

(3) Retained for a period of two years by the owner or operator of the vessel;

(4) Open to inspection by a fishery officer or any authorized representative of the Commission upon demand; and

(5) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following off-loading halibut.

(c) No person shall make a false entry in a log referred to in paragraph (a) of this section.

§ 301.15 Receipt and possession of halibut.

(a) No person shall receive halibut from a vessel that does not have the license required by § 301.12 on board the vessel.

(b) A person who purchases or otherwise receives halibut from the owner or operator of the vessel from

which that halibut was caught, either directly from that vessel or through another carrier, shall record each such purchase or receipt on State fish tickets or Canadian Federal catch reports, showing the date, locality, name of vessel, Halibut Commission license number, and the name of the person from whom the halibut was purchased or received and the amount in pounds according to trade categories of the halibut.

(c) No person shall make a false entry on a State fish ticket or Canadian Federal catch report referred to in paragraph (b) of this section.

(d) A copy of the fish tickets referred to in paragraph (b) of this section shall be:

(1) Retained by the person making them for a period of two years from the date the fish tickets are made; and

(2) Open to inspection by a fishery officer or any authorized representative of the Commission.

(e) No person shall possess any halibut that he knows to have been taken in contravention of this part.

(f) When halibut are delivered to other than a commercial fish processor or primary fish buyer, the records required by paragraph (b) of this section shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (d) of this section.

(g) It shall be illegal to enter a Halibut Commission license number on a State fish ticket or Canadian Federal catch report for any vessel other than the vessel actually used in catching the halibut reported thereon.

§ 301.16 Fishing gear.

(a) No person shall fish for halibut using any gear other than hook and line gear.

(b) No person shall possess halibut taken with any gear other than hook and line gear.

(c) No person shall possess halibut while on board a vessel carrying any fishing gear other than hook and line gear or nets that are used solely for the capture of bait.

(d) All setline or skate marker buoys carried aboard or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(1) The vessel's name,

(2) The vessel's state license number, or

(3) The vessel's registration number, which markings shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(e) All setline or skate marker buoys carried aboard or used by a Canadian vessel used for halibut fishing shall be:

(1) Floating and visible on the surface of the water, and

(2) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(f) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(g) No vessel from which setline gear was used to fish for any species of fish anywhere in waters described in § 301.4(a) of this part during the 72-hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(h) Notwithstanding paragraphs (f) and (g) of this section, the 72-hour fishing restriction preceding a halibut fishing period shall not apply to persons and vessels fishing for halibut during fishing periods in Areas 4C and 4E as described in §§ 301.5 (h) and (j) of this part.

(i) No person shall fish for halibut from a vessel that is equipped with, or that possesses on board, an automated hook stripper.

(j) No person shall possess halibut on a vessel that is equipped with, or that possesses on board, an automated hook stripper.

§ 301.17 Retention of tagged halibut.

Nothing contained in this part prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an officer of the Contracting Parties or a state or provincial government.

§ 301.18 Supervision of unloading and weighing.

The unloading and weighing of halibut may be subject to the supervision of fishery officers to assure the fulfillment of the provisions of this part.

§ 301.19 Fishing by United States treaty Indian tribes.

(a) Except as provided in this section, all regulations of the Commission in this part apply to halibut fishing by members of United States treaty Indian tribes from the State of Washington.

(b) For purposes of this part, United States treaty Indian tribes means the Hoh, Jamestown Klallam, Lower Elwha Klallam, Lummi, Makah, Port Gamble Klallam, Quileute, Quinault, Skokomish, Suquamish, Swinomish, and Tulalip tribes.

(c) Subarea 2A–1 includes all waters off the coast and inland marine waters of Washington that are north of latitude 46°53'18"N. and east of longitude 125°44'00"W.

(d) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 1 through October 31, or until the catch limit specified in paragraph (f) of this section is reached, whichever occurs first.

(e) Subsistence and ceremonial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 through December 31.

(f) The total allowable catch of halibut to be taken during the fishing periods specified in paragraphs (d) and (e) of this section shall

(1) Be limited to 152,000 pounds (69 metric tons), and

(2) Include commercial, and subsistence and ceremonial catch projected through the end of the year.

(g) No size or bag limits shall apply to the subsistence and ceremonial fishery except that when commercial halibut fishing is prohibited pursuant to paragraph (d) of this section, treaty Indians may take and retain not more than two halibut per day per person.

(h) Halibut taken for subsistence and ceremonial purposes shall not be offered for sale or sold.

(i) If the Commission determines that any part of the catch limit specified in paragraph (f) of this section will not be taken, it may transfer all or a portion of the unharvested halibut to the non-Indian sport fishery.

(j) All halibut sold by treaty Indians during the commercial fishing season specified in paragraph (d) of this section shall comply with the size limits specified in § 301.11.

(k) Any member of a United States treaty Indian tribe as defined in paragraph (b) of this section, who is engaged in commercial, subsistence, or ceremonial fishing under this part must have on his or her person a valid treaty Indian identification card issued pursuant to 25 CFR Part 249, Subpart A, and must comply with the treaty Indian vessel and gear identification requirements of Final Decision No. 1 and subsequent orders in United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974).

