

which would be suffered if such relief were not available.

Effect upon the States. The determination that these four species are Threatened or Endangered Species will require States proposing to enter into Cooperative Agreements pursuant to Section 6 of the Act to consider these species.

Several States have State laws which recognize the List of Threatened or Endangered Wildlife promulgated pursuant to the Act and provide State protection to these species. This determination will make these four species eligible for such consideration as those State laws provide.

Effect internationally. In addition to the protection provided by the Act, the Service will review these four species to determine whether they should be proposed to the Secretariat of the Convention on International Trade in Endangered Species of Wild Fauna and Flora for placement upon the appropriate Appendix(ices) to that Convention or whether they should be considered under other, appropriate international agreements.

National Environmental Policy Act. Two Environmental Assessments have been prepared and are on file in the Service's Washington Office of Endangered Species. One addresses this action as it involves the Gray Bat and the Mexican Wolf and the second deals with the Schaus and Bahama Swallowtail butterflies. Each assessment is the basis for a decision that these determinations are not major Federal actions which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

Format. These final rules are published in a format different from that set forth in the proposed rulemaking. This new format was adopted by rules published in the FEDERAL REGISTER of September 26, 1975, (40 FR 4412) and represents no substantive change.

Effective date. Considering the long period during which the public has had notice of the proposal to determine these species to be Threatened or Endangered, and in view of the precarious status of the species, it has been determined that

there is good cause to make this rule-making effective shortly after publication.

The determinations set forth in these rules shall become effective May 4, 1976.

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

APRIL 15, 1976.

Accordingly of Part 17 of Chapter 1 of Title 50 of the U.S. Code of Federal Regulations is amended as follows:

1. § 17.11 By adding the Gray Bat to the list of "Mammals," following the entry for "Banteng; *Bibos bonteng*" and the Mexican Wolf to the list of "Mammals," following the entry for "Wolf, Maned; *Chrysocyon brachyurus*" and by adding the U.S. Population of the Bahama Swallowtail Butterfly and the Schaus Swallowtail Butterfly list under "Insects", as indicated below:

§ 17.11 Endangered and Threatened Wildlife.

(i) * * *

SPECIES			RANGE		Status	When Listed	Special Rules
Common Name	Scientific Name	Population	Known Distribution	Portion of Range Where Threatened or Endangered			
MAMMALS:							
Bat, Gray	<i>Myotis grisescens</i>	N/A	Central and Southeastern USA	Entire	E	...	N/A
Wolf, Mexican	<i>Canis lupus baileyi</i>	N/A	Mexico, USA (Arizona, New Mexico, Texas)	Entire	E	...	N/A
INSECTS:							
Butterfly, Bahama Swallowtail	<i>Papilio andraemon bohnoti</i>	USA	USA (Florida), Bahamas	USA	T	...	17.47
Butterfly, Schaus Swallowtail	<i>Papilio aristodemus ponceanus</i>	N/A	USA (Florida)	Entire	T	...	17.47

3. Delete the notation "Reserved" from § 17.47 and insert the following in lieu thereof:

§ 17.47 Special rules—insects.

"(a) U.S. population of the Bahama Swallowtail butterfly (*Papilio andraemon bohnoti*) and the Schaus Swallowtail butterfly (*Papilio aristodemus ponceanus*)—

(1) Prohibitions—All of the provisions set forth in Section 17.31 shall apply to both species with the following exceptions:

(i) Adult specimens of either species (but not deposited eggs, larvae or pupae) may be taken without Federal permits issued pursuant to these Regulations provided, That all other Federal, State or local laws, regulations, ordinances or other restrictions or limitations have been complied with and, provided further, That such taking is not in the course of a commercial activity. In addition, any such lawfully taken specimens may be exported without a permit issued pursuant to these Regulations provided such export is otherwise lawful and is not in the course of a commercial activity.

(ii) The inadvertent injury to or destruction of deposited eggs, larvae or pupae of these species incurred during lawn mowing or other routine maintenance operations in or around buildings shall not be considered to constitute "taking" in the context of the Act.

(iii) The killing or injuring of specimens of these species by unintentionally striking them with automobiles or other conveyances shall not be considered to constitute a "taking" within the context of the Act.

[FR Doc.76-12094 Filed 4-27-76; 8:45 am]

PART 33—SPORT FISHING

Moosehorn National Wildlife Refuge, Maine

The following special regulations are issued and are effective during the period April 30, 1976 through December 31, 1976.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

MAINE

MOOSEHORN NATIONAL WILDLIFE REFUGE

Sport fishing on the Moosehorn National Wildlife Refuge, Calais, Maine,

is permitted on the areas designated by signs as open to fishing. These open areas, comprising 500 acres, are delineated on maps available at Refuge Headquarters, Box X, Calais, Maine 04619 or from the Regional Director, U.S. Fish and Wildlife Service, Post Office and Courthouse Building, Boston, Massachusetts 02109. Sport fishing shall be in accordance with all applicable State regulations subject to the following special conditions:

(1) The use of boats without motors is permitted on Bearce, Conic, and Cranberry Lakes.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1976.

WILLIAM C. ASHE,
Acting Regional Director,
U.S. Fish and Wildlife Service.

APRIL 21, 1976.

[FR Doc.76-12291 Filed 4-27-76; 8:45 am]

PART 33—SPORT FISHING

**Montezuma National Wildlife Refuge,
New York**

The following special regulations are issued and are effective during the period April 30, 1976 through December 31, 1976.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

NEW YORK

MONTEZUMA NATIONAL WILDLIFE REFUGE

Sport fishing in state waters in compliance with state regulations is permitted from refuge lands. The four areas open for access to fishing are designated by signs and delineated on maps available from the Refuge Manager, Montezuma National Wildlife Refuge, RD No. 1, Box 1411, Seneca Falls, New York 13148 or from the Regional Director, U.S. Fish and Wildlife Service, Post Office and Courthouse Building, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations govern-

ing fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1976.

WILLIAM C. ASHE,
*Acting Regional Director,
U.S. Fish and Wildlife Service.*

APRIL 21, 1976.

[FR Doc.76-12292 Filed 4-27-76;8:45 am]

PART 33—SPORT FISHING

Erie National Wildlife Refuge, Pennsylvania

The following special regulations are issued and are effective during the period April 30, 1976, through December 31, 1976.

§ 33.5 Special regulations; sport fishing; for individual wildlife refuge areas.

PENNSYLVANIA

ERIE NATIONAL WILDLIFE REFUGE

Sport fishing on the Erie National Wildlife Refuge, Pennsylvania, is permitted on areas designated by signs as

open to fishing in accordance with State regulations. Boast are permitted in Lake Creek above Sugar Lake and above the Pool 9 dike where designated by signs. Fishing in Pools 9 and K is permitted from June 12 to September 15 only. Pools 9 and K will be open to ice fishing at the discretion of the refuge manager by daily permit only. All fishing areas are delineated on maps available at refuge headquarters, RD 2, Box 167, Guys Mills, Pennsylvania 16327 or from the Regional Director, U.S. Fish and Wildlife Service, Post Office and Courthouse Building, Boston, Massachusetts 02109.

The provisions of this special regulation supplement the regulations which govern fishing on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 33, and are effective through December 31, 1976.

WILLIAM C. ASHE,
*Acting Regional Director,
U.S. Fish and Wildlife Service.*

APRIL 21, 1976.

[FR Doc.76-12293 Filed 4-27-76;8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Endangered or Threatened Status for 32 U.S. Snails

The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively), hereby issues a proposed rulemaking, pursuant to Section 4 of the Endangered Species Act of 1973 (16 U.S.C., 1531-1543, 87 Stat. 884; hereinafter the Act), which would determine 15 U.S. snails to be Endangered species and 17 such snails to be Threatened species. He also requests comments regarding the determination of "Critical Habitat" of any of these molluscs.

BACKGROUND

Section 4(a) of the Act states:

"General.—The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

- (1) The present or threatened destruction, modification, or curtailment of its habitat or range;
- (2) Overutilization for commercial, sporting, scientific, or educational purposes;
- (3) Disease or predation;
- (4) The inadequacy of existing regulatory mechanisms; or
- (5) Other natural or manmade factors affecting its continued existence."

This authority has been delegated to the Director.

On June 15, 1973, the Service entered into a contract with The Chicago Field Museum of Natural History to investigate the status of certain snails indigenous to Eastern North America. A final report dated December 12, 1974, contained data indicating that several of the snails studied were either Threatened or Endangered Species as provided for by the Act.

Another contract entered into between the Service and the Sierra Club Foundation, San Francisco, California, to investigate the status of California land snails produced similar results which are documented in a final report dated August 25, 1975.

A third Service contract entered into with the Arizona State University produced a final report dated December 15, 1974. This report identified several southwestern freshwater snails that appeared to be Endangered or Threatened Species as provided for by the Act. Status reports on 4 other snails were submitted by experts on these species. James Carlton and Barry Roth, both affiliated with the

California Academy of Sciences submitted reports on *Helminthoglypta walkeri*, *arrosa miwoka*, and *Helminthoglypta nickliniana awania* in November 1972. Fred Thompson of the Florida State Museum, Leslie Hubricht of Meridian, Mississippi, and Alan Craig of Florida Atlantic University submitted reports on *Orthalicus reses reses* in January 1973, and January 1974.

These findings are summarized herein. The snails are grouped geographically into an American Southwest group, a California group; and an Eastern group. Summaries of these findings are presented following the name of each species.

On October 17, 1974, the Service published a Notice in the FEDERAL REGISTER (34 FR 37078-79) advising that a review of several species was underway to determine whether any were Threatened species or Endangered species. Only one comment was received as a result of that "Notice." In a letter dated December 11, 1974, Governor Reagan of California offered several comments, suggested further study and provided a copy of a California Department of Fish and Game report entitled "Rare and Endangered Land Mollusks in California" (Inland Fisheries Administrative Report No. 72-10, submitted May 1972) authored by Barry Roth of the Sierra Club, San Francisco, California 94104. This information has been considered and is incorporated into the administrative record of this proposal.

SUMMARIES OF FACTORS AFFECTING THE SPECIES

AMERICAN SOUTHWEST GROUP

The Service has evidence on file that the following twelve (12) aquatic mollusks endemic to the American Southwest are Endangered Species or Threatened Species as defined by the Act: St. George snail (*Amnicola deserta*); Socorro snail (*Amnicola neomexicana*); Reeves County snail (*Cochliopa texana*); Cheatum's snail (*Tryonia cheatumi*); Bad Water snail (*Assimineia infirma*); Muddy Valley turban snail (*Fluminicola avernalis*); Ash Meadows turban snail (*Fluminicola erythropoma*); Pahranaagat Valley turban snail (*Fluminicola merriami*); Amargosa snail (*Fontelicella micrococcus*); Diamond-Y pond snail (*Physa virgata bottomeri*); Zion Canyon snail (*Physa zioni*); and White River snail (*Tryonia clathrata*).

