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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 971

[Docket No. FV95-971-1FR]

Termination of Marketing Order 971; Lettuce Grown in the Lower Rio Grande Valley in South Texas

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination order.

SUMMARY: This action terminates the Federal marketing order for lettuce grown in the Lower Rio Grande Valley in South Texas (order) and the rules and regulations issued thereunder. The Secretary of Agriculture (Secretary) has determined that the order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937 (Act). In recent years, this industry has declined significantly in numbers of producers and handlers. In 1980, there were 42 producers and 11 handlers. In 1992, there were three producers and one handler. All known commercial production and handling of South Texas lettuce has ceased since 1992 and there are no indications that the industry will be revived.

EFFECTIVE DATE: July 14, 1995.

FOR FURTHER INFORMATION CONTACT: Jim Wendland, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-2170, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas, 78501, telephone 210-682-2833.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of section 8c(16)(A) of the Agricultural Marketing Agreement Act of 1937, as

amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

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

This termination order has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This termination order will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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 request 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 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.

In recent years, this industry has declined significantly in numbers of producers and handlers. During the first year the order was in effect, there were 68 producers and 31 handlers. In 1980, there were 42 producers and 11 handlers. In 1992, there were three

producers and one handler. All known commercial production and handling of South Texas lettuce has since ceased. 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, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of the former South Texas lettuce producers and handlers had been classified as small entities.

The South Texas Lettuce Committee (committee) met on May 29, 1991, and unanimously recommended that the order's handling regulation that was currently in effect be suspended for the 1991-92 lettuce marketing period. The recommendation was made to eliminate the continued expense of administering the order. The Department issued an interim final rule, which was published in the October 31, 1991, issue of the **Federal Register** (56 FR 55986). The rule suspended the 1991-92 handling regulation in effect under the order and invited public comment through December 2, 1991. No comments were received.

On July 13, 1992, the Department issued a suspension order, which was published in the July 17, 1992, issue of the **Federal Register** (57 FR 31631). The action suspended all of the provisions of and established pursuant to the order from July 17, 1992, through July 17, 1995, because the Secretary determined that the order no longer tended to effectuate the declared policy of the Act. The action also indicated that, during this period, the Department would monitor lettuce production and the number of active producers and handlers in the production area. At the end of that period an evaluation would be made by the Secretary on whether there was a revival in lettuce production and whether to reactivate the order or begin termination proceedings.

As an interim step in this evaluation, in December 1992, the Department conducted a survey of former industry handlers to determine whether they expected a revival of South Texas lettuce production in the next two years, and if not, whether they wanted a refund of excess reserve funds prior to the end of the evaluation period.

The overwhelming consensus of the respondents was that they did not plan to resume lettuce production and the