chapter, keep a supporting record of such removals and shall make appropriate entries therein at the time of removal. The supporting record shall show, with respect to each removal, the date of removal, the name and address of the Federal agency to which shipped or delivered, the quantity and, with respect to large cigars, the wholesale price for tax purposes. Appropriate entries shall also be made in the supporting record of any cigars, cigarettes, or ciragette papers or tubes removed under this part which are returned to the factory. Where the manufacturer keeps, at the factory, copies of invoices or other commercial records containing the information required as to each removal, in such manner that the information may be readily ascertained therefrom, such copies will be considered the supporting record required by this section. The supporting record shall be retained by the manufacturer for 3 years following the close of the year covered therein and shall be made available for inspection by any ATF officer upon his request.

(Sec. 2128(c), Pub. L. 94-455, 90 Stat. 1921 (26 U.S.C. 5741).)

PART 296—MISCELLANEOUS REGULATIONS RELATING TO CIGARS, CIGARETTES, AND CIGARETTE PAPERS AND TUBES

PAR. E. The regulations in 27 CFR Part 296 are amended as follows:

1. Section 296.72 is amended to rephrase the introductory language, to delete the definition of "Commissioner", to add definitions of "wholesale price", "region", and "regional regulatory administrator", and to modify the definitions of "assistant regional commissioner" and "Commissioner of Customs" to reflect the change in the name of the U.S. Customs Service and the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.72 reads as follows:

§ 296.72 Meaning of terms.

When used in this subpart, the following terms shall have the meanings given in this section, unless the context clearly indicates otherwise. Words in the plural form shall include the singular, and vice versa, and words indicating the masculine gender shall include the feminine. The terms "includes" and "including" do not exclude things not listed which are in the same general class.

* * * * *

Assistant Director (Regulatory Enforcement). The Assistant Director for regulatory enforcement activities in the Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Director, Bureau of Alcohol, Tobacco and Firearms.

Assistant regional commissioner. A regional regulatory administrator as defined in this section.

* * * * *

Commissioner of Customs. The Commissioner of Customs, U.S. Customs Service, the Department of the Treasury, Washington, DC.

* * * * *

Region. A geographical region of the Bureau of Alcohol, Tobacco and Firearms.

Regional regulatory administrator. A regional regulatory administrator, Bureau of Alcohol, Tobacco and Firearms, who is responsible to, and functions under the direction and supervision of, the Assistant Director (Regulatory Enforcement).

* * * * *

Wholesale price. The manufacturer's, or importer's, suggested delivered price, at which the cigars are to be sold to retailers, inclusive of the tax imposed by 26 U.S.C. chapter 52 or section 7652 but exclusive of any State or local taxes imposed on cigars as a commodity, and before any trade, cash, or other discounts, or any promotion, advertising, display, or similar allowances. Where the manufacturer's or importer's suggested delivered price to retailers is not adequately supported by bona fide arm's length sales, or where the manufacturer or importer has no suggested delivered price to retailers, the wholesale price shall be the price for which cigars of comparable retail price are sold to retailers in the ordinary course of trade as determined by the Assistant Director (Regulatory Enforcement).

2. Section 296.74 is amended to replace "tax class" of large cigars with "wholesale price," to change the examples to reflect the new tax structure imposed by legislation, and to make terminology changes to reflect the establishment of the Bureau of Alcohol, Tobacco and Firearms. As amended, § 296.74 reads as follows:

§ 296.74 Execution and filing of claims.

Claims under this subpart shall be executed on Internal Revenue Service Form 843 in accordance with the applicable instructions on the form, and filed with the regional regulatory administrator of the region in which the cigars, cigarettes, or cigarette papers or tubes were lost, rendered unmarketable, or condemned, within 6 months after the date on which the President makes the determination that the disaster has occurred. The claim shall state all the facts on which the claim is based, and shall set forth the numbers of small cigars, large cigars (itemized separately as to taxable wholesale price—see §§ 270.214 and 275.73 of this chapter for wholesale price information shown on packages), small cigarettes, large cigarettes, cigarette papers, and cigarette tubes, as the case may be, and the rate of tax and the amount claimed with respect to each article set forth, substantially in the form as shown in the example below.

EXAMPLE

Quantity	Article	Rate of tax	Amount
20,000	Large cigars	$0.75 per thousand.	$15.00
1,000	Large cigars wholesale price $100 per thousand.	8½ pct of wholesale price.	8.50
500	Large cigars wholesale price $236 per thousand.	$20 per thousand.	10.00
10,000	Small cigarettes.	$4 per thousand.	40.00
5,000	Large cigarettes	$8.40 per thousand.	42.00
2,000 sets	Cigarette papers—50 each set.	$0.005 per set	10.00
1,000 sets	Cigarette papers—100 each set.	$0.01 per set	10.00
1,000	Cigarette tubes.	$0.01 per 50 tubes.	.20
Total claimed			135.70

The claimant shall certify on the claim to the effect that no amount of internal revenue tax or customs duty claimed therein has been or will be otherwise claimed under any other provision of law or regulations.

Effective date. It is proposed that these regulations shall be effective on and after February 1, 1977.

The Bureau of Alcohol, Tobacco and Firearms has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Signed: November 15, 1976.

REX D. DAVIS,
Director.

Approved: November 29, 1976.

JERRY THOMAS,
Under Secretary of the Treasury.

[FR Doc.76-35709 Filed 12-2-76;8:45 am]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

[29 CFR Part 2201, 2300]

REGULATIONS UNDER THE FREEDOM OF INFORMATION ACT

Notice of Proposed Amendment; Redesignation

The Occupational Safety and Health Review Commission proposes by this notice to amend its Freedom of Information Act Regulations, published in 29 CFR Part 2300, to effect several changes, the object of which is a more efficient public information program. Additionally, the Commission, on an experimental basis, is presently using a new microfiche format for publication of its decisions, including administrative law judges' ("ALJ") decisions, and the proposal describes the microfiche system as it would be used in the official reporter system if these amendments are adopted. The Occupational Safety and Health Review Commission invites comments on its present

use of microfiche system and its proposed use as an official reporter system.