The five criteria of Section 4(a) of the Act, and their application to the above-named species, are as follows:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*

St. George snail—Proposed Endangered—formerly believed to live in several springs in and near St. George, Washington County, Utah. This minute snail is now restricted to one seepage spring 3 meters long and 3/10 of a meter wide on sandstone kept moist by seepage which waters a small private garden. Since 1916, when the species was first discovered, all nearby springs which might have habitats supporting this species have been capped for city water supply. This species is further endangered by the likelihood that modification of the road directly above the seepage would cause the seepage to cease flowing.

Socorro snail—Proposed Endangered—Discovered in 1916, this minute snail was formerly known from the Sedillo and Socorro Springs in Socorro County, New Mexico, but probably is extinct because of capping of springs to supply the city of Socorro with water. It was found as recently as 1971 and, although it is not considered likely, extensive search in other nearby seepages conceivably may reveal one or more additional populations.

Reeves County snail—Proposed Endangered—This species was formerly abundant in a lake in Reeves County, Texas, but this lake was drained by channelization and the species declined. It has stabilized in numbers since 1968 in the lake's cave spring and downstream for about 800 meters. However, increased agricultural pumpage nearby has caused a decline in the discharge out of this spring, thus threatening the continued existence of this species.

Cheatum's snail—Proposed Endangered—This species was formerly abundant in a lake in Reeves County, Texas, but this lake has been drained by channelization and the species is now much less abundant. It presently is found in a spring that discharges from a cave and in the first 800 meters or so of the run from the spring. Although the population has suffered no known major change since 1968, there recently has been a precarious decline in the discharge from the spring which threatens the continued existence of the species.

Bad Water snail—Proposed Threatened—Restricted to several seepage springs at Bad Water in Death Valley National Monument, California, this species has declined and is declining because of lowered water table and increased tourist pressure (people trampling the marsh habitat).

Muddy Valley turban snail—Proposed Threatened—This species has always been restricted to springs in Muddy Valley, Clark County, Nevada, where it is

found on rocks at the source of one spring and on submergent vegetation in several other springs. All these springs are within about two sections of land and arise from the same complex of aquifers. Lowering of the water table by pumpage would therefore affect all of the springs. An even greater threat in this area has been the conversion of some of these springs to commercial spas in which the number of snails has declined greatly.

Ash Meadows turban snail—Proposed Threatened—This species has always been restricted to the Ash Meadows area in Nye County, Nevada, but has been eliminated from a number of springs. And in the Point of Rocks Spring Complex, the habitat area has been halved in the last four years. It is today present in small head springs and restricted to areas near the outflows. The largest populations remain at the Point of Rocks Spring complex and the Scruggs Spring complex. Increasing agricultural pumpage is rapidly reducing the abundance of the snails. Road construction and spring head modifications are also reducing habitat. The total area which supports this snail among the different springs is about 25 square meters.

Pahranaagat Valley turban snail—Proposed Threatened—Historically restricted to 3 springs of the Pahranaagat Valley in Lincoln County, Nevada, it is found on rocks and submergent vegetation in runs near the springs' sources. All three spring systems are from the same aquifer, and present and potential lowering of the water table by agricultural pumpage effects them all.

Amargosa snail—Proposed Threatened—This species is restricted to the Amargosa River drainage including springs the conversion of some of these springs to commercial spas in which the number of snails has declined greatly.

Ash Meadows turban snail—Proposed Threatened—This species has always been restricted to the Ash Meadows area in Nye County, Nevada, but has been eliminated from a number of springs. And in the Point of Rocks Spring complex, the habitat area has been halved in the last four years. It is today present in small head springs and restricted to areas near the outflows. The largest populations remain at the Point of Rocks Spring complex and the Scruggs Spring complex. Increasing agricultural pumpage is rapidly reducing the abundance of the snails. Road construction and spring head modifications are also reducing habitat. The total area which supports this snail among the different springs is about 25 square meters.

Pahranaagat Valley turban snail—Proposed Threatened—Historically restricted to 3 springs of the Pahranaagat Valley in Lincoln County, Nevada, it is found on rocks and submergent vegetation in runs near the springs' sources. All three spring systems are from the same aquifer, and present and potential lowering of the water table by agricultural pumpage effects them all.

Amargosa snail—Proposed Threatened—This species is restricted to the Amargosa River drainage including

springs at Tecopa and near Tecopa Hot Springs in Inyo County, California; a spring in Ash Meadows, Nye County, Nevada; springs in northern San Bernardino County, California; and Oasis Valley Spring, California. These springs are all fed by the same aquifer. This is ominous because several springs in the area have already dried. A further threat has been and continues to be capping of springs in the area.

Diamond-Y pond snail—Proposed Threatened—Formerly known from the entire Leon Creek system including Comanche Spring, which has been drained dry, it is now restricted to the Diamond-Y (Wilbank) Spring complex and Leon Creek, north of Fort Stockton in Pecos County, Texas. The required habitat of this species is threatened by oil and brine spills from local oil fields. Protective measures have already been taken, however, as good cooperation has been received from Exxon, Northern Natural Gas and Phillips Oil Company which have constructed retaining dikes. There is still a real danger and the species is proposed as threatened.

Zion Canyon snail—Proposed Threatened—A fresh water snail which has evolved unusual features which allow it to survive in spring seepages in its vertical canyon wall habitat, it has always been restricted to Narrows Canyon, Zion National Park, Washington County, Utah. It is rare and the total area it occupies is approximately 20 square meters spread along a nature trail. It receives some protection by virtue of being in a National Park but is threatened by increasing human pressure.

White River snail—Proposed Threatened—Formerly distributed throughout the pluvial White River system in Nevada, it is now restricted to springs in the Muddy River Valley, Clark County; Pahranaagat Valley, Lincoln County; and White River Valley, Nye County. Increased ground water pumpage which could adversely affect these springs is anticipated in the area.

2. **Overutilization for commercial, sporting, scientific or educational purposes.** Not known to be applicable to any of the twelve above-named species.

3. **Disease or predation.** All twelve species are jeopardized by the spread of the Asian snail (*Melanoides tuberculatus*) into their required habitat. In particular, the *Muddy Valley turban snail*, the *Pahranaagat Valley turban snail* and the *White River snail* are already competing with the Asian snail for any habitat where they are subject to fish predation, since the Asian snail has a selective advantage in such habitats. Recent declines of the *White River snail* may be attributed directly to competition with the Asian Snail.

4. **The inadequacy of existing regulatory mechanisms.** No regulatory mechanisms adequate to protect these species from over-collecting or other human predation presently exist.

5. **Other natural or manmade factors affecting its continued existence.** Not known to be applicable to any of the twelve above-named species.

In summary, four species from the American Southwest group are proposed as "endangered" because they occur on private land and are restricted to single springs which are jeopardized by water use and invasion of the Asian Snail: St. George snail (*Amnicola deserta*); Socorro snail (*Amnicola neomexicana*); Reeves County snail (*Cochliopa texana*); and Cheatum's snail (*Tryonia cheatumi*). Some of the other eight species are proposed as "threatened" because although they are each restricted to a single, vulnerable spring, seepage, pond, run or creek the species receive some protection by virtue of being in a national park. Others are restricted to single aquifers which are subject to ground water pumping, pollution, or invasion by the Asian snail. These two groups consist of the Bad Water snail (*Assiminea infirma*); Muddy Valley turban snail (*Fluminicola avernalis*); Ash Meadows turban snail (*Fluminicola erythropoma*); Pahranaagat Valley turban snail (*Fluminicola merriami*); Amargosa snail (*Fontelicella micrococcus*); Diamond-Y pond snail (*Physa virgata bottomeri*); Zion Canyon snail (*Physa zion*); and White River snail (*Tryonia clathrata*).

CALIFORNIA GROUP

On October 17, 1974, the Service published, in the FEDERAL REGISTER a notice that it was reviewing the status of fifteen (15) California land snails as well as several other species (39 FR 37078-37079). The Service now has evidence on hand that the following nine (9) of these California land snails are Endangered Species or Threatened Species as provided for by the Act: Slug snail (*Binneya notabilis*); Dented peninsula snail (*Helminthoglypta arrosa miwoka*); Nicklin's peninsula snail (*Helminthoglypta nickliniana awania*); Banded dune snail (*Helminthoglypta walkeriana*); Fraternal snail (*Micrarionta feralis*); Tryon's snail (*Micrarionta tryoni*); Rocky coast snail (*Monadenia fidelis pronotis*); California northern river snail (*Monadenia setosa*); and Karok Indian snail (*Vesperiicola karokorum*).

The five criteria of Section 4(a) of the Act, and their application to the above-named species, are as follows:

1. **The present or threatened destruction, modification or curtailment of its habitat or range.**

Slug snail—Proposed Endangered—Known only from Santa Barbara Island, California, this is a unique subterranean slug-like snail with a very small range on the island. It could be destroyed by accidental brush fires, and is endangered by competition for habitat with introduced species including the iceplant. The total range is probably less than 1000 square yards. The habitat cannot survive the slightest disturbance and is jeopardized by the use of an existing trail. A major increase in recreational use or development of Santa Barbara Island without appropriate safeguards could exterminate this species. Activity upslope from the canyons which would increase the wind-or-water-transport of loose sediment into the canyons would defi-

nately be detrimental, as would landfill or excavation.

Dented peninsula snail—Proposed Endangered—Known only on Point Reyes Peninsula, Marin County, California, this species is restricted to the exposed headlands of the point proper and to a few miles to either side. It is threatened by grazing, road construction, grading, excavation for parking, and vacation facility development.

Nicklin's peninsula snail—Proposed Endangered—Also known only on the tip of Point Reyes Peninsula, Marin County, California, this species also is threatened by grazing, road construction, grading, excavation for parking, and vacation facility development.

Banded dune snail—Proposed Endangered—This species is known only from Morro Bay, San Luis Obispo County, California, and is endangered by housing development in the area where reproduction occurs, by dune buggies or other off-road vehicles, and potentially by the dumping of dredge spoils.

Fraternal snail—Proposed Endangered—This species is known only from a shrinking range on San Nicolas Island, Ventura County, California, and is endangered by the grazing of feral goats. It is vulnerable to military operations or other actions which result in the introduction of exotic species or major erosion. It may be extinct.

Tryon's snail—Proposed Threatened—This snail is known only from Santa Barbara Island and San Nicolas Island, California. On San Nicolas Island feral goats have greatly reduced its range and it is vulnerable to military operations or other actions which result in the introduction of exotic species or major erosion. On Santa Barbara Island a striking decrease in plants of the Genus *Coreopsis* and concomitant increase in iceplant has probably cut in half the available area for *M. tryoni*.

Rocky coast snail—Proposed Threatened—This small, variably colored subspecies is known only from the rocky moist coastal terraces of Point St. George near Crescent City in Del Norte County, California, in association with certain seashore plants. It is endangered by housing expansion and over-grazing.

California northern river snail—Proposed Threatened—This snail is known only from talus slopes along Swede Creek in the Trinity River drainage. Stripping of cover by logging above the forested talus slopes where *M. Setosa* lives would change the erosion pattern, and the subsequent increased runoff would be expected to remove the forest duff in which it survives.

