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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV94-967-3FR]

Suspension of Marketing Order 967; Celery Grown in Florida

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension order.

SUMMARY: This rule suspends Federal Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. The suspension includes budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season. This rule is in response to a recommendation for suspension made by the Florida Celery Committee (committee), the agency responsible for local administration of the order. The committee's recommendation is based on the belief that loss of market share and a reduction in the number of producers and handlers has diminished the need for regulating Florida celery.

EFFECTIVE DATE: January 12, 1995, through December 31, 1997.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This action is issued under Marketing Agreement and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida,

hereinafter referred to as the order. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act. This suspension action is being taken under the provisions of section 8c(16)(A) of the Act.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This suspension order has been reviewed under Executive Order 12778, Civil Justice Reform. The order suspends Marketing Order No. 967 for celery grown in Florida, and rules and regulations implemented thereunder, through December 31, 1997. Administrative budget, assessment, and volume control rules which were previously established for the 1994-95 marketing season, which began August 1, 1994, also are suspended. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly

or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are six handlers of Florida celery who are subject to regulation under the marketing order and five celery producers within the production area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than \$500,000. Small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of these Florida celery handlers and producers may be classified as small entities.

Marketing Order No. 967 has been in effect since 1965. The order provides for the establishment of grade, size, container and inspection requirements, as well as volume regulation. In addition, the order authorizes production research, marketing research, and development projects. It also provides for reporting and recordkeeping requirements on affected handlers. The production and marketing season runs from early November through late June.

The committee held a teleconference on November 22, 1994, and unanimously recommended suspension of the marketing order through December 31, 1997. The committee's recommendation was based on the fact that the number of growers and handlers had declined to the lowest number in 20 years. Only five growers remain. There are six handlers. The suspension will eliminate the continued expense of administering the marketing order and will relieve the industry of assessments. With the economic conditions the industry is facing, this reduction in costs should be beneficial.

The authority to implement grade, size, container and inspection requirements has not been used for years. The authorities that were being utilized were the provisions for research and development and volume regulation. However, the Committee believes that the program is no longer effectively helping market Florida celery.