Microfiche is a relatively inexpensive method of putting multiple images of printed text of reduced size on a negative which is described as a fiche. Ninety-eight pages of text will be put on one fiche. By use of a microfiche reader (viewer) the reduced pages are magnified for reading purposes. Information contained on the fiche can be converted into hard copy, the same size as the original, by use of a printer. Combination reader/printers are available for use with microfiche. Readers are available at all Regional Offices listed elsewhere in this document and at the National Office.

Additionally, the regulations would be redesignated as Part 2201 of this title, and Part 2300 would be vacated.

The major changes presented by the proposal may be summarized as follows:

Section 2201.2(a), present § 2300.2(a), would be changed to adopt a new Commission acronym, "OSHRC," instead of the present "OSAHRC." The acronym, where used, would be changed to the new form throughout the proposal. However, the name of the official reporter system for all Commission decisions, including ALJ decisions, would remain the same, "OSAHRC Reports."

Section 2201.2(b), present § 2300.2(b), would be revoked.

Section 2201.3, present § 2300.3, would be changed to delegate to the Director of Information and Publications the authority to act for the Commission on all requests for information. This authority is presently delegated to the Executive Secretary. This change is uniform throughout the proposal. A proposed new exception to the delegated authority is noted in this section, which is, that copies of individual Commission decisions, including ALJ decisions, would be available free of charge upon request. This provision is discussed more fully in the discussion of § 2201.6(a), below.

Section 2201.4(b), present § 2300.4(b), would be changed to allow copying and examination of Commission records between the hours of 10:00 a.m. and 3:00 p.m. on any business day. The present rule is not precise and allows examination and copying during normal operating hours.

Section 2201.4(c), present § 2300.4(c), proposes the integration of the new microfiche system for publishing all decisions of general applicability, including ALJ decisions, into the official reporter system. The Microfiche system would contain all decisions issued after October 31, 1975. All decisions issued through that date are contained in the previously published bound, volumes. The official reporter system, encompassing the bound Volumes 1–20 and the new microfiche system, would continue to be known as OSAHRC Reports. Also explained is the proposed method of official citation of decisions in the microfiche system, noting that the first numbers in the citation would indicate in what year the decision was issued. A sample official citation of a microfiche-published case is included in the proposal.

Section 2201.4(d), present § 2300.4(e), would be changed to announce that an index to all decisions would be available from the Superintendent of Documents, U.S. Government Printing Office, and that the index would be updated at least quarterly throughout the year. The present rule requires only that an index be compiled.

Section 2201.4(f) (new) would state that disclosure of information in the official personnel folder of Commission employees or former employees would be governed by pertinent regulations issued by the U.S. Civil Service Commission.

Section 2201.5(a), present § 2300.5(a), would add language describing the availability of OSAHRC Reports from the U.S. Government Printing Office.

Section 2200.5(b), present § 2300.5(b), proposes several changes in fees charged for search time and for copying documents. Paragraph No. (1) states that when the $.10 per page copying charge would result in a charge of less than $3.00, no charge would be made. Paragraph No. (2) would adopt a $5.00 per hour search charge for clerical time and a $10.00 per hour charge for professional search time. No charge would be made to search for copies of Commission decisions. Paragraph No. (3) is new and would state that copies of individual decisions of the Commission would be available from the Director of Information and Publications and from the regional offices of the Commission without charge. It is expected that some slight delays could be encountered by persons requesting copies of decisions from regional offices since, in some cases, the request would have to be forwarded to the National Office. Paragraph No. (4) is new and would establish a maximum $200 per hour charge for searching computer records, but limited to the actual charge to the government. A charge of $.20 per page would be established for computer printouts per page with carbon copies concurrently printed. Paragraph No. (5) is new and would establish the cost of certified or authenticated documents as $3.00.

Section 2201.5(c), present § 2300.5(c), would be expanded for clarity and to more nearly conform to the public interest test under the FOIA for waiving or reducing fees.

Section 2201.5(e), present § 2300.5(e), would be changed to make transcripts of OSHRC hearings available on the same basis as any other Commission document. Under the present rule, parties to OSHRC litigation were charged the same rate as they would have been charged by the official court reporter, if the party had been previously given an opportunity to purchase the transcript from the reporter but had not done so. Although it appears necessary under the FOIA to make transcripts available for the cost of duplication only, parties to OSHRC cases should still order transcripts from the court reporter, since it may be expected that receipt of such transcripts directly from the reporter would be more timely than receipt of the transcripts from the Commision after submitting a written request under the FOIA.

Section 2201.6, present § 2300.6, explaining the procedure for obtaining information, would be completely revised. The new rule would divide all records and documents at the Commission into four (4) types: (1) copies of individual Commission decisions, § 2201.6(a); (2) copies of multiple decisions, of the official reporter or of the Commission index, § 2201.6(b); (3) published or generally available matter other than decisions and the index, e.g., press releases, rules of procedure, etc., § 2201.6(c), and; (4) any record, document or information other than those mentioned above, § 2201.6(d), present §§ 2300.6(a) and (b). New section 2201.6(a) would direct persons wanting copies of individual decisions of the Commission to write or visit either the Director of Information and Publications or any of the regional offices of the Commission. New § 2200.6(b) would make copies of multiple decisions, of the official reporter, OSAHRC Reports, and of the Commission index available from the U.S. Government Printing Office. New § 2200.6(c) would make all previously published material (other than decisions and the index), and information concerning hearings and other general information, available from the Director of Information and Publications' Office free of charge. Section 2201.6(d), present §§ 2200.6 (a) and (b), would contain directions for requesting all material not discussed elsewhere in § 2201.6. Also, a new specific designation, "Information Request," would be required on the outside of the envelope or cover of any request under the FOIA.

Section 2201.7(d), present § 2300.7(d), would rescind the existing delegation of authority to the Executive Director to receive appeals of denials of requests under the FOIA. This proposed change is to conform to the statute. Appeals would be directly received by the Chairman.

Section 2201.7(e), present § 2300.7(e), would be revoked. Matters previously contained in that section would be handled by internal instructions to staff.

Sections 2201.8(a)(2) and (a)(8), present §§ 2300.8(a)(3) and (a)(8), would be changed to correct typographical interlineations in the previous Federal Register version.

Following is a list of the proposed new and substantially revised sections in the proposal, with a cross-reference to the section, if any, in the present regulations from which the proposed regulation is derived.