Karok Indian snail—Proposed Threatened—This species is known only from a few miles on the north side of the Klamath River, Humboldt County, California, and is endangered by high water. *Vespericola karokorum* inhabits only the deepest, narrowest, fissure-like gorges—never exposed habitats; they are always found extremely close to water. Logging topographically above the narrow gulches might readily result in heavy sedimentation or runoff problems in the gulches. Stripping of local cover would

drastically alter the moisture regime and probably exterminate the species. Widening or regrading of the small road on the northeast side of the Klamath River in this area would definitely be detrimental to the species.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.*

The *Slug snail*, *Tryon's snail* and *Karok Indian snail* are of interest and vulnerable to over-collecting.

3. *Disease or predation.* Not known to be applicable to any of these species.

4. *The inadequacy of existing regulatory mechanisms.* No regulatory mechanisms adequate to protect these species from overcollecting, or other human predation presently exist.

5. *Other natural or manmade factors affecting its continued existence.* Not known to be applicable to any of the nine above-named species.

In summary, five of the California group are proposed as "endangered" because they are restricted to very small areas or occur in small numbers and are in immediate danger of extinction throughout their range: *Slug snail* (*Binneya notabilis*); *Banded dune snail* (*Helminthoglypta walkeriana*); *fraternal snail* (*Micrarionta feralis*); *Rocky coast snail* (*Monadenia fidelis pronotis*); and *Karok Indian snail* (*Vespericola karokorum*). The other four species are proposed as "threatened" because they occur over a wider range or in larger numbers and are potentially in jeopardy over most of their range: *Dented peninsula snail* (*Helminthoglypta arrosa miwoka*); *Nicklin's peninsula snail* (*Helminthoglypta nickliniana awania*); *Tryon's snail* (*Micrarionta tryoni*); and *California northern river snail* (*Monadenia setosa*).

EASTERN GROUP

The Service has evidence that the following eleven (11) species of Eastern land snails are Endangered Species or Threatened Species as provided for by the Act: *Painted snake coiled forest snail* (*Angustispira picta*); *MacClintock's discoid land snail* (*Discus macclintocki*); *Jones' middle-toothed land snail* (*Mesodon jonesianus*); *Virginia fringed mountain snail* (*Polygyris virginiensis*); *Chittenango ovate amber snail* (*Succinea ovalis chittenangoensis*); *flat spired three-toothed land snail* (*Triodopsis platysayoides*); *Magazine Mountain middle-toothed land snail* (*Mesodon magazinenses*); *Pilsbry's narrow apertured land snail* (*Stenotrema pilsbryi*); *Clark's Nantahala middle-toothed land snail* (*Mesodon clarki nantahala*); *strange many whorled land snail* (*Polygyra peregrina*); and *Stock Island tree snail* (*Orthalicus reses reses*).

The five criteria of Section 4(a) of the Act, and their application to the above named species, are as follow:

1. *The present or threatened destruction, modification or curtailment of its habitat or range.*

Painted snake coiled forest snail—Proposed Endangered—Discovered in 1906 in Buck Creek Cove, south of Sherwood, Franklin County, Tennessee, it has

never been found elsewhere although it has been extensively searched for by several competent malacologists. The area is subject to periodic lumbering; this species is not found in habitats that no longer have good cover and cannot survive such lumbering.

MacClintock's discoid land snail—Proposed Endangered—Also known as the Iowa pleistocene driftless snail, this is a relic of pre-glacial times, once widespread but now known only from a cave in Bixby State Park, Clayton County, Iowa. The snail's survival in a non-glaciated driftless area within the boundaries of the last four glaciations is so unique that the species was first described and has long been known only as a fossil. General threats in the Driftless Area include the spraying of 2,4,5-T; a defoliant. This spraying is being done to convert forest and brush land into pasture for livestock. The existence of this species depends upon its requirement for a "fossil" climate at the mouth of the cave where temperature and humidity are relatively constant. If the talus is undisturbed this will be an effective reservoir but the talus habitat appears thin, and one ardent collector could destroy it, and thereby the species, in one afternoon. Probably fewer than one hundred live individuals exist.

Jones' middle-toothed land snail—Proposed Endangered—This species lives in the humus zone very near to a parking area at Newfound Gap, North Carolina. Trampling of the forest litter can easily destroy this species. There are only an estimated 300 living individuals which are found only in birch, beech, maple, and hemlock forest in the Great Smokey Mountains National Park in Swain County, North Carolina.

Virginia fringed mountain snail—Proposed Endangered—Known only from a small area of a single river bluff opposite Radford in Pulaski County, Virginia, there are only a few hundred individuals at most in existence, and they are endangered by the destruction of rock slide habitat from quarrying and road construction. It is the only species in the genus. Thus the genus is endangered and loss of the Virginia fringed mountain snail would detract greatly from living diversity.

Chittenango ovate amber snail—Proposed Endangered—Restricted to the spray zone talus and rocks under Chittenango Falls, Madison County, New York, this form requires cool to cold air circulating through the talus area.

This snail was common in 1905, rare in 1965, and very rare in 1974. It occupies a total area of less than 200 square feet. There has been a drastic decrease in populations of other mollusks downstream and this subspecies is believed to have declined because of pollution in the spray.

Flat spired three-toothed land snail—Proposed Endangered—This species is restricted to isolated patches of deep undisturbed litter and sheltered retreats among rocks in a small area of less than one-quarter square mile on the summit of Cooper's Rock, Monongalia County, West Virginia. In dry seasons the snails

retreat in among the huge scattered and split boulders just below the summit. The entire one-quarter square mile area is regularly and frequently visited by the public. A concession stand is at the top of the rock with moderately extensive parking available. There are about 300 to 500 living individuals. The species is endangered because trampling of the foraging litter is reducing the available food space niche for this highly restricted species.

Magazine Mountain middle-toothed land snail—Proposed Threatened—This snail is known only from one area consisting of a few acres. That area is located about 200 feet from a loop summit road and parking area. Although one dead shell was found on the south side of the summit of Magazine Mountain, in Logan County, Arkansas, the species now is restricted to a large talus just below a cliff on the north side of the summit of Magazine Mountain. This species is threatened due to easy access and vulnerability of it and its only existing habitat to human encroachment.

Pilsbry's narrow apertured land snail—Proposed Threatened—This snail is restricted to the north side of Rich Mountain in Polk County, Arkansas, and Leflore County, Oklahoma. Although it is fairly common in its very limited range in rock slides and among scattered boulders under heavy forest cover and damp ravines, any major lumbering could locally destroy populations. Clear cutting would create major problems.

Clark's Nantahala middle-toothed land snail—Proposed Threatened—This species is restricted to the Blowing Spring area of Nantahala Gorge and Handpole Brook in Swain County, North Carolina. Widening of U.S. 19 to four lanes, as has been proposed, could destroy most of the known colonies of this subspecies.

Strange many whorled land snail—Proposed Threatened—This species is common on rocky slopes and in rock piles at the base of bluffs. Although locally abundant, it is restricted to a small area between a railroad track and some bluffs of the White River near Calico Rock, Izard County, Arkansas and just north of Allison, Stone County, Arkansas. It is proposed as a threatened species because removal of talus could wipe it out.

Stock Island tree snail—Proposed Threatened—Once known from Key West, other lower keys, Key Vaca, and Stock Island, it has been extirpated from all but the latter. It was extirpated on Key West by real estate development and requires the retention of some natural habitats on Stock Island, where it is similarly threatened, for its continued existence. It may be threatened by overgrazing.

2. **Overutilization for commercial, sporting, scientific or educational purposes.**

The Virginia fringed mountain snail could literally be wiped out by one or two collections and the Stock Island tree snail is threatened by overcollecting.

3. **Disease or predation.**

MacClintock's discoid land snail is threatened by predation by Cychrine beetles and the *Chittenango ovate amber snail* is seriously threatened by predation by the introduced and now established European *Discus rotundatus* and *Oxychilus*.

4. **The inadequacy of existing regulatory mechanisms.** No regulatory mechanisms adequate to protect these species from overcollecting, or other human predation presently exist.

5. **Other natural or manmade factors affecting its continued existence.** Not known to be applicable to any of the eleven above-named species.

In summary, six species from the Eastern group are proposed as "Endangered" because they are restricted to a very small area or occur in small numbers and are in immediate danger of extinction throughout their range: Painted snake coiled forest snail (*Anguispira picta*); MacClintock's discoid land snail (*Discus macclintocki*); Jones' middle toothed land snail (*Mesodon jonestanus*); Virginia fringed mountain snail (*Polygyris-cus virginianus*); Chittenango ovate amber snail (*Succinea ovalis chittenangoensis*); and flat spired three-toothed land snail (*Triodopsis platysayoides*). The other five species are proposed as "threatened" because they occur over a wider range or in larger numbers and are potentially in jeopardy over most of their range; Magazine Mountain middle-toothed land snail (*Mesodon magazinenses*); Pilsbry's narrow apertured land snail (*Stenotrema pilsbryi*); Clark's Nantahala middle-toothed land snail (*Mesodon clarki nantahala*); strange many whorled land snail (*Polygyra peregrina*); and Stock Island tree snail (*Orthalicus reses reses*).

DESCRIPTION OF THE PROPOSAL

Determination that an animal is a Threatened or Endangered species would, among other things, make that species, including any part, product, egg or offspring thereof, or the dead body or parts thereof subject to the prohibitions and exceptions in § 17.21 of the regulations in this Part, which were published in the FEDERAL REGISTER of September 26, 1975 (40 FR 44423) and, for the convenience of the reader, are reprinted below:

"§ 17.21 Prohibitions.

(a) Except as provided in Subpart A of this part, or under permits issued pursuant to § 17.22 or § 17.23, it is unlawful for any person subject to the jurisdiction of the United States to commit, to attempt to commit, to solicit another to commit or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any endangered wildlife.

(b) **Import or export.** It is unlawful to import or to export any endangered wildlife. Any shipment in transit through the United States is an importation and an exportation, whether or not it has entered the country for customs purposes.

(c) **Take.** (1) It is unlawful to take endangered wildlife within the United States, within the territorial sea of the United States, or upon the high seas. The high seas shall be all waters seaward of the territorial sea of the United States, except waters officially recognized by the United States as the ter-

ritorial sea of another country, under international law.

(2) Notwithstanding paragraph (c) (1) of this section, any person may take endangered wildlife in defense of his own life or the lives of others.

(3) Notwithstanding paragraph (c) (1) of this section, any employee or agent of the Service, any other Federal land management agency, the National Marine Fisheries Service, or a State conservation agency, who is designated by his agency for such purposes, may, when acting in the course of his official duties, take endangered wildlife without a permit if such action is necessary to:

(i) Aid a sick, injured or orphaned specimen; or

(ii) Dispose of a dead specimen; or

(iii) Salvage a dead specimen which may be useful for scientific study; or

(iv) Remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided that the taking is done in a humane manner; the taking may involve killing or injuring only if it has not been reasonably possible to eliminate such threat by live-capturing and releasing the specimen unharmed, in a remote area.

(4) Any taking pursuant to paragraphs (c) (2) and (3) of this section must be reported in writing to the United States Fish and Wildlife Service, Division of Law Enforcement, P.O. Box 19183, Washington, D.C. 20036, within 5 days. The specimen may only be retained, disposed of, or salvaged in accordance with directions from the Service.

