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SUPPLEMENTARY INFORMATION: This interim final rule is issued pursuant to requirements 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 rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. This action is not intended to have retroactive effect. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

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 rule 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.

There are approximately 45 handlers of peanuts who have not signed the Agreement and, thus, are subject to the regulations contained herein. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000. It is estimated that most of the non-signatory handlers are small entities. Most of the 47,000 peanut producers who might potentially do business with these handlers are also small entities. Small agricultural producers have been defined as those having annual receipts of less than \$500,000.

In 1994, the reported U.S. production, mostly covered under the Agreement, was approximately 4.25 billion pounds of peanuts, a 25 percent increase from the short 1993 crop. The preliminary 1994 peanut crop value is \$1.23 billion, up 19 percent from the 1993 crop value.

After aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products. Under authority of the Act, Peanut Marketing Agreement No. 146 and the Peanut Administrative Committee (Committee) were established by the Secretary in 1965. The Agreement was signed by a majority

of domestic peanut handlers (signatory handlers).

Public Law 101-220, enacted December 12, 1989, amended section 608b of the Act to require that all handlers who have not signed the Agreement (non-signatory handlers) be subject to quality, handling, and inspection requirements to the same extent and manner as are required under the Agreement. Regulations to implement Pub. L. 101-220 were issued and made effective on December 4, 1990 (55 FR 49983). It is estimated that 5 percent of the domestic peanut crop is marketed by non-signatory handlers and the remainder of the crop is handled by signatory handlers.

The objective of the Agreement and the non-signatory handling regulations (7 CFR part 997) is to ensure that only wholesome peanuts enter edible market channels. Under both regulations, farmers stock peanuts with visible Aspergillus flavus mold (the principle source of aflatoxin) are required to be diverted to non-edible uses. Both regulations also provide that shelled peanuts meeting minimum outgoing quality requirements must be chemically analyzed for aflatoxin contamination.

Under the non-signatory provisions, no peanuts may be sold or otherwise disposed of for human consumption if the peanuts fail to meet the quality requirements of the Agreement. The non-signatory handler regulations have been amended several times thereafter and are published in 7 CFR part 997. All amendments have been made to ensure that the non-signatory handling requirements are the same as modifications made to the signatory handling requirements under the Agreement. Violation of non-signatory regulations may result in a penalty in the form of an assessment by the Secretary equal to 140 percent of the support price for quota peanuts. The support price for quota peanuts is determined under section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c-3) for the crop year during which the violation occurs.

Because aflatoxin appears most frequently in damaged, stressed, underdeveloped, and malformed peanut kernels, peanut lots with fewer poor quality kernels are less likely to be contaminated. Under § 998.200(a) of the Agreement, minimum quality requirements for shelled peanuts are found in the "Other Edible Quality" table of the Agreement. All shelled peanuts destined for edible consumption must meet these minimum requirements. Peanuts meeting this

minimum grade must also be chemically tested for contamination.

The Agreement also has a higher level of quality requirements titled "Indemnifiable Grades." Peanuts meeting the indemnifiable grades do not have to be chemically analyzed for aflatoxin.

The minimum quality requirements specified in the "Other Edible Quality" table of the Agreement are also specified in the non-signatory handler regulations in the table titled "Minimum Grade Requirements—Peanut for Human Consumption" (hereinafter referred to as Table 1) in § 997.30(a).

To be consistent with the Agreement, the Department is establishing in this interim final rule, a second table titled "Superior Quality Exemption—Peanuts for Human Consumption" (hereinafter referred to as Table 2) in the outgoing quality requirements in § 997.30(a). The quality requirements in Table 2 are the same as those established in the Indemnifiable Grades table of the Agreement. Non-signatory handler peanuts meeting the Superior Quality Exemption grades are not required to be chemically tested for aflatoxin. However, buyers often require chemical analysis as an assurance of minimum aflatoxin contamination.

The Superior Quality Exemption tolerances in these regulations are (in percentage of kernels): Unshelled and damaged kernels (1.25); combined unshelled, damaged kernels and kernels with minor defects (2.00); sound split and broken kernels (3.00 for most varieties); sound whole kernels that pass specified screens (3.00 for most varieties); combined sound split and broken kernels (4.00 for all varieties); foreign material (.10 for some varieties and .20 for other varieties), and moisture (9.00).

Amendments to handling requirements: The Committee meets in February or March each year and recommends to the Secretary such rules and regulations as may be necessary to keep the Agreement consistent with current industry practice. The Committee met on March 22 and 23, 1995, and unanimously recommended four relaxations in the Agreement handling requirements which the Department accepted. The changes were published in the July 14, 1995, issue of the Federal Register as an interim final rule (60 FR 36205). This interim final rule establishes the same relaxations, as appropriate, for the non-signatory handling regulations.

The first amendment relaxes Positive Lot Identification (PLI) and quality certification requirements specified in paragraph (g) of § 997.20 *Shelled*