(1) The following table (Table 2) sets forth the fishing areas of each of the twelve United States treaty Indian tribes fishing pursuant to this section. Within Subarea 2A–1, boundaries of a tribe's fishing area may be revised as ordered by a Federal court.

TABLE2—FISHING AREAS FOR U.S. TREATY INDIAN TRIBES

Tribe	Boundaries
Lummi	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 360, to be places at which the Lummi Tribe may fish under rights secured by treaties with the United States.
Swinomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Swinomish Tribe may fish under rights secured by treaties with the United States.
Tulalip	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1351–1352, to be places at which the Tulalip Tribe may fish under rights secured by treaties with the United States.
Suquamish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049, to be places at which the Suquamish Tribe may fish under rights secured by treaties with the United States.
Skokomish	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 384 F. Supp. 377, to be places at which the Skokomish Tribe may fish under rights secured by treaties with the United States.
Makah	North 48°02'15" N. latitude (Norwegian Memorial), west of 123°42'30" W. longitude, and east of 1250°44'00" W. longitude.
Quileute	Between 48°07'36" N. latitude (Sand Point) and 47°31'42" N. latitude (Queets River), and east of 125°44'00" W. longitude.
Hoh	Between 47°54'18" N. latitude (Quillayute River) and 47°21'00" N. latitude (Quinault River), and east of 125°44'00" W. longitude.
Quinault	Between 47°40'06" N. latitude (Destruction Island) and 46°53'18" N. latitude (Point Chehalis), and east of 125°44'00" W. longitude.
L. Elwha	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 459 F. Supp. 1049 and 1066 and 626 F. Supp. 1443, to be places at which the Lower Elwha Tribe may fish under the rights secured by treaties with the United States.
Jamestown	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1486, to be places at which the Jamestown Tribe may fish under rights secured by treaties with the United States.
Port Gamble	Those locations in the Strait of Juan de Fuca and Puget Sound as determined in or in accordance with Final Decision No. 1 and subsequent orders in *United States* v. *Washington*, 384 F. Supp. 312 (W.D. Wash. 1974), and particularly at 626 F. Supp. 1442, to be places at which the Port Gamble Tribe may fish under rights secured by treaties with the United States.

§ 301.20 Sport fishing for halibut in all waters.

(a) No person shall engage in sport fishing for halibut using gear other than a handline or rod with no more than two hooks attached, or a spear.

(b) In all waters off the coast of Alaska

(1) The sport fishing season is from February 1 to December 31;

(2) The daily bag limit is two halibut of any size per day per person.

(c) In Puget Sound and United States waters in the Strait of Juan de Fuca, east of a line from Bonilla Point (latitude 48°35'45" N., longitude 124°43'00" W.) to Tatoosh Island (latitude 48°23'30" N., longitude 124°44'00" W.) to Cape Flattery (latitude 48°22'55" N., longitude 124°23'42" W.).

(1) The sport fishing seasons are

(i) April 8 through June 15, seven days a week;

(ii) June 16 through August 11, one day a week (Friday only).

(2) The daily bag limit is two halibut of any size per day per person.

(d) Off the North Washington Coast west of the line described in paragraph (c) of this section and north of the Queets River (latitude 47°31'42" N., longitude 124°21'15" W.)

(1) The sport fishing seasons are

(i) May 6 through June 27, five days a week (Tuesday through Saturday);

(ii) June 30 through July 29, two days a week (Friday and Saturday);

(iii) September 1 through September 10, seven days a week.

(2) The daily bag limit is two halibut of any size per day per person.

(e) Off the Washington and Oregon Coast, between the Queets River and Cape Falcon (latitude 45°46'00" N., longitude 123°58'53" W.).

(1) The sport fishing season is from April 1 through September 30, seven days a week;

(2) The daily bag limit is one halibut of any size per day per person.

(f) Off the Oregon Coast, south of Cape Falcon

(1) The sport fishing seasons are

(i) April 1 through June 28, four days a week (Wednesday through Saturday);

(ii) August 1 through September 30, seven days a week.

(2) The daily bag limit

(i) Between April 1 and July 28 is two halibut, with a minimum overall size limit of 32 inches (81.3 centimeters);

(ii) Between August 1 and September 30 is two halibut, one with a minimum overall size limit of 32 inches (81.3 centimeters) and the second with a minimum overall size limit of 50 inches (127.0 centimeters).

(g) Off the California Coast

(1) The sport fishing season is from April 1 through September 30, seven days a week.

(2) The daily bag limit is one halibut with a minimum overall size limit of 32 inches (81.3 centimeters).

(h) Notwithstanding paragraphs (c), (d), (e), (f), and (g) of this section, the total allowable catch of halibut shall be limited to 224,000 pounds (102 metric tons) except that the limit may be increased pursuant to § 301.19(i) provided that the sum of the total allowable catch limits for Area 2A do not exceed 650,000 pounds (295 metric tons).