(d) **Possession and other acts with unlawfully taken wildlife.** (1) It is unlawful to possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any endangered wildlife which was taken in violation of paragraph (c) of this section.

Example. A person captures a whooping crane in Texas and gives it to a second person, who puts it in a closed van and drives thirty miles, to another location in Texas. The second person then gives the whooping crane to a third person, who is apprehended with the bird in his possession. All three have violated the law—the first by illegally taking the whooping crane; the second by transporting an illegally taken whooping crane; and the third by possessing an illegally taken whooping crane.

(2) Notwithstanding paragraph (d) (1) of this section, Federal and State law enforcement officers may possess, deliver, carry, transport or ship any endangered wildlife taken in violation of the Act as necessary in performing their official duties.

(e) **Interstate or foreign commerce.** It is unlawful to deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever, and in the course of a commercial activity, any endangered wildlife.

(f) **Sale or offer for sale.** (1) It is unlawful to sell or to offer for sale in interstate or foreign commerce any endangered wildlife.

(2) An advertisement for the sale of endangered wildlife which carries a warning to the effect that no sale may be consummated until a permit has been obtained from the U.S. Fish and Wildlife Service shall not be considered an offer for sale within the meaning of this subsection."

Although the Act authorizes the Secretary to publish "... such regulations as he deems necessary and advisable for the conservation of ..." any species de-

terminated to be a Threatened species, no special regulations are proposed for any of the species herein proposed to be determined Threatened species. Lacking any such special regulations, all of the provisions set forth in § 17.31 would apply to such Threatened species as well as any Endangered species. That section incorporates all the provisions of § 17.21, and adds an exception which allows the taking of such species by certain Federal or State conservation personnel in the course of scientific research or conservation programs.

Section 3(14) of the Act defines the term "take" as follows:

"(14) The term 'take' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct."

It should be noted that a determination that an animal is an Endangered species or a Threatened species generally imposes no restrictions upon: otherwise lawful possession; the intrastate sale; nor upon the interstate movement of such specimens unless such movement is in the course of a commercial activity. In this context, the term "commercial activity" is defined in Section 3(1) of the Act as follows:

"(1) The term 'commercial activity' means all activities of industry and trade, including, but not limited to, the buying or selling of commodities and activities conducted for the purpose of facilitating such buying and selling."

The terms "industry or trade," as used in the above definition, were defined in the September 26, 1975, FEDERAL REGISTER (40 FR 44416) as follows:

"'Industry or trade' in the definition of 'commercial activity' in the Act means the actual or intended transfer of wildlife or plants from one person to another person in the pursuit of gain or profit;"

In the case of Endangered or Threatened wildlife, regulations published in 40 FR 44412 provide for the issuance of permits to carry out otherwise prohibited activities under certain circumstances. Such permits are available for scientific purposes or to enhance the propagation or survival of the species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship which would be suffered if such relief were not available.

Determination that an animal is a Threatened or an Endangered species makes that species eligible for the protection provided by Section 7 of the Act which reads as follows:

"INTERAGENCY COOPERATION"

Sec. 7. 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 restriction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

No determination of "Critical Habitat" presently is proposed for any of the species named herein. However, the Director recognizes that loss of habitat is the principal threat faced by many of these species and intends to propose the destruction or modification of habitat of many in the near future. A further elaboration of the concept of Critical Habitat was published on April 22, 1975 (40 FR 17764-17765).

The act requires inclusion of the "... scientific and common name or names, if any, * * *" upon the list of those species determined to be Threatened or Endangered. No generally recognized common name exists for some of the snails herein discussed. In such cases common names have been assigned to the animal. As usage of common names varies considerably, it should be recognized that only the scientific names carry legal significance.

The Service recognizes that invertebrate taxonomy is not an exact science, that the knowledge of such animals continues to develop, and that scientific nomenclature reflects such understanding. It further recognizes that the classification and nomenclatural rank given a taxon is subject to opinion, based on the specialist's knowledge of the animal in question, and his interpretation of the science. Comments and data toward improving the accuracy of common names, as well as scientific names, are requested.

Pursuant to Section 4(b) of the Act, the Director will notify the Governors of the States of Arkansas, California, Florida, Iowa, Nevada, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas, Utah, Virginia, and West Virginia with respect to this proposal and request their comments and recommendations before making final determinations.

PUBLIC COMMENTS SOLICITED

The Director intends the finally adopted rules to be as accurate and effective in the conservation of any Endangered or Threatened species as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests or any other interested party con-

cerning any aspect of these proposed rules are hereby solicited. Comments particularly are sought concerning:

1. The existence of any living specimen of those species felt possibly to be extinct;
2. Biological or other relevant data concerning any threat (or the lack thereof) to any species included on the following list;
3. the location of and reasons why any habitat of any snail named herein should be determined to be "Critical Habitat" as provided for by Section 7 of the Act;
4. improved scientific or common names for any snail on the following list;
5. additional information concerning the range and distribution of any of these snails.

Final promulgation of the regulations on these species will take into consideration the comments and any additional information received by the Director and such communications may lead him to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species and International Activities, 1612 K Street, NW., Washington, D.C. 20240 and may be examined during regular business hours. A determination will be made at the time of final rulemaking as to whether this is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(c) of the National Environmental Policy Act of 1969.

SUBMITTAL OF WRITTEN COMMENTS

Interested persons may participate in this rulemaking by submitting written comments and other documents, 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 and materials received no later than June 28, 1976, will be considered. Comments and materials 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.

This proposed rulemaking is issued under authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884).

Dated: April 15, 1976.

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

Accordingly, it is hereby proposed to amend Part 17, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations, as set forth below:

It is proposed to amend section 17.11 by adding in alphabetical order the following to the list of snails:

§ 17.11 Endangered and threatened wildlife.

SPECIES		RANGE					Status	When listed	Special rules
Common name	Scientific Name	Population	Known Distribution	Portion of Range Where Threatened or Endangered					

SNAILS:									
Snail, Amargosa	<i>Fontelicella micrococcus</i>	N/A	USA (California, Nevada)	Entire	T	N/A			
Snail, Ash Meadows Turban	<i>Planorbicella erythropoma</i>	N/A	USA (Nevada)	Do	T	N/A			
Snail, Bad Water	<i>Assiminea infirma</i>	N/A	USA (California)	Do	T	N/A			
Snail, Banded Dune	<i>Helminthoglypta walkeri</i>	N/A	Do	Do	E	N/A			
Snail, California Northern River	<i>Monadenia setosa</i>	N/A	Do	Do	T	N/A			
Snail, Cheatum's	<i>Tryonia cheatumi</i>	N/A	USA (Texas)	Do	E	N/A			
Snail, Chittanooga Ovate Amber	<i>Succinea ovalis chittengoensis</i>	N/A	USA (New York)	Do	E	N/A			
Snail, Clark's Nantahala Middle-toothed Land	<i>Mesodon clarki nantahala</i>	N/A	USA (North Carolina)	Do	T	N/A			
Snail, Dented Peninsula	<i>Helminthoglypta arrosa miteoka</i>	N/A	USA (California)	Do	T	N/A			
Snail, Diamond-Y Pond	<i>Physa virgata bottomeri</i>	N/A	USA (Texas)	Do	T	N/A			
Snail, Flat-Spired Three-toothed Land	<i>Tridopsis platyspoides</i>	N/A	USA (West Virginia)	Do	E	N/A			
Snail, Fraternal	<i>Micrarionta jeralis</i>	N/A	USA (California)	Do	E	N/A			
Snail, Fraternal	<i>Micrarionta jeralis</i>	N/A	USA (California)	Do	E	N/A			
Snail, Jones' Middle-toothed Land	<i>Mesodon jonesianus</i>	N/A	USA (North Carolina)	Do	E	N/A			
Snail, Karok Indian	<i>Vespericola karokorum</i>	N/A	USA (California)	Do	E	N/A			
Snail, MacClintock's Discoid Land	<i>Discus macclintocki</i>	N/A	USA (Iowa)	Do	E	N/A			
Snail, Magazine Mountain Middle-toothed Land	<i>Mesodon magazinei</i>	N/A	USA (Arkansas)	Do	T	N/A			

Snail, Muddy Valley Turban	<i>Planorbicella acervalis</i>	N/A	USA (Nevada)	Do	T	N/A			
Snail, Nicklin's Peninsula	<i>Helminthoglypta nickliniana awania</i>	N/A	USA (California)	Do	T	N/A			
Snail, Pahranagat Valley Turban	<i>Planorbicella merriami</i>	N/A	USA (Nevada)	Do	T	N/A			
Snail, Painted Snake Coiled Forest	<i>Anghuspira picta</i>	N/A	USA (Tennessee)	Do	E	N/A			
Snail, Pillsbury's Narrow Apertured Land	<i>Succinea pillsburyi</i>	N/A	USA (Arkansas, Oklahoma)	Do	T	N/A			
Snail, Reeves County	<i>Cochliopa texana</i>	N/A	USA (Texas)	Do	E	N/A			
Snail, Rocky Coast	<i>Monadenia fidelis pronotii</i>	N/A	USA (California)	Do	E	N/A			
Snail, St. George	<i>Amnicola deserta</i>	N/A	USA (Utah)	Do	E	N/A			
Snail, Shig	<i>Banneya notabilis</i>	N/A	USA (California)	Do	E	N/A			
Snail, Soorro	<i>Amnicola neomezicana</i>	N/A	USA (New Mexico)	Do	E	N/A			
Snail, Stock Island Tree	<i>Orthalicus vesca vesca</i>	N/A	USA (Florida)	Do	T	N/A			
Snail, Strange Many-whorled Land	<i>Polypyriscus peregrina</i>	N/A	USA (Arkansas)	Do	T	N/A			
Snail, Tryon's	<i>Micrarionta tryoni</i>	N/A	USA (California)	Do	T	N/A			
Snail, Virginia Fringed Mountain	<i>Polypyriscus virginianus</i>	N/A	USA (Virginia)	Do	T	N/A			
Snail, White River	<i>Tryonia clathrata</i>	N/A	USA (Nevada)	Do	T	N/A			
Snail, Zion Canyon	<i>Physa zionii</i>	N/A	USA (Utah)	Do	T	N/A			

[FR Doc.76-12095 Filed 4-27-76;8:45 am]

Bureau of Indian Affairs

[25 CFR Part 183]

LEASING OF OSAGE RESERVATION LANDS FOR OIL AND GAS MINING Leasing Procedures and Operations

APRIL 19, 1976.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

Notice is hereby given that it is proposed to amend §§ 183.1, 183.20 and 183.21 of Part 183, Subchapter Q, Chapter I, Title 25 of the Code of Federal Regulations. These amendments are proposed pursuant to authority contained in the Act of June 28, 1906 (34 Stat. 539, 543), as amended.

Notwithstanding the phrase "lessee or his authorized representative" contained in § 183.19, certain landowners have taken the position that said term does not grant a pipeline company the right of ingress and egress. They maintain that in order to secure such right of ingress and egress, the pipeline company must procure a right-of-way. The purpose of the proposed amendments is to alleviate controversy in the future.

