

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.

This proposed rulemaking is issued under the authority contained in the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884), and was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species (202-343-7814).

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation

(i)

Species			Range		Status	When listed	Special rules
Common name	Scientific name	Population	Known distribution	Portion of range where endangered or threatened			
REPTILES:							
Rattlesnake, New Mexican ridge-nosed.	<i>Crotalus willardi obscurus</i> .	NA	New Mexico and Chihuahua, Mexico.	Entire	E	NA	

2. It is further proposed to amend 50 CFR Part 17 by adding new paragraph (c) (3) to proposed § 17.95 to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

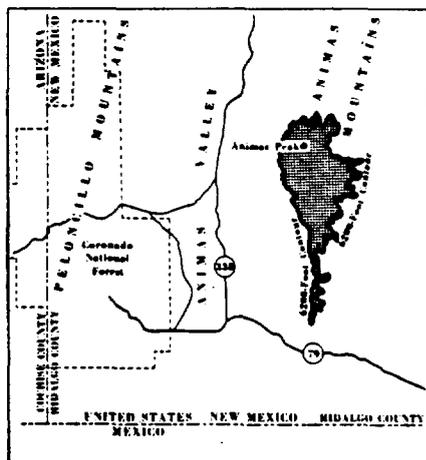
(c) Reptiles. . . .

(3) New Mexican ridge-nosed rattlesnake.

(i) The following area (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) is Critical Habitat for the New Mexican ridge-nosed rattlesnake (*Crotalus willardi obscurus*):

(A) Elevations above 6200 feet in the Animas Mountains, Hidalgo County, New Mexico.

(ii) Pursuant to Section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the Critical Habitat area.



of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 5, 1977.

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:

1. It is proposed to amend § 17.11(i) by adding in alphabetical order the following to the list of animals:

§ 17.11 Endangered and threatened wildlife.

CRITICAL HABITAT FOR THE NEW MEXICAN RIDGE-NOSED RATTLESNAKE

[FR Doc. 77-14848 Filed 5-25-77; 8:45 am]

[50 CFR Part 17]

ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Proposed Determination of Critical Habitat for the Houston Toad

AGENCY: U.S. Fish and Wildlife Service.

ACTION: Critical Habitat proposal.

SUMMARY: The Director, U.S. Fish and Wildlife Service (hereinafter, the Director and the Service, respectively) hereby issues a proposed rulemaking which would determine the Critical Habitat of the Houston toad (*Bufo houstonensis*). This proposal is issued pursuant to Section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1531-1543; 87 Stat. 884; hereinafter the Act).

DATES: All relevant comments and materials with regard to this proposed rulemaking received no later than August 24, 1977 will be considered by the Director, U.S. Fish and Wildlife Service.

ADDRESSES: Comments and materials concerning this proposed rulemaking, preferably in triplicate, should be sent to the Director (FWS/OES), U.S. Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

Comments and materials received will be available for public inspection during normal business hours at the Service's Office of Endangered Species, Suite 1100, 1612 K Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT:

Mr. Keith M. Schreiner, Associate Director, Federal Assistance, Fish and

Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240, 202-343-4646.

BACKGROUND

SUPPLEMENTARY INFORMATION: The Houston toad is among the rarest and most critically Endangered amphibians in the United States, and has been officially listed as Endangered since 1970. Much of the hope for the survival and recovery of this species depends upon the maintenance of suitable, undisturbed habitat and breeding sites. The Service recognizes that areas containing such sites may qualify for recognition as Critical Habitat as referred to in Section 7 of the Act. A notice of intent to determine Critical Habitat for the Houston toad was published by the Service in the FEDERAL REGISTER of May 16, 1975 (40 FR 21499-21500). In late 1976, the Albuquerque Regional Office (Region 2), of the Fish and Wildlife Service received a report from Dr. Robert A. Thomas of Texas A & M University recommending that certain areas in central Texas be designated as Critical Habitat for the Houston toad.