Proposal:	*Present rule*
2201.2(a)	2300.2(a).
2201.2(b) (revoked)	2300.2(b).
2201.4(b)	2300.4(b).
2201.4(c)	2300.4(c).
2201.4(d)	2300.4(e).
2201.4(f)	New.
2201.5(a)	2300.5(a).
2201.5(b)	2300.5(b).
2201.5(c)	2300.5(c).
2201.5(e)	2300.5(e).
2201.6(a)	New.
2201.6(b)	Do
2201.6(c)	Do.

Proposal:	Present rule
2201.6(d)	2300.6(a) and (b).
2201.7(d)	2300.7(d).
2201.7(e) (revoked)	2300.7(e).
2201.8(a)	2300.8(a).

Interested persons are invited to submit such written data, views, or arguments as they may desire. All communications should be addressed to: Executive Secretary, Occupational Safety and Health Review Commission, 1825 K Street, Washington, D.C. 20006. All communications received on or before December 29, 1976, will be considered before action is taken on the proposal. The proposals may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date, in the office of the Executive Secretary. Telephone inquiries concerning any matters in the proposal may be made to the Counsel to the Commission, Paul Wallace, (202) 634–7970, or the Director of Information and Publications, Linda Dodd, (202) 634–7943.

These amendments are proposed under the authority of Section 12(g) Pub. L. No. 91–596, 84 Stat. 1604 (29 U.S.C. 661(f)), 5 U.S.C. 552 as amended, 1974 (Pub. L. No. 93–502).

In consideration of the foregoing, it is proposed to vacate Part 2300 of Title 29 and to make a new Part 2201 which will read as follows:

PART 2201—REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Sec.

2201.1 Purpose and scope
2201.2 Description of agency
2201.3 Delegation of authority
2201.4 Information policy
2201.5 Copies of records
2201.6 Procedure for obtaining information
2201.7 Processing requests
2201.8 Maintenance of statistics

AUTHORITY: Sec. 12(g), Pub. L. No. 91–596, 84 Stat. 1604 (29 U.S.C. 661(f)), 5 U.S.C. 552 as amended, 1974 (Pub. L. No. 93–502).

§ 2201.1 Purpose and scope.

The purpose of the provisions of the Part is to provide procedures to implement the Freedom of Information Act, 5 U.S.C. section 552, as amended November 21, 1974 (Pub. L. 93–502). The following provisions are applicable only to such items of information as relate to the agency or are items within its custody. They are not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure which are published at Part 2200 of this chapter.

§ 2201.2 Description of agency.

The Occupational Safety and Health Review Commission (OSHRC) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (84 Stat. 1590, 29 U.S.C. 651–77). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing in accordance with section 554 of Title 5, United States Code. All such hearings are conducted by an OSHRC Administrative Law Judge at a place convenient to the parties and are open to the public.

§ 2201.3 Delegation of authority.

The Director of Information and Publications is delegated the exclusive authority to act upon all requests for information, documents and records which are received from any person or organization. However, copies of individual Commission decisions are available without restriction (see §§ 2201.4(e) and 2201.6(a)).

§ 2201.4 Information policy.

(a) Except for matters specifically excluded by section 553(b) of Title 5, United States Code or other applicable statute, all documents and records maintained by this agency or within the custody thereof shall be available to the public upon request filed in accordance with this part.

(b) Any person may examine and copy any such document or record of this agency (or within the custody thereof), under conditions prescribed by the Director of Information and Publications, between the hours of 10:00 a.m. and 3:00 p.m. on any business day so long as it does not interfere with the trial or disposition of a pending case.

(c) All final OSHRC decisions (including decisions of the Commission and of its administrative law judges) of general applicability (including concurring and dissenting opinions) are published by the Superintendent of Documents, U.S. Government Printing Office, in a series of bound volumes known as OSAHRC Reports Volumes 1 through 20, for decisions and reports from April 28, 1971 to October 31, 1975. After Volume 20, OSAHRC Reports are published in a series of microfiche. An example of the official method of citation of Commission decisions printed on microfiche is as follows:

SAMPLE—Secretary v. J. W. Black Lumber Co., 75 OSAHRC 1/B9, p. 2

Year decision issued	The official reporter	The serial No. of Fiche where decision is printed	Coordinates on the Fiche for 1st page of cited decision	Cite to specific page of cited decision
1975	OSAHRC	1/	B9	2

Copies of individual decisions will also be available from the Commission (see §§ 2201.4(e) and 2201.6(a)).

(d) The Commission maintains an index to all decisions in OSAHRC Reports. This index is published and is available from the Superintendent of Documents, U.S. Government Printing Office. The index shall be updated, at least quarterly.

(e) Copies of individual Commission decisions (including administrative law judge decisions) may be obtained free of charge from the following offices:

NATIONAL OFFICE

Director of Information and Publications, 1825 K Street, N.W., Washington, D.C. 20006. 202–634–7943.

REGIONAL OFFICES

Atlanta, Georgia: 1365 Peachtree Street, N.E., Room 400, Atlanta, Georgia 30309. 404–526–5197.

Boston, Massachusetts: 100 Summer Street, Suite 1521, Boston, Massachusetts 02110. 617–223–3757.

Chicago, Illinois: 55 East Monroe Street, Room 1530, Chicago, Illinois 60603. 213–353–4634.

Dallas, Texas: 1507 Pacific Avenue, Fidelity Union Tower, Suite 400, Dallas, Texas 75201. 214–749–7171.

Denver, Colorado: 1050 Seventeenth Street, Prudential Building, Suite 1718, Denver, Colorado 80202. 303–837–2281.

New York, New York:
1515 Broadway, Room 3800, New York, New York 10036. 212–399–5985.

St. Louis, Missouri:
1114 Market Street, Room 608, St. Louis, Missouri 63101. 314–425–5071.

Washington, D.C.:
6525 Belcrest Road, Suite 1005, Hyattsville, Maryland 20782. 301–436–8870.

(f) Disclosure of information contained in the official personnel folder of any OSHRC employee or former employee shall be governed by the regulations published by the United States Civil Service Commission in 5 CFR Part 294, Subpart G.

§ 2201.5 Copies of records.