(i) The minimum overall size limit specified in paragraphs (f)(2) and (g)(2) of this section is measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(j) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of a minimum size or the number of fish caught, possessed, or landed.

(k) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(l) The possession limit for halibut in the waters off British Columbia, Washington, Oregon, and California is the same as the daily bag limit.

(m) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(n) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(o) No halibut caught in sport fishing shall be possessed aboard a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(p) No person shall operate a charter vessel engaged in fishing for halibut unless the Commission has issued a license in respect of that vessel and such license is aboard such vessel.

(q) A license issued in respect of a vessel referred to in paragraph (p) of this section must be carried on that charter vessel at all times and the holder of it shall permit its inspection by customs and fishery officers of the Contracting Parties.

(r) A license shall be issued without fee by the Commission from its office in Seattle, Washington, upon receipt of a completed written and signed "Application for Vessel License for the Halibut Fishery" form.

(s) Licenses issued under this section shall be valid only during the year in which they are issued.

§ 301.21 Previous regulations superseded.

This part shall supersede all previous regulations of the Commission, and this part shall be effective each succeeding year until superseded.

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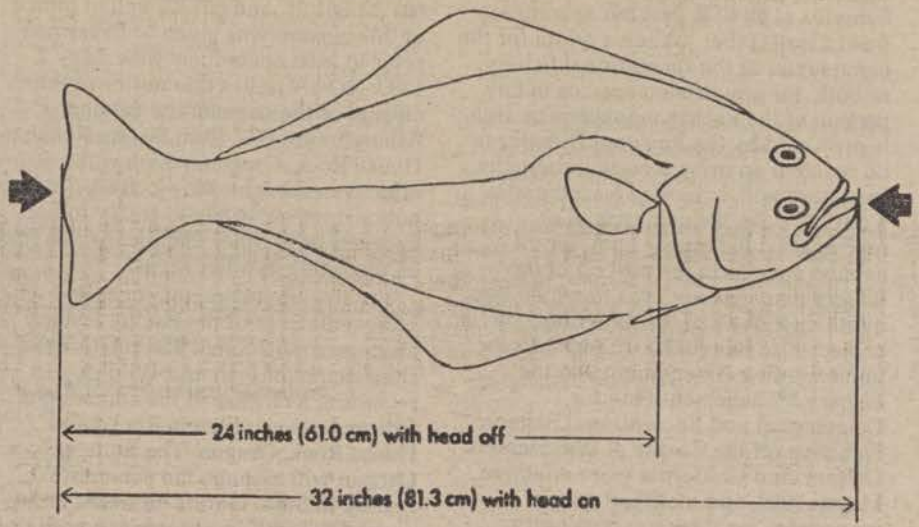
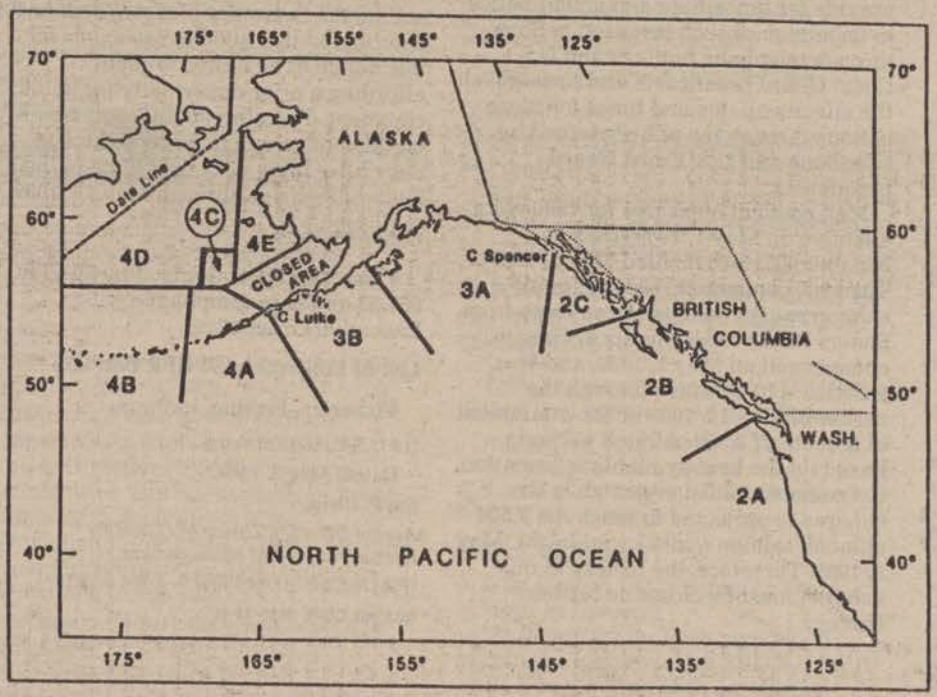
APPENDIX TO PART 301



Minimum commercial size.



Regulatory areas for the Pacific halibut fishery.

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