After evaluating his recommendation and supporting data, it was determined to proceed with the proposed rulemaking.

The areas delineated below have been used by Houston toads within the last few years, and contain the last remaining habitat and breeding sites for the species. If more populations are discovered in the future, additional areas may be proposed for Critical Habitat designation.

EFFECT OF THE RULEMAKING

The effects of this determination are involved primarily with Section 7 of the Act, which states:

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

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

ther jeopardy, or restrict the potential and reasonable recovery of that species; and (3) there may be many kinds of actions which can be carried out within the Critical Habitat of a species which would not be expected to adversely affect that species.

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

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

There may indeed be legitimate questions of whether, and to what extent, certain kinds of actions would adversely affect listed species. These questions, however, are not relevant to the biological basis of Critical Habitat delineations. Such questions should, and can more conveniently, be dealt with after Critical Habitat has been designated. In this respect, the Service in cooperation with other Federal agencies has drawn up a set of guidelines which, in part, establish a consultation and assistance process for helping to evaluate the possible effects of actions on Critical Habitat. Proposed provisions for Interagency Cooperation were published on January 26, 1977, in the FEDERAL REGISTER (42 FR 4868-4875) to assist Federal agencies in complying with Section 7 of the Endangered Species Act of 1973.

PUBLIC COMMENTS SOLICITED

The Director intends that the rules finally adopted will be as accurate as possible in delineating the Critical Habitat of the Houston toad. The Director, therefore, desires to obtain the comments and suggestions of the public, other concerned governmental agencies, the scientific community, or any other interested party on these proposed rules.

Final promulgation of Critical Habitat regulations will take into consideration the comments received by the Director. Such comments and any additional information received may lead the Director to adopt final regulations that differ from this proposal.

An environmental assessment has been prepared in conjunction with this proposal. It is on file in the Service's Office of Endangered Species, 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.

This proposed rulemaking was prepared by Dr. C. Kenneth Dodd, Jr., Office of Endangered Species.

NOTE.—The Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 18, 1977.

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

It is proposed to amend 50 CFR Part 17:

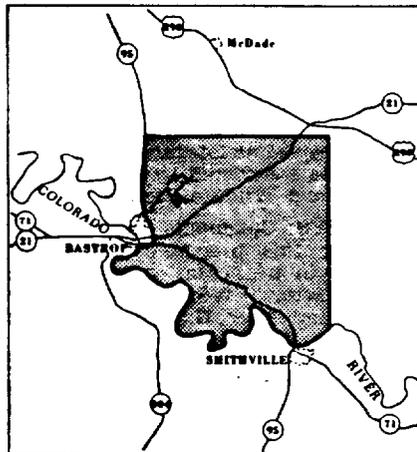
By adding new paragraph (d)(3) to proposed § 17.95 to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

- (d) Amphibians. * * *
- (3) Houston toad.

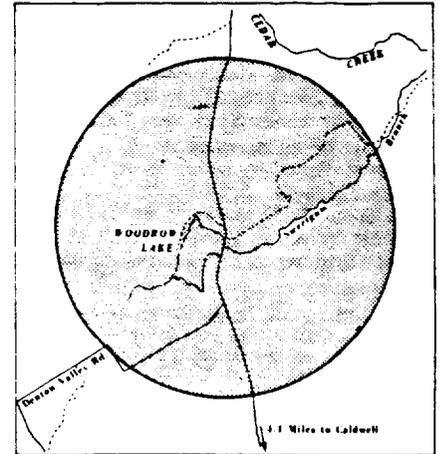
(i) The following areas (exclusive of those existing manmade structures or settlements which are not necessary to the survival or recovery of the species) are Critical Habitat for the Houston toad (*Bufo houstonensis*):

(A) Bastrop County. From the junction of a line corresponding to 30°12'00" N. and Texas state highway 95 east along a line corresponding to 30°12'00" N. to where it intersects a line corresponding to 97°7'30" W. to where it intersects the Colorado River, west and northwest along the north bank of the Colorado River to the City limits of Bastrop, and north thru Bastrop along Texas state highway 95 to where it intersects a line corresponding to 30°12'00" N.