It is proposed to add a new paragraph (k) to § 183.1 to define the term "authorized representative"; to revise the introductory sentence in § 183.21 to provide for recovery of damages caused in the marketing of oil or gas by Lessee or his authorized representative; and to in-

clude the term "authorized representative" in several places in §§ 183.20(a) and 183.21(d) through (g). In the first sentence of § 183.21(e), the words "any of his employees" are deleted and "his authorized representative" substituted therefor.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections regarding the proposed regulations to the Director, Office of Trust Responsibilities, Bureau of Indian Affairs, Washington, D.C. 20245, on or before May 28, 1976.

It is proposed to amend Part 183, Subchapter Q, Chapter I, Title 25 of the Code of Federal Regulations as follows:

1. By adding a new paragraph (k) to § 183.1 to read as follows:

§ 183.1 Definitions.

(k) "Authorized representative" of an oil lessee, gas lessee, or oil and gas lessee means any person, group or groups of persons, partnership, association, company, corporation, organization or agent employed by or contracted with a lessee or any subcontractor to conduct oil and gas operations and provide facilities to market oil and gas.

2. By revising paragraph (a) of § 183.20 to read as follows:

§ 183.20 Settlement of damages claimed.

(a) Lessee or his authorized representative or geophysical permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages as may be occasioned by operations. * * * If Lessee or his authorized representative and surface owner are unable to agree concerning damages, the same shall be determined by arbitration. Nothing herein contained shall be construed to deny any party the right to file an action in a court of competent jurisdiction if he is dissatisfied with the amount of the award.

3. By revising paragraphs (d) through (g) of § 183.21 to read as follows:

§ 183.21 Procedure for settlement of damages claimed.

Where the surface owner or his lessee suffers damage due to the oil and gas operations and/or marketing of oil or gas by Lessee or his authorized representative, the procedure for recovery shall be as follows:

(d) * * * The fees and expenses of the third arbitrator shall be borne equally by the claimant and Lessee or his authorized representative. Each Lessee or his authorized representative and claimant shall pay the fees and expenses for the arbitrator appointed by him.

(e) When an act of an oil or gas lessee or his authorized representative results in injury to both the surface owner and his lessee, the parties aggrieved shall join in the appointment of an arbitrator. Where the injury complained of is chargeable to one or more oil or gas Lessee or his authorized representative, such lessee or said representative shall join in the appointment of an arbitrator.

(f) * * * If no such action is filed within said time and the award is against Lessee or his authorized representative, he shall pay the same together with interest at the rate of 6 percent per annum from date of award, within 10 days after the expiration of said period for filing an action. If he fails to do so, in the discretion of the Superintendent, the Lessee or his authorized representative shall be subject to a penalty of \$10 per day for each day thereafter that he remains in default.

(g) Lessee or his authorized representative shall file with the Superintendent a report on each settlement agreement, setting out the nature and location of the damage, date, and amount of the settlement, and any other pertinent information.

MORRIS THOMPSON,
Commissioner of Indian Affairs.

[FR Doc.76-12285 Filed 4-27-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 915]

AVOCADOS GROWN IN SOUTH FLORIDA

Limitations of Handling

Consideration is being given to the following proposal, as hereinafter set forth, which would regulate the handling of fresh avocados grown in South Florida by establishing minimum quality and maturity requirements for such avocados. The proposal would establish U.S. No. 3 as the minimum grade and would prescribe minimum weights or diameters by specified dates as the maturity requirements. Weights or diameters and picking dates are indices used at harvest to assure that avocados are mature and will ripen satisfactorily after picking.

The proposed requirements would be established pursuant to § 915.51 *Issuance of regulations* and were recommended by the Avocado Administrative Committee, established pursuant to the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915; 40 F.R. 52605), regulating the handling of avocados grown in South Florida. The proposed minimum grade and maturity requirements for handling of designated varieties of avocados would be effective on and after May 31, 1976. This program is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674).

All persons who desire to submit written data, views, or arguments in connection with the proposal should file the

same in quadruplicate with the Hearing Clerk, Room 112A, U.S. Department of Agriculture, Washington, D.C. 20250, not later than May 10, 1976. All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

The purpose of the proposed regulation is to assure that the fruit of the various varieties will be of suitable quality and maturity so as to provide consumer satisfaction which is a critical element in disposition of the crop. Immature avocados are unpalatable and external characteristics do not provide a basis on which to distinguish immature avocados from those that will ripen into a palatable product, hence consumers have no rational basis for selection of satisfactory fruit.

The recommendations of the Avocado Administrative Committee reflect its appraisal of the avocado crop and current and prospective market conditions. Shipments of avocados are expected to begin on or about May 31, 1976. The committee has considered and recommended the quality and maturity requirements, including shipping periods, deemed appropriate to the current season for the designated varieties and types of avocados, to prevent the handling of immature and other undesirable fruit. Such recommendation is designed to recognize the differences in consumer demand within

and outside the production area and to provide the trade and consumers with an adequate supply of mature avocados of a satisfactory quality commensurate with crop conditions in the interest of producers and consumers pursuant to the declared policy of the act.

Such proposal reads as follows:

§ 915.318 Avocado Regulation 18.

(a) *Order.* (1) During the period May 31, 1976, through April 30, 1977, no handler shall handle any avocados unless such avocados grade at least U.S. No. 3 grade: *Provided*, That avocados which fail to meet the requirements of such grade may be handled within the production area, if such avocados meet all other applicable requirements of this section and are handled in containers other than the containers prescribed in § 915.305, as amended (7 CFR Part 915; 40 F.R. 52605), for the handling of avocados between the production area and any point outside thereof;

(2) On and after the effective date of this regulation, except as otherwise provided in subparagraphs (10) and (11) of this paragraph, no avocados of the varieties listed in Column 1 of the following Table I shall be handled prior to the date listed for the respective variety in Column 2 of such table, and thereafter each such variety shall be handled only in conformance with subparagraphs (3), (4), (5), (6), (7), (8), and (9) hereof.

TABLE I

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(3)	(3)	(4)	(5)	(6)	(7)	(8)
Kosel	5-31-76	16 oz	6-14-76	13 oz	6-28-76	10 oz	7-12-76
Arue	5-31-76	16 oz	6-14-76	14 oz	7-19-76		
				3 3/4 in			
Roland 22	6-14-76	22 oz	6-28-76	20 oz	12-27-76		
J. M. Poropat	6-28-76	17 oz	12-27-76				
Fuchs	6-21-76	3 3/4 in	7- 5-76	12 oz	7-19-76	10 oz	8- 9-76
		3 3/4 in		3 3/4 in		2 1/4 in	
K-5	6-28-76	18 oz	7-12-76	14 oz	7-26-76		
		3 3/4 in		3 3/4 in			
Dr. DuPuis #2	6-21-76	16 oz	7- 5-76	14 oz	7-19-76		
		3 3/4 in		3 3/4 in			
Hardee	7- 5-76	16 oz	7-12-76	14 oz	8- 2-76		
		3 3/4 in		2 1/4 in			
Pollock	7- 5-76	18 oz	7-19-76	16 oz	8- 2-76		
		3 1/4 in		3 3/4 in			
Simmonds	7- 5-76	16 oz	7-19-76	14 oz	8- 2-76		
		3 3/4 in		3 3/4 in			
Nadir	7- 5-76	14 oz	7-12-76	12 oz	7-19-76	10 oz	8- 2-76
		3 3/4 in		3 3/4 in		2 1/4 in	
Katherine	7- 5-76	16 oz	7-19-76	14 oz	8- 2-76		
Halle	7- 5-76	20 oz	7-19-76	16 oz	7-26-76	14 oz	8-16-76
Ruehla	7-19-76	18 oz	7-26-76	16 oz	8- 2-76	14 oz	8-30-76
		3 1/4 in		3 3/4 in		3 3/4 in	
Dawn	7-19-76	12 oz	8- 2-76	10 oz	8-16-76		
		3 3/4 in		3 3/4 in			
Webb 2	7-19-76	18 oz	8- 2-76	16 oz	8-16-76		
Blondo	8- 2-76	15 oz	12-27-76				
Cash	7-19-76	16 oz	12-27-76				
Peterson	7-26-76	14 oz	8- 9-76	10 oz	8-23-76	8 oz	9- 6-76
		3 3/4 in		3 3/4 in		2 1/4 in	
Gretchen	8- 2-76	14 oz	8-16-76	12 oz	8-30-76		
Trapp	8-16-76	14 oz	8-30-76	12 oz	9-13-76		
		3 3/4 in		3 3/4 in			
Waldin	8-16-76	16 oz	8-30-76	14 oz	9-13-76	12 oz	9-27-76
		3 3/4 in		3 3/4 in		3 3/4 in	
Pinelli	8- 2-76	18 oz	8-16-76	16 oz	8-30-76		
		3 3/4 in		3 3/4 in			
Miguel	8- 2-76	22 oz	8-16-76	20 oz	8-30-76	18 oz	9-13-76
		3 3/4 in		3 3/4 in		3 3/4 in	
Nesbitt	8- 2-76	22 oz	8-16-76	18 oz	8-23-76	16 oz	9-13-76
		3 3/4 in		3 3/4 in		3 3/4 in	
Bets	8-16-76	18 oz	8-28-76	16 oz	9-13-76		
		3 3/4 in		3 3/4 in			
K-9	8-16-76	16 oz	8- 6-76				
Tower 2	8-16-76	14 oz	8-30-76	12 oz	9-27-76		