(a) Copies of documents or records of this agency, or within the custody thereof, or information respecting the time and place of hearings will be furnished to any person or organization requesting the same in accordance with this part, except for OSAHRC Reports and Commission index, which are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. (See § 2201.4(c) and (d)). See § 2201.4(e) for instructions for obtaining copies of individual Commission decisions.

(b) The Director of Information and Publications shall charge a fee for searching for and copying such documents or records.

(1) The fee per copy of each page up to 8½" x 14" shall be $.10 per copy per page. However, when the fee so computed would be less than $3.00, no fee shall be charged.

(2) The search charge shall be $5.00 per hour of clerical time and $10.00 per hour of professional time, except that no search charge shall be made for copies of decisions.

(3) Copies of individual decisions of the Commission shall be available from the Director of Information and Publications and from the several Commission offices without charge (see §§ 2201.4(e) and 2201.6(a)).

(4) Searches for computerized records shall be charged at the actual charge to the government not to exceed $200 per hour. This fee includes machine time and that of the operator and clerical personnel. The fee for computer printouts shall

be 20 cents per page for the original and carbon copies concurrently printed.

(5) The fee for certification or authentication shall be $3.00 per document.

(c) All charges may be waived or reduced by the Director of Information and Publications whenever it is determined that it is in the public interest to do so because furnishing the information can be considered as primarily benefiting the general public.

(d) Copies of documents (including the hearing transcript) which have been filed in an OSHRC case which, at the time of the request therefor, is pending in any United States Court should be directed to such Court.

(e) Requests for transcripts of OSHRC hearing shall be made in accordance with the procedure set out in § 2201.6(d).

§ 2201.6 Procedure for obtaining information.

(a) Persons or organizations wishing to obtain copies of individual Commission decisions (including administrative law judge decisions) may call, write or visit either the Director of Information and Publications at the national office or any of the field offices of the Commission. See § 2201.4(e) for addresses and telephone numbers of those offices. These copies are available free of charge.

(b) Persons or organizations wishing to obtain copies of numerous decisions or an index of decisions are advised to contact the U.S. Government Printing Office to secure copies of OSAHRC Reports and of the OSAHRC Reports Index. See § 2201.4(c) for information on OSAHRC Reports. See § 2201.4(d) for information on the Commission index.

(c) Persons or organizations wishing to obtain copies of the Commission's press releases, rules of procedure or any other published material (other than the index and decisions), information concerning the date, time and place of hearings or other information of a general nature concerning operations of the Commission may call, write or visit the Director of Information and Publications at the national office of the Commission. These documents and items of information are available free of charge.

(d) All persons or organizations requesting any information from the Commission or any record or document (other than the information, records and documents specified in subsections (a), (b) and (c) of this section (§ 2201.6)) of the Commission or in its custody shall submit such request in writing to the Director of Information and Publications, OSHRC, 1825 K Street, N.W., Washington, D.C. 20006. All such requests for information should be clearly identified as a request for information under the Freedom of Information Act, and if submitted by mail or otherwise submitted in an envelope or other cover, should carry the phrase "INFORMATION REQUEST" in capital letters on the front of the envelope or cover.

(e) If a request does not comply with the provisions of the preceding paragraph, it shall not be deemed received by the Commission until the time it is actually received by the Director of Information and Publications.

§ 2201.7 Processing requests.

(a) The Director of Information and Publications shall respond promptly to all requests for information or for copies of records or documents which are submitted in accordance with this regulation but in no event shall such response be furnished later than ten (10) working days following receipt of such request.

(b) A request that is expected to involve assessed fees in excess of $50.00 will not be deemed to have been received until the requester is advised of the anticipated cost and agrees to bear it.

(c) In the event any request for information or for a copy of any document or record is denied, the Director of Information and Publications shall, within 10 working days of the receipt of the request, notify the requester of the denial. Such denial shall specify the reason therefor and also advise that the denial may be appealed as specified hereinafter.

(d) Whenever any request for information or for a copy of any document or record is denied by the Director of Information and Publications, an appeal may be filed with the Chairman of the Commission within 30 working days after the requester receives notification that the request has been denied. The appeal shall be in writing and the Chairman shall respond ot the same in accordance with section 552(a)(6) of Title 5, United States Code, and within the time period set forth therein.

§ 2201.8 Maintenance of statistics.

(a) The Director of Information and Publications shall maintain records of

(1) The total amount of fees collected by this agency pursuant to this part;

(2) The number of denials of requests for records or information made pursuant to this part and the reason for each;

(3) The number of appeals from such denials, together with the results of such appeals, and the reason(s) for the action upon each appeal that results in a denial of information or documents;

(4) The name(s) and title(s) or position(s) of each person responsible for each denial of records requested and the number of instances of participation for each;

(5) The results of each proceeding conducted pursuant to sect ion 552(a)(4)(F) of Title 5, United States Code, including a report of the disciplinary action against the official or employee who was primarily responsible for improperly withholding records or an explanation of why disciplinary action was not taken;

(6) A copy of every rule made by this agency affecting or in implementation of section 552 of Title 5, United States Code;

(7) A copy of the fee schedule for copies of records and documents requested pursuant to this regulation; and

(8) All other information which indicates efforts to administer fully the letter and spirit of the Freedom of Information Act and the above rules.

(b) The Director of Information and Publications shall annually, within 60 days following the close of each calendar year, prepare a report covering each of the categories of records to be maintained in accordance with the foregoing and submit the same to the Speaker of the House of Representatives and the President of the Senate for referral to the appropriate committees of the Congress.

Dated: November 30, 1976.

For the Commission,

WILLIAM S. MCLAUGHLIN,
Executive Secretary.

[FR Doc.76-35680 Filed 12-2-76;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 413]

[FRL 652-6]

ELECTROPLATING POINT SOURCE CATEGORY

Withdrawal of Notice of Proposed Rulemaking

In consideration of the matters discussed in the preamble to the Suspension and Revocation of Regulations published today elsewhere in this issue, the proposed effluent limitations guidelines for existing sources, standards of performance and pretreatment standards for new sources, and pretreatment standards for existing sources published in the FEDERAL REGISTER on March 28, 1974 (39 FR 11515) and on April 24, 1975 (40 FR 18140) are hereby withdrawn.

Dated: November 29, 1976.

RUSSELL E. TRAIN,
Administrator.