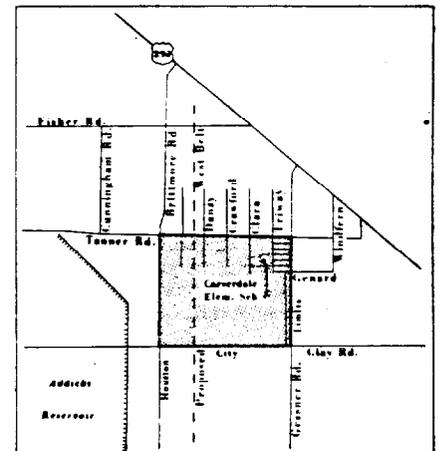
CRITICAL HABITAT FOR THE HOUSTON TOAD IN BASTROP COUNTY

(B) Burleson County—a circular area with a one mile radius, the center being the north entrance to Lake Woodrow from Texas FM 2000.



CRITICAL HABITAT FOR THE HOUSTON TOAD IN BURLESON

(C) Harris County, at the northwest corner of Houston, Texas. From the junction of Tanner and Brittmoore Roads east on Tanner Road to its junction with Gessner Road, south on Gessner Road to its junction with Clay Road, west on Clay Road to its junction with Brittmoore Road, and north on Brittmoore Road to its junction with Tanner Road.



CRITICAL HABITAT FOR THE HOUSTON TOAD IN HARRIS COUNTY

(D) Harris County, six areas in south Houston and Pasadena, Texas.

(1) From the junction of Harwin Drive and Fondren Road east on Harwin Drive to its junction with the Southwest Freeway, southwest on the Southwest Freeway to its junction with Fondren Road, and north on Fondren Road to its junction with Harwin Drive.

(2) From the junction of Hillcroft Avenue and South Main Street northeast on South Main Street to its junction with Holmes Road, northeast on Holmes Road to its junction with Knight Road, south on Knight Road to its junction with Alameda Road, southwest on Alameda Road to its junction with West Orem Drive, west on West Orem Drive to its junction with South Post Oak, south on South Post Oak to its junction with Sims Bayou, west along the north bank of Sims Bayou to where it crosses Hillcroft Avenue, and north on Hillcroft Avenue to its junction with South Main Street.

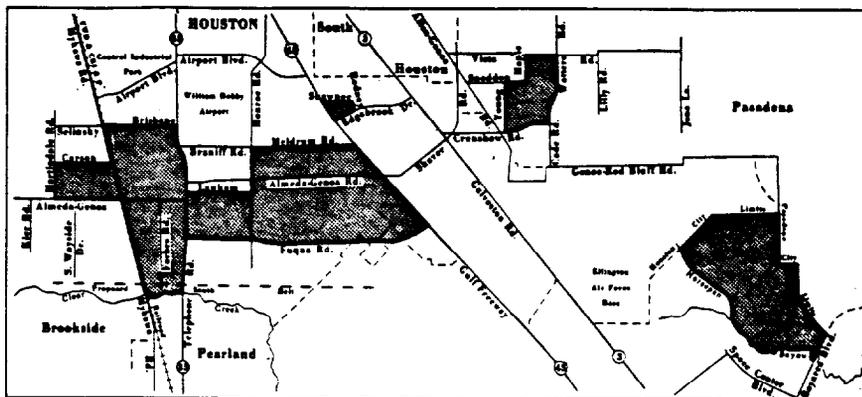
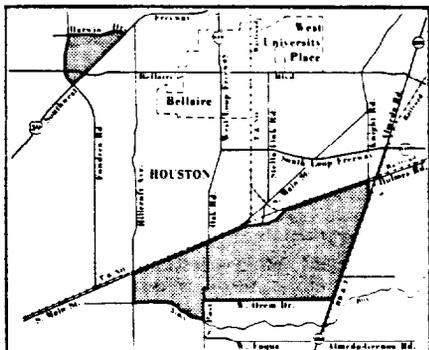
(3) From the junction of the Gulf Freeway and Shawnee Drive east on Shawnee Drive to its junction with Rodney, south on Rodney to its junction with Edgebrook Drive, southwest on Edgebrook Drive to its junction with the Gulf Freeway, and northwest on the Gulf Freeway to its junction with Shawnee Drive.