TABLE I

Variety	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date	Minimum weight or diameter	Date
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Shula	8-16-76	22 oz	9-6-76				
Tonnage	8-30-76	16 oz	9-6-76	12 oz	9-13-76	10 oz	9-20-76
		3 1/8 in		3 9/16 in		2 3/8 in	
Fairchild	8-30-76	16 oz	9-13-76	14 oz	9-27-76	12 oz	10-4-76
		3 9/16 in		3 1/2 in		3 1/8 in	
Nirody	8-30-76	18 oz	9-13-76	16 oz	9-27-76		
		3 9/16 in		3 1/2 in			
Black Prince	9-13-76	23 oz	9-27-76	16 oz	10-18-76		
Catalina	9-13-76	24 oz	9-20-76	22 oz	10-4-76		
Csonka	9-20-76	22 oz	12-27-76				
Guatemalan Seeding	9-20-76	15 oz	10-18-76	13 oz	12-20-76		
Blair	9-13-76	16 oz	9-27-76	14 oz	10-18-76		
				3 9/16 in			
Collinson	9-27-76	16 oz	10-25-76				
		3 9/16 in					
Chica	9-27-76	12 oz	10-11-76	10 oz	10-25-76		
		3 3/8 in		3 3/8 in			
Rue	9-27-76	30 oz	10-4-76	24 oz	10-18-76	18 oz	11-1-76
		4 3/8 in		3 1/2 in		3 9/16 in	
Brooks 1978	10-11-76	10 oz	10-18-76	8 oz	12-27-76		
Booth 5	10-4-76	16 oz	10-25-76				
		3 1/8 in					
Hickson	10-4-76	15 oz	10-18-76	12 oz	10-25-76		
		3 1/8 in		3 5/8 in			
Simpson	10-4-76	16 oz	10-25-76				
		3 1/8 in					
Vaca	10-4-76	16 oz	10-25-76				
		3 9/16 in					
Sherman	10-4-76	16 oz	10-18-76	14 oz	11-1-76	10 oz	11-22-76
Mareus	10-4-76	32 oz	11-15-76				
Booth 10	10-11-76	16 oz	11-8-76				
		3 9/16 in					
Booth 7	9-27-76	18 oz	10-11-76	16 oz	10-25-76	14 oz	11-8-76
		3 1/2 in		3 9/16 in		3 5/8 in	
Avon	10-11-76	15 oz	11-1-76				
		3 1/2 in					
Booth 11	10-11-76	16 oz	11-1-76				
		3 1/2 in					
Leona	10-11-76	18 oz	10-25-76				
		3 9/16 in					
Winslowson	10-11-76	18 oz	11-1-76				
		3 1/2 in					
Nelson	10-11-76	14 oz	10-25-76	12 oz	11-8-76	10 oz	11-20-76
		3 5/8 in		3 5/8 in		3 1/2 in	
Hall	10-11-76	26 oz	10-25-76	20 oz	11-8-76		
		3 1/2 in		3 1/2 in			
Lula	10-18-76	18 oz	11-1-76	14 oz	11-15-76		
		3 1/2 in		3 5/8 in			
Choquette	10-18-76	24 oz	11-1-76	20 oz	11-22-76		
		4 1/8 in		3 1/2 in			
Monroe	11-15-76	24 oz	11-29-76	20 oz	12-13-76		
		4 1/8 in		3 1/2 in			
Herman	10-18-76	16 oz	11-1-76	14 oz	11-15-76		
		3 9/16 in		3 1/2 in			
Murphy	10-18-76	18 oz	11-1-76	14 oz	11-15-76	11 oz	12-6-76
Ajax (B-7-B)	10-25-76	18 oz	11-15-76				
		3 1/2 in					
Booth 1	11-22-76	16 oz	12-13-76				
		3 1/2 in					
Booth 3	10-25-76	16 oz	11-15-76				
		3 1/2 in					
Taylor	10-25-76	14 oz	11-8-76	12 oz	11-23-76		
		3 9/16 in		3 5/8 in			
Dmedin	11-8-76	16 oz	11-22-76	14 oz	12-6-76	10 oz	12-27-76
		3 9/16 in		3 5/8 in		3 1/2 in	
Byars	11-15-76	16 oz	12-6-76				
		3 1/2 in					
Linda	11-15-76	18 oz	12-6-76				
		3 1/2 in					
Nabal	11-15-76	14 oz	12-6-76				
		3 9/16 in					
Zlo	11-29-76	12 oz	12-13-76	10 oz	12-27-76		
Wagner	12-6-76	12 oz	12-20-76	10 oz	1-3-76		
		3 9/16 in		3 5/8 in			
Maya	12-27-76	13 oz	1-10-77	11 oz	1-24-77		
Brookslate	1-10-77	14 oz	1-24-77	12 oz	2-7-77	10 oz	2-21-77
Schmidt	1-17-77						
Itzanna	2-14-77						

(6) No handler shall handle (i) prior to August 23, 1976, any Lisa variety avocados, (ii) during the period August 23, 1976, through August 29, 1976, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, (iii) during the period August 30, 1976, through September 5, 1976, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 11 ounces, (iv) during the period September 6, 1976, through September 12, 1976, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 10 ounces, (v) during the period September 13, 1976, through September 19, 1976, any Lisa variety avocados unless the individual fruit in each lot of such avocados weighs at least 9 ounces;

(7) No handler shall handle (i) prior to September 13, 1976, any Booth 8 variety avocados, (ii) during the period September 13, 1976, through October 3, 1976, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 16 ounces, or is at least 3 3/8 inches in diameter, or (iii) during the period October 4, 1976, through October 17, 1976, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 14 ounces, or is at least 3 1/2 inches in diameter, or (iv) during the period October 18, 1976, through October 31, 1976, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 12 ounces, or is at least 3 1/8 inches in diameter, or (v) during the period November 1, 1976, through November 14, 1976, any Booth 8 variety avocados unless the individual fruit in each lot of such avocados weighs at least 10 ounces or is at least 3 1/8 inches in diameter.

(8) Except as otherwise provided in paragraphs (a) (10) and (11) of this section, varieties of the West Indian type of avocados not listed in Table I shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to July 5, 1976.

(ii) From July 5, 1976, through August 1, 1976, the individual fruit in each lot of such avocados shall weigh at least 18 ounces.

(iii) From August 2, 1976, through September 5, 1976, the individual fruit in each lot of such avocados shall weigh at least 16 ounces.

(iv) From September 6, 1976, through October 3, 1976, the individual fruit in each lot of such avocados shall weigh at least 14 ounces.

(9) Except as otherwise provided in paragraphs (a) (10) and (11) of this section, varieties of avocados not covered by paragraphs (a) (2) through (8) hereof shall not be handled except in accordance with the following terms and conditions:

(i) Such avocados shall not be handled prior to September 20, 1976.

(ii) From September 20, 1976, through October 17, 1976, the individual fruit in each lot of such avocados shall weigh at least 15 ounces.

(3) From the date listed for the respective variety in Column 2 of Table I to the date listed for the respective variety in Column 4 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 3 of such table or is of at least the diameter specified for such variety in said Column 3;

(4) From the date listed for the respective variety in Column 4 of Table I to the date listed for the respective variety in Column 6 of such table, no handler shall handle any avocados of such

variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 5 of such table or is of at least the diameter specified for such variety in said Column 5;

(5) From the date listed for the respective variety in Column 6 of Table I to the date listed for the respective variety in Column 8 of such table, no handler shall handle any avocados of such variety unless the individual fruit weighs at least the ounces specified for the respective variety in Column 7 of such table or is of at least the diameter specified for such variety in said Column 7;

(iii) From October 18, 1976, through December 19, 1976, the individual fruit in each lot of such avocados shall weigh at least 13 ounces.

(10) Notwithstanding the provisions of paragraphs (a) (2) through (9) hereof regarding the minimum weight or diameter for individual fruit, up to 10 percent, by count, of the individual fruit contained in each lot may weigh less than the minimum specified weight and be less than the minimum specified diameter: *Provided*, That such avocados weigh not more than two ounces less than the applicable specified weight for the particular variety as prescribed in Columns 3, 5, or 7 of Table I or in paragraphs (a) (6), (7), (8), and (9). Such tolerances shall be on a lot basis, but not to exceed double such tolerances shall be permitted for an individual container in a lot.

(11) The provisions of paragraphs (a) (2) through (10) of this section shall not apply to any variety, except the Linda variety, of avocados which, when mature, normally change color to any shade of red or purple and any portion of the skin of the individual fruit has changed to the color for that fruit when mature.

(b) Terms used in the amended marketing and order, when used herein, have the same meaning as is given to the respective term in said marketing agreement and order; the term "diameter" shall mean the greatest dimension measured at right angles to a line from the stem to the blossom end of the fruit; and the term "U.S. No. 3" shall have the same meaning as set forth in the United States Standards for Florida avocados (7 CFR 51.3050-51.3069).

(c) The provisions of this regulation shall become effective May 31, 1976.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division Agricultural Marketing Service.

[FR Doc.76-12078 Filed 4-27-76;8:45 am]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Parts 206 and 207]

MISCELLANEOUS FEES, AND STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL APPLICATION HEARINGS

Notice of Proposed Rulemaking

Subpart A of Part 206 of Title 46 of the Code of Federal Regulations prescribes procedures by which members of the public may obtain from the Maritime Administration, an agency within the Department of Commerce, certain statistical and economic data, including data required by the Maritime Subsidy Board (Board) in connection with hearings under section 605(c), Merchant Marine Act, 1936, as amended (the Act), on applications for operating-differential subsidy (ODS). Subpart A also establishes certain fees for the production of data, but imposes no fees for furnishing data in connection with the Board's consideration of applications for ODS.

Notice is hereby given that Subpart A of Part 206 is proposed to be revised and that a new Part 207, prescribing procedures for the furnishing of statistical and economic data without charge in connection with the Board's consideration of ODS applications, is proposed to be established.

Part 206 is proposed to be revised by making it applicable only to requests for the production of statistical data and reports other than those required by the Board in connection with hearings under section 605(c) of the Act. A new section 206.3 is proposed to be added in order to assure the confidentiality of the sources of the data supplied to the Maritime Administration. A new schedule of charges to cover the cost of producing the requested data has been added.

The new Part 207 proposed to be established identifies with exactness the basic statistical data and reports required by the Board in hearings under section 605(c) of the Act in regard to ODS applications, and provides procedures for their production. The confidentiality of data supplied by industry sources is proposed to be protected to the same extent as under Part 206. The production of data and reports required by the Board in connection with hearings under section 605(c) of the Act is necessary for the fulfillment of the Board's responsibilities and is considered to be in the public interest. Accordingly, no charges are imposed for production of data under Part 207. Public Counsel will continue to introduce into the record of hearing under section 605(c) of the Act the basic statistical data and reports produced under Part 207 by means of a witness from the Maritime Administration's Division of Trade Studies and Statistics. Such witness will supply explanatory details on the content of the data and reports introduced into evidence, as required.

These proposed regulations have been reviewed in accordance with Executive Order 11821 and OMB Circular A-107 and it has been determined that they will have no major inflationary impact.

Since ODS is a matter of public grant, rulemaking affecting it is exempt from the requirements of 5 U.S.C. 553. Nevertheless, interested parties are encouraged to submit written comments, views or data concerning these proposed regulations, in triplicate, to the Secretary, Maritime Administration, Department of Commerce, Washington, D.C. 20230. All such submissions received on or before Wednesday, May 12, 1976, will be considered prior to the adoption of these regulations.

Accordingly, Subpart A of Part 206 of Title 46 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 206—MISCELLANEOUS FEES

Subpart A—Charges for Special Statistical Data Sec.

- | | |
|-------|--------------------------|
| 206.1 | Purpose. |
| 206.2 | Requests for data. |
| 206.3 | Confidentiality of data. |
| 206.4 | Charges. |

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Public Law 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

Subpart A—Charges for Special Statistical Data

§ 206.1 Purpose.

The purpose of this subpart is to establish the policy and procedures applicable to requests for statistical data and reports, other than those provided pursuant to Part 207 of this subchapter.

§ 206.2 Requests for data.

(a) *Requests.* Any request for statistical data or reports maintained by the Maritime Administration, other than those provided pursuant to Part 207 of this subchapter, shall be submitted in writing to the Assistant Administrator for Maritime Aids, Maritime Administration, U.S. Department of Commerce, Room 4099A, 14th and E Streets NW., Washington, D.C. 20230. The request must contain a detailed narrative explanation of the information requested and of the output report format desired which indicate: whether the data are to be coded, decoded, or both; the order in which the data are to be presented; the totals and subtotals required for each category, as appropriate; and the number of reports required. The request must also clearly indicate that it is submitted pursuant to this subpart.