[FR Doc.76-35727 Filed 12-2-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[49 CFR Part 228]

[FRA Docket No. HS-2, Notice No. 2]

CONSTRUCTION OF RAILROAD EMPLOYEE SLEEPING QUARTERS

Proposed Amendment to Hours of Service Regulations

The Federal Railroad Administration proposes to issue permanent rules responsive to section 2(a)(4) of the Hours of Service Act (45 U.S.C. 61-64b) (hereafter Act), as amended by section 4(a) of the Federal Railroad Safety Authorization Act of 1976, Pub. L. No. 94-348, 90 Stat. 818.

The statutory amendment, which became effective on July 8, 1976, makes it unlawful for any common carrier by railroad to construct or reconstruct sleeping quarters for employees covered by the Act "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary) of any area

where railroad switching or humping operations are performed".

Carrier employees covered by the Act include those (1) engaged in or connected with the movement of any train (e.g., trainmen, locomotive engineers, firemen, conductors, switchmen, switchtenders, hostlers), (2) involved in the communication of orders pertaining to or affecting train movements (e.g., operators, train dispatchers), or (3) engaged in installing, repairing or maintaining signal systems (e.g., signal maintainers; persons assigned to signal "gangs" engaged in constructing systems; signal shop employees who repair, test or fabricate signal system components; communications employees who work on circuits governing signals).

FRA administers the ours of Service Act under section 6(f)(3)(A) of the Department of Transportation Act (49 U.S.C. 1655(f)(3)(A)) and a delegation from the Secretary of Transportation (49 CFR 1.49(d)). The proposed rules would amend existing FRA regulations which implement the ours of Service Act (49 CFR Part 228).

By a separate document published in this issue of the FEDERAL REGISTER at page 53028, FRA has issued interim rules relating to the definition of "immediate vicinity" which are virtually identical to those proposed by this notice. The interim rules will remain in effect until the final rules issued in this proceeding become effective.

The primary impetus of this amendment to the Hours of Service Act was the accident that occurred at Decatur, Illinois, on July 19, 1974. (H.R. Report No. 94–1166 (1976) at page 11.) Seven employees were killed and another 33 were injured when an explosion demolished crew quarters that were located between and adjacent to two classification yards, and did other extensive damage in the middle of the Norfolk and Western yard. Three hundred sixteen persons who lived or worked in the surrounding area were also injured. The explosion resulted from accidental release of product which occurred during the switching of hazardous materials.

The approach of the Department of Transportation in attempting to limit or eliminate the risks associated with the transportation of hazardous materials in yards throughout the country has been to work for the prevention of accidental release of product, fires and explosions. This approach is based on the realization that, in many hundreds of localities throughout the country, it is not possible to create a physical separation or buffer zone between railroad yards and nearby homes, businesses and schools. Nor has it appeared to be sound policy to apply drastically different standards to the location of carrier-provided employee crew quarters.

Therefore, the Department, through the Materials Transportation Bureau (formerly the Hazardous Materials Transportation Board) and the FRA, has taken several steps since the Decatur incident to require (1) better equipment design, including the modification of certain existing cars, and (2) more strict operating procedures for handling of hazardous materials. See, e.g., 39 FR 27572, July 30, 1974; 39 FR 38230, October 3, 1974.

In enacting the 1976 amendment to the law, Congress determined that additional protection from accidents such as the one that occurred at Decatur, Illinois, is required for crew quarters. In an integrally related provision of the 1976 amendments, Congress made it unlawful for a carrier "to provide sleeping quarters for employees (including crew quarters, camp or bunk cars, and trailers) which do not afford such employees an opportunity for rest, free from interruptions caused by noise under the control of the railroad, in clean, safe, and sanitary quarters. * * *" (section 2(a)(3) of the Act, as amended; 45 U.S.C. 62(a)(3)). FRA recognizes that the approach of Congress, which links basic standards for existing facilities with more strict standards for new or reconstructed facilities, evidences an intent that conditions be improved generally over a period of time. Thus, FRA has considered both the factors of safety and freedom from carrier-controlled noise in fashioning these rules.

In determining what constitutes the "immediate vicinity" for purposes of the interim rules and these proposed permanent rules, FRA considered, among other things, the: distances of burning and serious damage in accidents (such as the one at Decatur, Illinois) involving detonation of vapor clouds forming as a result of puncture of a tank car; a National Aeronautics and Space Administration (NASA) study of certain chemical tank car explosions occurring between 1958 and 1971 (R. D. Seiwert, NASA Technical Memorandum TMX–68277 (1972)); and the Hazardous Materials—Emergency Action Guide prepared by the National Highway Traffic Safety Administration.

Based on analysis of these materials and other information, FRA proposes that, for purposes of the permanent rules, the "immediate vicinity" of humping or switching operations should mean an area within one-half mile of such operations or such lesser distance meeting the tests described below. The one-half mile distance approximates the average perimeter of the area over which significant burn damage occurred in the worst of the vapor cloud accidents—Decatur, Illinois. In addition, information contained in the NASA study referred to above indicates that 95.4 percent of the large fragments propelled by an explosion caused by ignition of hazardous materials contained in a tank car fall within one-half mile of the point of ignition. (The remaining 4.6 percent of the fragments fall over the succeeding 2,000 feet.) FRA has updated the NASA study of fragment distribution to account for more recent accidents and has found that the data on such accidents are consistent with the NASA study conclusions.

For any proposed project sites within one-half mile of switching or humping operations but outside of one-third mile of such operations, FRA proposes to review the sites to determine the relative safety of and noise levels in crew quarters located at the proposed sites based on the topography of the general area of the site and the rail facilities near the site, the location of other physical improvements situated between the site and areas of rail operations, the distance from trackage where specific types of switching or humping operations are performed, and the type of rail operations within the area including the volume of placarded cars transporting hazardous material. If these factors or other information available to FRA indicates that the proposed site would be safe and would be free from noise within the control of the carrier, the site would be approved.