(4) From the junction of Vista Road and Maple east on Vista Road to its junction with Watters Road, South on Watters Road to its junction with Crenshaw Road, west on Crenshaw Road to its junction with Young, north on Young to its junction with Snodden Avenue, east on Snodden Avenue to its junction with Maple, and north on Maple to its junction with Vista Road.

(5) From the junction of Carson and Martindale south on Martindale to its junction with Almeda-Genoa Road, east on Almeda-Genoa Road to its junction with Mykawa Road, south on Mykawa Road to its junction with Clear Creek, east along the north bank of Clear Creek to where it crosses Telephone Road, north on Telephone Road to its junction with Fuqua, east on Fuqua to its junction with the Gulf Freeway, northwest on the Gulf Freeway to its junction with Meldrum, west on Meldrum to its junction with Monroe Road, south on Monroe Road to its junction with Lanham, west on Lanham to its junction with Telephone Road, north on Telephone Road to its junction with Brisbane, west on Brisbane until it ends, then continuing due west on a line which would intersect Mykawa Road near its junction with Selinsky Road, south on Mykawa Road to its junction with Carson, and west on Carson to its junction with Martindale.

(6) From the point at which Horsepen Bayou crosses Bayarea Boulevard, northeast on Bayarea Boulevard to the point at which it begins to form the southeastern boundary of the city of Pasadena, north and northwest along the western Pasadena city boundary to where it contacts the Houston city boundary, west along the southern boundary of Houston to where it crosses Horsepen Bayou, and southeast along the north bank of Horsepen Bayou to where it crosses Bayarea Boulevard.

(i) Pursuant to Section 7 of the Act, all Federal agencies must take such action as is necessary to insure that actions authorized, funded, or carried out by them do not result in the destruction or modification of the Critical Habitat area.



CRITICAL HABITAT FOR THE HOUSTON TOAD IN HARRIS COUNTY

[FR Doc.77-14849 Filed 5-25-77;8:45 am]

DEPARTMENT OF AGRICULTURE

Food Safety and Quality Service

[7 CFR Part 58]

MILK AND MILK PRODUCTS

Proposed Amendment to United States Sediment Standards

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Quality Service (FSQS) is proposing to amend the U.S. sediment standards for milk and milk products to provide for sediment standards for use with "universal" sample sizes (4 ounces, 2 ounces and 1 ounce) that are being adopted by the industry in their milk quality programs. A "universal sample" is taken from each producer's milk when collected from the farm for use in determining quality and composition. This amendment will expand the use of the universal sample for sediment testing thus eliminating the need of larger special samples for determining sediment in milk. This amendment will provide equivalent standards to those presently used for the one pint mixed sample.

DATE: Comments on or before July 15, 1977.

ADDRESS: Written comments on this proposal may be sent, in duplicate, to the Hearing Clerk, Room 1077, South Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Richard W. Webber, Dairy Standardization Branch, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250 (202-447-7473).

SUPPLEMENTARY INFORMATION:

The United States Department of Agriculture under authority of the Agriculture Marketing Act of 1946 (60 Stat. 1087, as amended; 7 U.S.C. 1621) issues official U.S. standards to measure and improve the quality of milk and milk products.

Historically, sediment testing of milk has been a measure of quality ever since milk has been produced and processed. It has been used by industry in quality improvement work as well as by regulatory agencies as a basis for rejecting milk produced or handled under unsatisfactory conditions.