(b) *Approval of request.* Approval, in whole or in part, of any request submitted pursuant to paragraph (a) of this section will be made at the discretion of the Assistant Administrator for Maritime Aids on the basis of the nature and scope of the work, the availability of personnel and administrative services, and other considerations pertaining to the feasibility of producing the requested information.

(c) *Notification of approval or disapproval.* Upon approval, in whole or in part, or disapproval in whole, of any request submitted pursuant to paragraph (a) of this section, the requesting party will be notified of the following: The statistical data and reports which can be produced; the statistical data and reports which cannot be produced, if any, and the reasons therefor; the estimated time to effect production, based on the charges set forth in section 206.4 of this part, which amount must be received before work begins.

(d) *Cost adjustment.* If the amount of the advance payment required by paragraph (c) of this section is insufficient to cover the actual cost of production, the requesting party will be required to make payment of the additional amount necessary before work will be continued. In the event that the amount of the advance payment exceeds the actual cost of production, the amount of the excess payment will be refunded.

§ 206.3 Confidentiality of data.

The original sources of statistical data requested under this subpart are "busi-

ness confidential" and data shall not be supplied in such form as to permit competitors to extrapolate the data supplied by the original sources to the Maritime Administration and, thereby, determine the carryings of individual competitors. Appropriate written waivers of confidentiality from persons supplying the data will be accepted and honored by the Maritime Administration to the extent practicable in the preparation of statistical data and reports under this subpart.

§ 206.4 Charges.

To cover the cost of furnishing statistical data and reports under this subpart, the following charges shall apply:

Computer Metered Minute.....	\$23.49
Programmer/Analyst Man-Hour Regular Time.....	14.28
Statistician/Analyst Man-Hour Regular Time.....	13.50
Reel of Magnetic Tape Created.....	25.00
Computer Printed Page.....	.10

Standard Copier Printed Page.....	.07
Reel of Magnetic Tape Duplicated....	25.00
All Other Costs (e.g., typing, postage, etc.)	(¹)

¹ Actual.

There is hereby proposed to be established a new Part 207 in Title 46 of the Code of Federal Regulations to read as follows:

PART 207—STATISTICAL DATA FOR USE IN OPERATING-DIFFERENTIAL SUBSIDY APPLICATION HEARINGS

Sec.	
207.1	Purpose.
207.2	Basic statistical data.
207.3	Procedures.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 USC 1114), Reorganization Plans No. 21 of 1950 (64 Stat. 1273) and No. 7 of 1961 (75 Stat. 840) as amended by Pub. L. 91-469 (84 Stat. 1036), Department of Commerce Organization Order 10-8 (38 FR 19707, July 23, 1973).

§ 207.1 Purpose.

The purpose of this part is to identify the basic statistical data and reports required by the Maritime Subsidy Board (Board) in hearings held under section 605(c), Merchant Marine Act, 1936, as amended (Act), in regard to applications for operating-differential subsidy (ODS) under Title VI of the Act and to provide procedures for the production of these data and reports. Statistical data not expressly covered by this part are subject to Subpart A of Part 206 of this subchapter. There shall be no charge for the production of the basic statistical data and reports identified in this part.

§ 207.2 Basic statistical data.

(a) *Data and reports available.* The basic statistical data and reports that will be provided pursuant to § 207.3 of this part in regard to any hearing held by the Board under section 605(c) of the Act in connection with an application for ODS are as follows, with the accompanying "Notes" forming an integral part of each report:

REPORT 001 19 CENSUS TRADE DATA ¹ PAGE _____
MSB DOCKET _____ DATE PREPARED _____

		INBOUND LINER ²							
		Tonnage			Value			Percent	
Trade Route	Commodity	United States	Foreign	Total	United States	United States	Foreign	Total	United States
Commodity Description									

TOTAL TRADE ROUTE BY INBOUND LINER ³

(For an explanation of terms and numbers see "Notes")

REPORT 002 19 CENSUS TRADE DATA ⁴ PAGE _____
MSB DOCKET _____ DATE PREPARED _____

		INBOUND LINER ²							
		Tonnage			Value			Percent	
Trade Route	Coastal District	Foreign Country	United States	Foreign	Total	United States	United States	Foreign	Total
Commodity									
Commodity Description									

TOTAL TRADE ROUTE BY COASTAL DISTRICT BY FOREIGN COUNTRY BY INBOUND LINER ⁶

TOTAL TRADE ROUTE BY COASTAL DISTRICT BY INBOUND LINER ⁵

TOTAL TRADE ROUTE BY INBOUND LINER ³

(For an explanation of terms and numbers see "Notes")

PROPOSED RULES

REPORT 003

19 MARAD LINER FOREIGN TRADE DATA
MSB DOCKETPAGE _____
DATE PREPARED _____

Trade Route	Coastal District	Foreign Country	Flag	INBOUND Tonnage				OUTBOUND Tonnage			
				General	Bulk	Defense	Total	General	Bulk	Defense	Total

TOTAL TRADE ROUTE BY COASTAL DISTRICT BY FOREIGN COUNTRY ⁸
 TOTAL TRADE ROUTE BY COASTAL DISTRICT ⁹
 TOTAL TRADE ROUTE ¹⁰

(For explanation of terms and numbers see "Notes")

REPORT 004

19 MARAD CONTAINERIZED FOREIGN TRADE DATA ¹¹
MSB DOCKETPAGE _____
DATE PREPARED _____

Trade Route	Coastal District	Foreign Country	Flag	INBOUND Tonnage			OUTBOUND Tonnage		
				Commercial	Defense	Total	Commercial	Defense	Total

TOTAL TRADE ROUTE BY COASTAL DISTRICT BY FOREIGN COUNTRY ⁸
 TOTAL TRADE ROUTE BY COASTAL DISTRICT ⁹
 TOTAL TRADE ROUTE ¹⁰

(For an explanation of terms and numbers see "Notes")

REPORT 005

19 MARAD Sailings Foreign Trade Data ¹²
MSB DocketPAGE _____
DATE PREPARED _____

Trade Route	Flag	SAILINGS ¹³		
		Inbound	Outbound	Total

TOTAL SAILINGS BY TRADE ROUTE ¹⁴
 TOTAL SAILINGS ¹⁵

(For an explanation of terms and numbers see "Notes")

NOTES

EXPLANATION OF TERMS

Trade Route—A two digit numerical code signifying a waterborne route between a specific U.S. coastal district(s) and foreign port range.

Commodity—A three digit numerical Statistical Classification of Commodities (SCC) code assigned by the Bureau of the Census to a major category of commodities.

Commodity Description—A literal definition of each three digit numerical (SCC) code.

Value Outbound—The dollar value of commodities at time and place of export. It is based on the selling price (or cost if not sold) and includes inland freight insurance, and other charges to the port of exportation.

Value Inbound—The market dollar value of commodities in the exporting foreign country, and therefore excludes U.S. import duties, freight charges from the foreign country to the United States and insurance.

Tonnage Inbound—The number of long tons (2,240 lbs.) of entries for immediate consumption and entries into customs bonded storage and manufacturing warehouses. Excludes American goods returned by U.S. military forces for their own use and imports arriving on vessels owned and operated by the Department of Defense.

Tonnage Outbound—The number of long tons (2,240 lbs) of foreign merchandise, including nongovernment shipments, shipments to U.S. civilian government agencies, and government-financed economic assistance shipments under the Foreign Assistance Act. Excluded from the figures are shipments of supplies and equipment to U.S. military forces for their own use, shipments of DOD controlled cargo under foreign aid programs, and all shipments of Special Category commodities (commodities for which detailed information may not be released for security reasons).

Inbound—A vessel movement to the United States from a foreign country.

Outbound—A vessel movement to a foreign country from the United States.

Liner—Type of Service offered on a definite, advertised schedule and giving relatively frequent sailings at regular intervals between specific United States ports or range and designated foreign ports or range.

Non-Liner—Type of Service offered by vessels, other than liner or tanker vessels, that are chartered or otherwise hired for the carriage of goods on special voyages. Sailing schedules are not predetermined or fixed.

Tanker—Type of Service offered by vessels, primarily designed for the carriage of bulk liquid cargoes, which are chartered or otherwise hired for special voyages.

Foreign Country—A three digit numerical code classification as defined by the Bureau of the Census' Schedule C, "Classification of Country Designations", dated January 1, 1972.

Flag—A two digit numerical code signifying the country in which a vessel is registered.

Coastal District—A one digit numerical code depicting a specific United States coastal area as follows:

1. North Atlantic—Maine to Virginia/North Carolina state line.
2. South Atlantic—Virginia/North Carolina state line to Key West, Florida.
3. Gulf—Key West, Florida, to the border of Mexico.
4. California—California.
5. Pacific Northwest—Washington and Oregon.
6. Great Lakes—All U.S. ports on the Great Lakes system.
7. Hawaii—All ports in the Hawaiian Islands.
8. Alaska—All ports in Alaska and the Aleutian Islands.
9. Puerto Rico—Puerto Rico and the Virgin Islands.

Bulk—Commodities customarily loaded and carried without wrappers or containers, and received and delivered without transportation mark or count whether such cargo is handled on berth terms, voyage charter, or any other basis.

General—Miscellaneous commodities packed in boxes, bags, bales, barrels, containers, crates, drums, unboxed or uncrated, accepted and delivered by mark and count.
 Defense—Cargo transported for the U.S. Department of Defense, including the Military Sealift Command.
 Commercial—Combination of general and bulk cargoes.

EXPLANATION OF NUMBERS

¹19— Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 42A.

²Inbound Liner—This heading indicates the type of data contained in the report; other headings for the report are:

- Outbound Liner
- Inbound Non-Liner
- Outbound Non-Liner
- Inbound Tanker
- Outbound Tanker

³Total Trade Route By Inbound Liner—At the end of the data for each trade route a total is provided for the category; other categories for the report are:

- Total Trade Route By Outbound Liner
- Total Trade Route By Inbound Non-Liner
- Total Trade Route By Outbound Non-Liner
- Total Trade Route By Inbound Tanker
- Total Trade Route By Outbound Tanker

⁴19— Census Trade Data—The data base for this report is the Census Annual Commodity Movements. The report was formerly known as Table 44B.

⁵Total Trade Route By Coastal District By Inbound Liner—At the end of the data for each coastal district a total is provided for the category; other categories for the report are:

- Total Trade Route By Coastal District By Outbound Liner
- Total Trade Route By Coastal District By Inbound Non-Liner
- Total Trade Route By Coastal District By Outbound Non-Liner
- Total Trade Route By Coastal District By Inbound Tanker
- Total Trade Route By Coastal District By Outbound Tanker

⁶Total Trade Route By Coastal District By Foreign Country By Inbound Liner—At the end of the data for each foreign country a total is provided for the category; other categories for the report are:

- Total Trade Route By Coastal District By Foreign Country By Outbound Liner
- Total Trade Route By Coastal District By Foreign Country By Inbound Non-Liner
- Total Trade Route By Coastal District By Foreign Country By Outbound Non-Liner
- Total Trade Route By Coastal District By Foreign Country By Inbound Tanker
- Total Trade Route By Coastal District By Foreign Country By Outbound Tanker

⁷19—MARAD Liner Foreign Trade Data—The data base for this report is the MARAD Foreign Trade System. This System contains liner information only and is collected from MA Forms 721/722.