The one-third mile limitation on this proposed review was established on the basis of the fact that such a distance is the minimum distance over which serious damage has occurred as a result of vapor cloud explosions in the few accidents that have been caused by such an explosion, indicating that a site located within this distance would, except in most unusual circumstances, not be considered safe from such explosions. In addition, 92 percent of the fragments propelled by such an explosion fall within one-third mile. Finally, noise levels within one-third mile are usually so high and of such a quality as to make unlikely the achievement of interior levels which are desirable in light of the statutory objective of uninerrupted rest. *See* J. M. Fath et al., "Measurement of Railroad Noise-Line Operations, Yard Boundaries, and Retarders" (National Bureau of Standards 1974); E. J. Rickley et al., "Noise Level Measurements of Railroads: Freight Yards and Wayside" (Department of Transportation, Transportation Systems Center 1974); "Assessment of Noise Environments Around Railroad Operations" (Wyle Laboratories Report WCR 73–5); E. K. Bender et al., "Railroad Environmental Noise: A State of the Art Assessment" (Bolt Beranek and Newman Inc. 1974).

It has come to the attention of FRA that, in extraordinary situations, it may not be feasible to construct carrier-provided sleeping quarters at or beyond one-third of a mile. Therefore, FRA proposes to consider the approval of locations within that range where the carrier makes an affirmative showing of its inability to obtain an alternate site suitable for the purpose and demonstrates that the location and type of construction are so unique as to justify approval on the grounds of safety and freedom from railroad-caused noise. The cost to the railroad of providing an alternate site would not be considered in evaluating whether a "feasible" alternate site is, in fact, available.

Accordingly, § 228.101 would establish that all sites within one-half mile (2,640 feet) (804 meters) will be presumed to be

in the "immediate vicinity", except as determined otherwise through a site-by-site review. Section 228.103 would prescribe an approval procedure for construction within the range of one-third to one-half mile (1,760 to 2,640 feet) (536 to 804 meters) from any area where switching or humping operations are performed. Section 228.105 would prescribe very rigorous criteria and procedures for approval of sites within one-third mile (1,760 feet) (536 meters). Under § 228.105, the carrier would have to establish that an alternate site cannot be obtained and that the physical characteristics of the location and the proposed method of construction provide extraordinary protection against noise and hazardous materials incidents. Distances would be measured from the nearest rail of trackage utilized for switching or humping to the portion of the site on which would be located the exterior wall of the quarters which is the closest to the areas in which switching or humping are performed.

The rules would have the effect of permitting construction or reconstruction of crew quarters beyond one-half mile without FRA approval. At that distance and beyond, risks associated with hazardous materials incidents are not substantial, and noise from railroad operations is capable of being controlled. However, under the statute the quarters must still be "clean, safe, and sanitary" and must provide "an opportunity for rest free from interruptions caused by noise under the control of the railroad * * *"

Section 228.101(c)(4) would define "switching * * * operations" to include most of those railroad functions commonly referred to as "switching". The result would be that substantially all railroad yards and areas within yards would be considered areas in which switching or humping operations are performed. Of course, switching operations may also be conducted outside of carrier yard limits. This proposed definition of switching operations is responsive to the statutory language and reflects the fact that there is nothing in the legislative history of the provision to suggest that Congress intended a more narrow meaning.

It should be emphasized that the placement of employee sleeping quarters in compliance with these rules would not necessarily establish compliance with the noise criterion or any other of the criteria set forth in paragraph (a)(3) of section 2 of the Act. FRA approval of a particular project within one-half mile would not relieve the carrier of the requirements of that paragraph. Nor would construction beyond one-half mile obviate the need to comply with that paragraph.

In evaluating new construction or reconstruction subject to approval under §§ 228.103 and 228.105, FRA proposes to employ criteria based on those stated in Department of Housing and Urban Development Circular 1390.2 (Noise Abatement and Control: Departmental Policy, Implementation and Responsibility Standards, August 4, 1971). Under the circular, interior noise levels in sleeping quarters should not exceed—

(1) 55dB(A) for more than an accumulation of 60 minutes in any 24-hour period,

(2) 45dB(A) for more than 30 minutes during night time sleeping hours from 11:00 p.m. to 7:00 a.m.; or

(3) 45dB(A) for more than an accumulation of eight (8) hours in any 24-hour day.

As used above, the term "dB(A)" means decibel values for those sound levels measured using the A-weighting network of a standardized sound level meter. The A-weighting network most closely approximates the response of the human ear to noise.

Since railroads generally operate on a 24-hour "around the clock" basis, it should be assumed that sleeping quarters for railroad employees will likewise be occupied at all times. Consequently, to assure that railroad employees receive adequate rest, it is proposed that the noise level in newly constructed or reconstructed sleeping quarters not be permitted to exceed 45dB(A) for more than 30 minutes during any eight (8) hour period. The rules would provide that such a standard be employed in evaluating sites subject to approval. Comment is especially solicited on the ability of the industry to meet these criteria and on whether upper limits should be set on intermittent noises which exceed the 45dB (a) standard but which, in aggregate duration, may not exceed 30 minutes in a period of eight (8) hours.

In view of the limited economic consequences of the rule set forth below, FRA has determined that this notice does not constitute a "major proposal" under Executive Order 11821 and DOT Order 2050.4. Thus, an Inflation Impact Statement is not required.

Since promulgation of a rule of the character proposed herein is mandated by section 2(a)(4) of the Hours of Service Act, as amended, this rulemaking is excepted from the requirement that an evaluation of the regulatory impact be made and that a summary of the evaluation be published in the FEDERAL REGISTER (see 41 FR 16200; April 16, 1976).

Interested persons may participate in this rulemaking by submitting written data, views, or comments. Communications should refer to Docket No. HS-2 and should be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 7th Street, S.W., Washington, D.C. 20590. Comments received by January 17, 1977 will be considered by FRA. If requested in writing by a person desiring to make an oral presentation, FRA will schedule an informal hearing on this proposed rulemaking. The proposals contained in this notice may be changed in light of comments received.

This notice is issued under authority of the Hours of Service Act, as amended, 45 U.S.C. 61–64b, and § 1.49(d) of the regulations of the Office of the Secretary of Transportation (49 CFR 1.49(d)).