In May, 1964, official U.S. sediment standards were promulgated. These standards were the result of several meetings of the Department and representatives of the National Association of State Departments of Agriculture; International Association of Milk, Food and Environmental Sanitarians; American Public Health Association; U.S. Food and Drug Administration; U.S. Public Health Service; and the National dairy trade associations representing different segments of the dairy industry.

These meetings also unified a common position that there be only one official method of reading or grading the discs. The Department wishes to reaffirm this position and further state that any other method or way of reading the discs would not be official nor would it be of any usefulness to the dairy industry.

During the past few years the dairy industry has increasingly used the "universal" sample system to determine the quality and composition of producer milk. Under this system a small sample of 1, 2, or 4 ounces is taken of the producer's milk each time it is collected from the farm for use in testing for quality and composition.

The Committee on the chapter "Sediment in Fluid Milk", "Standard Methods for the Examination of Dairy Products" (on which the Department is represented) responded to the need for sediment test procedures utilizing small sizes by designing and conducting a collaborative study to determine the feasibility of using "universal" samples to determine sediment. The results of the study were published in the January, 1977 issue of the "Journal of Food Protection". This study also is the basis for including in the upcoming revision of "Standard Methods for the Examination of Dairy Products" procedures for using 4 ounce, 2 ounce and 1 ounce samples for determining sediment in milk.

The amendment will provide standard references for sediment in each sample size and provide official visual aids to facilitate the use of the amended standard.

The proposed addition to 7 CFR, Part 58, Subpart T is as follows:

§ 58.2732 United States sediment standards for milk and milk products: for 0.10", 0.14", and 0.20" diameter filtering areas (fine sediment).

(a) The standards contained in this section consist of three series of four (4) sediment discs prepared as hereinafter indicated, each of which is numbered 0 to 3 representing one of the following amounts of sediment on a 0.10 inch, 0.14 inch, and 0.20 inch filtering area and is equivalent to the respective amounts of sediment of the 1½ inch diameter filtering area as described in section 58.2728:

- 0.10 inch diameter filtering area
 0—0.0 mg. (0.0 mg. equivalent)
 1—0.0039 mg. (0.50 mg. equivalent)
 2—0.0118 mg. (1.50 mgs. equivalent)
 3—0.0196 mg. (2.50 mgs. equivalent)
- 0.14 inch diameter filtering area
 0—0.0 mg. (0.0 mg. equivalent)
 1—0.0078 mg. (0.50 mg. equivalent)
 2—0.0235 mg. (1.50 mgs. equivalent)
 3—0.0391 mg. (2.50 mgs. equivalent)
- 0.20 inch diameter filtering area
 0—0.0 mg. (0.0 mg. equivalent)
 1—0.0156 mg. (0.50 mg. equivalent)
 2—0.0469 mg. (1.50 mgs. equivalent)
 3—0.0781 mg. (2.50 mgs. equivalent)

(b) Each sediment disc was prepared from "fine" sediment in accordance with the procedure set forth in paragraph 15.07 of "Standard Methods for the Examination of Dairy Products", Eleventh Edition, 1960 and paragraph 17.4, thirteenth edition, 1972. To facilitate the use and availability of these standards, a composite visual aid of the three series of four (4) sediment discs is attached hereto and made a part hereof.¹

All persons who desire to submit written data, views or arguments in connection with the aforesaid proposals shall file the same in duplicate with the Hearing Clerk, Room 1077, South Building, Washington, D.C. 20250 not later than July 15, 1977. All written submissions pursuant to this notice will be made available for the public at the office of the Hearing Clerk during regular business hours. (7 CFR 1.27(b)). Received comments may be seen in the above office between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.

It is proposed that this addition shall become effective September 1, 1977.

Done at Washington, D.C., this 20th day of May 1977.

WILLIAM T. MANLEY,
 Acting Deputy Administrator,
 Commodity Operations.