⁸Total Trade Route By Coastal District By Foreign Country—A total is provided at the end of each foreign country.

⁹Total Trade Route By Coastal District—A total is provided at the end of each coastal district for all foreign countries.

¹⁰Total Trade Route—A total is provided at the end of each trade route for all coastal districts.

¹¹19— MarAd Containerized Foreign Trade Data—The data base for this report is the MarAd Container System. This system contains information collected from MA Forms 578A for any vessel carrying ten or more containers.

¹²19— MarAd Sailings Foreign Trade Data—The data base for this report is the MarAd Foreign Trade System. This system contains liner information only and is collected from MA Forms 721/722.

¹³Sailings—The actual number of "Outbound" and "Inbound" sailings made by vessels of specific flags of registration on a specific trade route is provided. A sailing constitutes an initial entrance to or a final clearance from the United States of a vessel.

¹⁴Total Sailings By Trade Route—A total is provided at the end of each trade route.

¹⁵Total Sailings—A total is provided at the end for all trade routes.

(b) *Time frame of data and reports provided.* The basic statistical data and reports provided by this part will be for the most recent three full calendar years for which such data is available in final form on the date the Board issues its referral order for a hearing on any ODS application. No preliminary data and no data for parts of a calendar year will be provided under this part. Any request for preliminary data or data for any part of a calendar year should be made under Subpart A of Part 206 of this subchapter. Data requested for any calendar year more recent than the three years described in this paragraph should also be made under Subpart A of Part 206 of this subchapter.

(c) *Confidentiality.* The original sources of basic statistical data furnished under this part are "business confidential" and data shall not be supplied in such form as to permit competitors to extrapolate the data supplied by the original sources to the Maritime Administration and, thereby, determine the carryings of individual competitors. Appropriate written waivers of confidentiality from persons supplying data will be accepted and honored by the Maritime Administration to the extent practicable in the preparation of statistical data and reports under this part.

§ 207.3 Procedures.

(a) *Request.* The procedures for production of basic statistical data and reports under this part may be initiated only by the written request of a party to a hearing under section 605(c) of the Act in connection with an ODS application. The term "party" includes the applicant, Public Counsel, and any other person whose petition to intervene has been granted. The request shall identify the specific format of data sought according to the report numbers listed in § 207.2 of this part and shall state the trade routes or trade areas covered by the ODS application and identified by the Board in its section 605(c) notice as published in the FEDERAL REGISTER. The letter requesting data and reports should be addressed to the Chief, Division of Trade Studies and Statistics (Code M-522), Maritime Administration,

U.S. Department of Commerce, Room 4075, 14th & E Streets NW., Washington, D.C. 20230. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing.

(b) *Determination of data and reports.* The Chief, Division of Trade Studies and Statistics, shall review and define the basic statistical data and reports applicable to a party's request, with special attention to section 207.2(c) of this part, and promptly take all necessary steps to effect production. He shall expeditiously notify the requesting party, with a copy to all other parties and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket), as follows: the basic statistical data and reports being produced; and the schedule for distribution thereof to the parties and to the presiding Administrative Law Judge.

(c) *Transmission of data package.* Once the Chief, Division of Trade Studies and Statistics, has assembled the basic statistical data and reports, he shall promptly transmit them to:

- (1) The requesting party (one copy);
- (2) Public Counsel (one copy);
- (3) Each other party (one copy each);

(4) The presiding Administrative Law Judge (two copies: one copy of which shall be received into evidence in the hearing docket, pursuant to section 201.132(g) of this subchapter, and the other copy of which shall be for the personal use of the presiding Administrative Law Judge).

(d) *Dispute as to scope of data and reports.* If any party to the hearing disputes the scope of data and reports to be produced as defined in the notice issued by the Chief, Division of Trade Studies and Statistics, review by the Director, Office of Subsidy Administration, may be obtained by such party through filing of a written request for review with the Director, Office of Subsidy Administration. Concurrently, the requesting party shall furnish a copy of the request to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket) and to each other party to the hearing. On the basis of the request for review, and such comments as any other party to the hearing may have filed within ten (10) days of the date on the request, the Director, Office of Subsidy Administration, shall determine the proper scope of the basic statistical data and reports to be produced. The determination shall be final. A copy of the determination shall be furnished to each party and to the presiding Administrative Law Judge (for inclusion in the correspondence section of the official docket).

It is hereby certified that the economic and inflationary impacts of these proposed regulations have been carefully evaluated in accordance with OMB Circular A-107.

By Order of the Maritime Subsidy Board.

Dated: April 22, 1976.

JAMES S. DAWSON, Jr.,
Secretary,
Maritime Subsidy Board.

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 207]

[Docket No. 76P-0071]

DRUG LISTING ACT OF 1972

Revision of Implementing Regulations

The Food and Drug Administration (FDA), having been petitioned by the Pharmaceutical Manufacturers Association (PMA), is proposing to amend the regulations implementing the Drug Listing Act of 1972 (21 CFR Part 207) to provide for: (1) The re-use, after a specified time period, of product codes for discontinued drug products; (2) the omission of leading zeros from the numeric character code when the National Drug Code (NDC) number is used in the labeling of small containers; and (3) a change in the conditions that require the use of a new NDC number for a drug product. Interested persons have until June 28, 1976, to submit comments.

Section 207.35(b)(2)(ii) (21 CFR 207.35(b)(2)(ii)) prohibits the re-use of a product code once it has been assigned to a specific drug product. In the petition dated January 28, 1975, PMA requested that § 207.35(b)(2)(ii) be amended by revising the last sentence to read: "When a drug product has been discontinued the same code may be used again for a new drug product four years after the expiration date of the original product (if it had such a date) or five years after the last shipment of the original product without an expiration date." The petition stated that PMA member firms have expressed concern that presently available product-package code configurations may be exhausted in the near future because of the size of the product lines and the many changes in them. The petition contends that the proposed revision provides a reasonable means of extending the usefulness of the present coding system.

The Commissioner of Food and Drugs agrees that available numbers for product codes may eventually be exhausted if re-use of such codes is not permitted. He tentatively concludes that the change suggested in the petition is reasonable and is therefore proposing to amend § 207.35(b)(2)(ii) to permit the re-assignment of a product code in accordance with PMA's suggestions.

Section 207.35(b)(3)(iv) allows for omission of leading zeros from the product code segment of the NDC number only when the number is imprinted on dosage forms. PMA requested that the paragraph be amended to read: "All 10 characters shall appear and the leading zeros in any segment of the NDC num-

ber shall be shown: *Provided, however*, That when the code is used for direct imprinting on solid oral dosage forms, on nontrade packages (such as ampuls, unit dosage packages, etc.), or when the size of the label for the trade package precludes their use, the leading zeros may be dropped." The petition contends that manufacturers have encountered space limitations when the NDC number is placed on labels of small containers.

The Commissioner advises that the reason for requiring leading zeros in all segments of the NDC number when the number is used in drug product labeling is to prevent errors in transcription and to assure compatibility with the Universal Product Code (UPC). A regulation permitting the NDC number to appear as part of and contiguous to the UPC symbol wherever the symbol appears on consumer packages for over-the-counter (OTC) drug products was published in the FEDERAL REGISTER of November 7, 1975 (40 FR 52000). The Commissioner, however, recognizes that some containers may be too small or otherwise unable to accommodate a label with sufficient space to bear both information required to appear on a label and information requested by regulation and thus voluntarily placed on the label, such as the NDC number. He tentatively concludes that the size of a container or package and its ability to accommodate a label with sufficient space to bear such information should determine whether or not leading zeros are dropped from the NDC number, rather than whether the label is on a "trade package" or "non-trade" package, as suggested by PMA. The Commissioner, therefore, is proposing to permit the deletion of leading zeros when the NDC number is directly imprinted on dosage forms or when a container is too small or otherwise unable to accommodate a label containing both required and optional labeling information. The Commissioner is of the opinion that permitting leading zeros to be omitted, as proposed, may also further encourage voluntary use of the NDC number on labels of small containers, and therefore is in the public interest.

PMA further requested FDA to amend the first sentence of § 207.35(b)(4), which requires the assignment of a new NDC number when "any material change occurs in product characteristics." PMA would have the requirement revised to read: "A new NDC number shall be assigned by the registrant following a change in active ingredients, or a change in strength or concentration thereof. However, a reformulation that does not result in a modification of the brand or proprietary name, does not require assignment of a new NDC number. Further, the addition or deletion of a route of administration, not accompanied by a formulation change, does not require assignment of a new NDC number." Subsequent discussion with PMA about the suggested change clarified the fact that PMA was recommending that a reformulation that does not result in a significant alteration of the therapeutic

characteristics of the drug product should not require assignment of a new NDC number. (A copy of PMA's letter dated February 18, 1976 clarifying its suggested change is on file in the office of the Hearing Clerk, Food and Drug Administration (address below).)

PMA contends that under the present regulation the circumstances requiring a new NDC number are ambiguous. It states that minor changes in labeling might require a new NDC number under the "material change" definition of § 207.3(g) (21 CFR 207.3). Also, numerous changes in drug products have resulted from such FDA programs as the OTC drug review, DESI (Drug Efficacy Study Implementation) review, dietary supplement regulations, etc. These changes have in the past required new NDC numbers. PMA further states that numerous changes to the NDC number for minor product or label modifications create numerous problems for those using the code and detract from optimum use of the code.

The Commissioner advises that the term "material change" as used in § 207.35(b)(4) is not intended to require a change in NDC number for minor labeling changes, such as changes in arrangement or printing or of an editorial nature. The product code segment of the NDC number represents a specific product version of active ingredient formulation, strength or concentration of active ingredients, dosage form, and route of administration. Changes in inactive ingredients may, in some instances, also be considered significant, e.g., a change in the color of a drug product or a change in an inactive ingredient that may have a physiological effect, such as with the fluorocarbons. A change in the legal marketing status, i.e., from Rx to OTC, would also be considered a change requiring a new product code for the drug product.

The Commissioner points out that an important use of the NDC number, particularly when imprinted on solid dosage forms, i.e., tablets and capsules, is for identifying a drug product when overdosage or accidental ingestion of the product occurs. Changes in a product's active ingredients, strength or concentration of active ingredients, dosage form, or route of administration without a change in product code could result in providing incorrect information on a particular drug product to a physician or Poison Control Center. The old product, whether or not completely removed from the commercial distribution channels, could still be in the hands of some consumers.

Therefore, the Commissioner does not agree completely with PMA's suggested revision to § 207.35(b)(4). He concludes that if the NDC number is to have any value in distinguishing one drug product version from another, it is essential that the product code segment of the NDC number be required to be changed whenever there is a change in those product characteristics that clearly distinguish one specific product version from another, including, but not limited to, a change in: Dosage form, active ingredient(s), active ingredient strength or con-