In consideration of the foregoing, it is proposed to amend Part 228 as follows:

1. By dividing Part 228 into three subparts and revising the table of contents to read as follows:

PART 228—HOURS OF SERVICE OF RAILROAD EMPLOYEES

Subpart A—General

Sec.
228.1 Scope
228.3 Application
228.5 Definitions

Subpart B—Records and Reporting

228.7 Hours of duty
228.9 Railroad records; general
228.11 Hours of duty records
228.13 Train delay records
228.15 Record of train movements kept at reporting station
228.17 Dispatcher's record of train movements
228.19 Monthly reports of excess service
228.21 Civil penalty
228.23 Criminal penalty

Subpart C—Construction of Employee Sleeping Quarters

228.101 Distance Requirement: definitions.
228.103 Approval procedure: construction between one-third and one-half mile (1,760 to 2,640 feet) (536 to 804 meters).
228.105 Approval procedure: construction within one-third mile (1,760 feet) (536 meters).
228.107 Action on petition.

2. By inserting "Subpart A—General" as a centerhead immediately above § 228.1 and by revising § 228.1 to read as follows:

§ 228.1 Scope.

This part—

(1) prescribes reporting and record keeping requirements with respect to the hours of service of railroad employees; and

(2) establishes standards and procedures concerning the construction or reconstruction of employee sleeping quarters.

3. By inserting "Subpart B—Records and Reporting" as a centerhead immediately above § 228.7 and by adding the following new subpart:

Subpart C—Construction of Employee Sleeping Quarters

§ 228.101 Distance requirement; definitions.

(a) The Hours of Service Act, as amended (45 U.S.C. 61–64b), makes it unlawful for any common carrier engaged in interstate or foreign commerce by railroad to begin, on or after July 8, 1976, the construction or reconstruction of sleeping quarters for employees who perform duties covered by the Act, "within or in the immediate vicinity (as determined in accordance with rules prescribed by the Secretary [of Transportation]) of any area where railroad switching or humping operations are performed".

(b) Except as determined in accordance with §§ 228.103 and 228.105 of this subpart, the "immediate vicinity" shall mean the area within one-half mile (2,640 feet) (804 meters) of switching or

humping operations as measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations.

(c) As used in this subpart—

(1) "Construction" shall refer to the—

(i) creation of a new facility; or

(ii) expansion of an existing facility.

(2) "Reconstruction" shall refer to the—

(i) replacement of an existing facility with a new facility on the same site; or

(ii) rehabilitation or improvement of an existing facility (normal periodic maintenance excepted) involving the expenditure, within any period of 18 months, of an amount representing more than 50 percent of the replacement cost of such facility at the time the program of rehabilitation or improvement began.

(3) The term "switching * * * operations" includes the classification of cars according to commodity or destination, assembling of cars for train movements, changing the position of cars for purposes of loading, unloading, or weighing, and placing of locomotives and cars for repair. However, the term does not include the moving of rail equipment in connection with work service, the moving of a train or part of a train within yard limits by a road locomotive, or placing locomotives or cars in a train or removing them from a train by a road locomotive while en route to the train's destination.

§ 228.103 Approval procedure: construction between one-third and one-half mile (1,760 to 2,640 feet) (536 to 804 meters).

(a) A common carrier that has developed plans for the construction or reconstruction of sleeping quarters subject to this subpart, and which is considering a site at least one-third mile (1,760 feet) (536 meters) but less than one-half mile (2,640 feet) (804 meters) from any area where switching or humping operations are performed, measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations, may petition the Administrator for approval of construction or reconstruction on that site.

(b) The petition shall be filed in triplicate with the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590 and shall contain the following:

(1) A brief description of the type of construction planned, including materials to be employed, means of egress from the quarters, and actual and projected exterior noise levels and projected interior noise levels;

(2) The number of employees expected to utilize the quarters at full capacity;

(3) A brief description of the site including:

(i) distances from trackage where switching or humping operations are performed, specifying distances from particular functions such as classification, repair, assembling of trains from large groups of cars, etc.;

(ii) topography within a general area consisting of the site and all of the rail facilities close to the site; and

(iii) location of other physical improvements situated between the site and areas where railroad operations are conducted;

(4) A blueprint or other drawing showing the relationship of the site to trackage and other planned and existing facilities;

(5) The proposed or estimated date for commencement of construction;

(6) A description of the average number and variety of rail operations in the areas within one-half mile (2,640 feet) (804 meters) of the site (e.g., number of cars classified in 24-hour period; number of train movements);

(7) An estimate of the average daily number of placarded rail cars transporting hazardous materials through the railroad facility, specifying the—

(i) number of such cars transporting Class A explosives, poison gases, and flammable poison gases; and

(ii) number of such cars transporting liquified flammable gases and anhydrous ammonia which are subject to FRA Emergency Order No. 5;

(8) A statement certified by a corporate officer of the carrier possessing authority over the subject matter explaining any plans for future utilization of existing trackage, or for the construction of new trackage, which may impact on the location of switching or humping operations within one-half mile of the proposed site (if there are no plans, the carrier officer must so certify); and

(9) Any further information which is necessary for evaluation of the site.

(c) A petition filed under this section or under section 228.105 must contain a statement that the petition has been served on the recognized representatives of the railroad employees who will be utilizing the proposed sleeping quarters, together with a list of the employee representatives served.

§ 228.105 Approval procedure: construction within one-third mile (1,760 feet) (536 meters).

(a) A common carrier that has been unable to identify a feasible site which is one-third mile (1,760 feet) (536 meters) or more from any area in which switching or humping operations are performed, measured from the nearest rail of the nearest trackage utilized on a regular or intermittent basis for switching or humping operations to the point on the site where the carrier proposes to construct or reconstruct the exterior wall of the structure, or portion of such wall, which is closest to such operations, may petition the Administrator for approval of a site within one-third mile (1,760 feet) (536 meters) of such an area.

(b) The petition must contain the information and be filed in the manner specified by paragraph (b) of § 228.103 and must be certified to be an accurate representation of fact and carrier intent by a corporate officer of the carrier possessing authority over the subject matter, and must establish that—

(1) no feasible alternate site located at or beyond one-third mile from switching or humping operations is either presently available to the railroad or is obtainable at any cost within three miles (15,840 feet) (4,827 meters) of the reporting point for the employees who are to be housed in the sleeping quarters;

(2) natural or other barriers exist or will be created prior to commencement of construction or reconstruction between the proposed site and any areas in which switching or humping operations are performed which will be adequate to shield the facility from the direct and severe effects of a hazardous materials accident/incident, arising in an area of switching or humping operations;

(3) the topogarphy of the property is such as most likely to cause any hazardous materials unintentionally released during switching or humping to flow away from the proposed site; and

(4) the facility will be so constructed as to assure that interior noise within the control of the railroad will be within limits permitting proper rest.