[FR Doc.77-15018 Filed 5-25-77;8:45 am]

Agricultural Marketing Service

[7 CFR Part 918]

[Docket No. AO-162-A5]

FRESH PEACHES GROWN IN GEORGIA
 Decision on Proposed Further Amendment
 of the Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

¹ Filed as part of the original document.

ACTION: Proposed rule.

SUMMARY: This decision would amend the Federal marketing agreement and order for fresh peaches grown in Georgia. Georgia peach growers will vote in a referendum to determine if they favor the proposed changes in the order.

The proposed amendment would provide for a public member on the administrative committee, dissolve the advisory committee, change the conditions under which a continuance referendum would be held, end compensation for committee members attending meetings, and provide for establishment of a reserve fund. The proposed amendment would also make a number of minor changes with respect to the terminology and language used in the marketing order.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, Department of Agriculture, Washington, D.C. 20250 (202-447-3545).

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Notice of Hearing—Issued November 19, 1976; published November 24, 1976 (41 FR 51818); Notice of Recommended Decision—Issued March 7, 1977; published March 11, 1977 (42 FR 13557); Corrections published April 8, 1977 (42 FR 18621) and May 6, 1977 (42 FR 23160).

PRELIMINARY STATEMENT

A public hearing was held upon proposed further amendment of the marketing agreement, as amended, and Order No. 918, as amended (7 CFR Part 918), (hereinafter referred to collectively as the "order") regulating the handling of fresh peaches grown in Georgia. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Fort Valley, Georgia, on December 9, 1976, pursuant to notice thereof issued on November 19, 1976.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, on March 7, 1977, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions were filed.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision are hereby approved and adopted and are set forth in full herein, subject to correction of inadvertent, grammatical or obvious errors.

Material issues. The material issues of record are as follows:

- (1) Redefine the term "Secretary".
- (2) Update the section pertaining to districts.
- (3) Provide for addition of a public member and alternate on the Industry Committee.

(4) Update the section pertaining to apportionment of committee members among districts.

(5) Delete provisions relating to selection of initial committee members.

(6) Delete the provision for compensating committee members for attending committee meetings.

(7) Delete all provisions relating to the Distributors' Advisory Committee.

(8) Change the provisions on expenses and assessments to conform with the language of the act.

(9) Provide that the committee may establish a reserve fund.

(10) Delete provisions providing for a biennial referendum and provide that a referendum be conducted upon request of growers meeting specified conditions.

(11) Make conforming changes.

Findings and conclusions. The following findings and conclusions on the material issues are based on the record of hearing:

1. The term "Secretary" contained in the order should be amended, as hereinafter set forth, to bring it into conformity with more recent definition of such term, and to recognize change in the titles of positions below that of Secretary. The current definition of "Secretary" in the order contains a reference to the "Under Secretary." The title of that position has been changed to "Deputy Secretary." Hence the definition of such term is incorrect. The term "Secretary" is defined in more recent orders in a manner which avoids the use of titles of position below that of Secretary such as "Secretary means the Secretary of the United States Department of Agriculture, or any officer or employee of the Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated to act in his stead." Such definition avoids the necessity for redefinition each time the title of a delegatee is changed. Hence, the term "Secretary" should be revised as hereinafter set forth.

2. The order should be amended, as hereinafter set forth, to revise the term "District" to conform with the realignment previously effected in the rules and regulations (§ 918.111) under the order. The districts subdivide Georgia into geographical areas for purposes of allocating membership on the committee. The districts hereinafter defined provide an appropriate basis for the allocation of committee representation.

3. The order should be amended, as hereinafter set forth, to provide for the nomination and selection of a public member and alternate to serve on the Industry Committee.

The public interest is to be observed in actions taken under marketing orders, hence, the interests of all groups including growers, handlers, and consumers should be considered. Although meetings of the committee are open to the public, there has been little participation by consumers.

Consumers have petitioned the government for a voice in actions which affect them. Both government agencies and private organizations now actively solicit the participation of consumers in