§ 228.107 Action on petition.

(a) Each petition for approval filed under §§ 228.103 or 228.105 of this subpart is referred to the Railroad Safety Board for action in accordane with the provisions of Part 211, Title 49, Code of Federal Regulations, concerning the processing or requests for special approvals.[1]

(b) In considering a petition for approval filed under §§ 228.103 or 228.105 of this subpart, the Railroad Safety Board evaluates the material factors bearing on—

(1) the safety of employees utilizing the facility in the event of a hazardous materials accident/incident; and

(2) interior noise levels in the facility.

(c) The Railroad Safety Board will not approve an application submitted under §§ 228.103 or 228.105 of this subpart if it is determined that the proposed sleeping quarters will be so situated and constructed as to permit interior noise levels resulting from exterior noise sources and interior building sources exceeding:

(1) 55dB(A) for more than an accumulation of 60 minutes in any 24-hour period; or

(2) 45dB(A) for more than 30 minutes during any 8-hour period.

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[1] Any request for approval of a site submitted to the Administrator after July 8, 1976, but prior to the effective date of this subpart, is treated as an effective petition under these rules. However, the Railroad Safety Board may require submission of—

(1) such additional information as may be required properly to evaluate the proposed site; and

(2) a certification responsive to subparagraph (b)(8) of § 228.103 and/or paragraph (b) of § 228.105, if appropriate.

Issued in Washington, D.C. on November 29, 1976.

ASAPH H. HALL,
Federal Railroad Administrator.

[FR Doc.76-35601 Filed 12-2-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for the Florida Everglade Kite and Dusky Seaside Sparrow

The Director, United States Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a Proposed Rulemaking which would determine Critical Habitat for the Florida Everglade Kite (*Rostrhamus sociabilis plumbeus*) and the Dusky Seaside Sparrow (*Ammospiza maritima nigrescens*). This Proposal is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

BACKGROUND

The Florida Everglade Kite and Dusky Seaside Sparrow are both restricted to Florida, and have been officially listed as Endangered since 1967. Hope for the survival and recovery of these species depends in large part on the maintenance of the particular kinds of habitat for which they are adapted. A notice of intent to determine Critical Habitat for both species was published by the Service in the FEDERAL REGISTER of May 16, 1975 (40 FR 21499-21500). Subsequently, Service-appointed recovery teams for each species developed recommendations for Critical Habitat designations. The Director of Region 4 of the Service in Atlanta forwarded the recommended delineations for the Kite on June 11, 1976, and for the Sparrow on July 26, 1976.

With respect to the Florida Everglade Kite, the areas delineated below contain the best and largest remaining stretches of suitable habitat for the species. These areas support substantial numbers of Apple Snails (*Pomacea paludosa*) upon which the Kites depend for food. The Snails, in turn, are dependent on maintenance of water levels in the marshes. The delineated areas have suitable water levels or have good potential for being managed for maximum snail production.

With respect to the Dusky Seaside Sparrow, the areas delineated below contain the world's entire population of the species. These areas are covered predominantly by open expanses of moist cordgrass (*Spartina bakerii*) savannas, about 10 to 15 feet above mean sea level. The Sparrow seems to be fully adapted to this restricted habitat with its high salinity aspects.

Information obtained during the comment period may allow more restrictive final delineation of these Critical Habitats. It is emphasized also that additions or modifications may be proposed in the future.

EFFECTS OF THE RULEMAKING

The effects of this determination are involved promarily with section 7 of the Act, which states:

> The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical.

An interpretation of the term "Critical Habitat" was published by the Fish and Wildlife Service and the National Marine Fisheries Service in the FEDERAL REGISTER of April 22, 1975 (40 FR 17764-17765). Some of the major points of that interpretation are: (1) Critical Habitat could be the entire habitat of a species, or any portion thereof, if any constituent element is necessary to the normal needs of survival of that species; (2) actions by a Federal agency affecting Critical Habitat of a species would not conform with Section 7 if such actions might be expected to result in a reduction in the numbers or distribution of that species of sufficient magnitude to place the species in further jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

This last point has not been well understood by some persons. There has been widespread and erroneous belief that a Critical Habitat designation is something akin to establishment of a wilderness area or wildlife refuge, and automatically closes an area to most human uses. Actually, a Critical Habitat designation applies only to Federal agencies, and essentially is an official notification to these agencies that their responsibilities pursuant to section 7 of the Act are applicable in a certain area.

A Critical Habitat designation must be based solely on biological factors. There may be questions of whether and how much habitat is critical, in accordance with the above interpretation, or how to best legally delineate this habitat, but any resultant designation must correspond with the best available biological data. It would not be in accordance with the law to involve other motives; for example, to enlarge a Critical Habitat delineation so as to cover additional habitat under Section 7 provisions, or to reduce a delineation so that actions in the omitted area would not be subject to evaluation.

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted be as accurate as possible in delineating the Critical Habitat of the Florida Everglade Kite and the Dusky Seaside Sparrow. The Director, therefore, desires, to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these Proposed Rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this Proposal. An environmental assessment has been prepared in conjunction with this proposal, and is available for inspection during regular business hours at the Service's Office of Endangered Species, 1612 K Street, NW., Washington, D.C. 20240.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this Rulemaking by submitting written comments, preferably in triplicate, to the Director (FWS/LE), U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036. All relevant comments received no later than January 31, 1977 will be considered. The Service will attempt to acknowledge receipt of comments, but substantive responses to individual comments may not be provided. Comments received will be available for public inspection during normal business hours at the Service's Office in Suite 600, 1612 K Street, NW., Washington, D.C.

Dated: November 16, 1976.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Accordingly, it is hereby proposed to amend 50 CFR Part 17:

1. By amending the Table of Sections for Subpart F of Part 17 to read as follows:

Subpart F—Critical Habitat

Sec.

* * * * *

17.95(b)(3) Florida Everglade Kite.
17.95(b)(4) Dusky Seaside Sparrow.

2. By adding a new § 17.95(b)(3) and § 17.95(b)(4) reading as follows: