accordance with law because there is no field price for raisins and USDA has not approved the Raisin Administrative Committee's recommendation for free and reserve tonnage. The commenter also suggests that last year's assessment rate could be retained by simply increasing the amount of assessable tonnage by 81,000 tons.

We disagree with the commenter. The issuance of this rule is consistent with the order provisions that authorize assessments. The Committee derived the $8.00 per ton assessment rate only after determining the level of necessary and appropriate administrative expenses, and dividing total administrative expenses by assessable tonnage. If later estimates indicate that the actual assessable tonnage is sufficiently greater than that projected by the Committee on July 24, 2002, the Committee could recommend that the assessment rate be reduced. Upon approval by the Secretary, this lower rate would be applied to all assessable 2002–03 crop year raisins. In either case, the assessment revenue collected from handlers would be used to fund the Committee's approved administrative expenses in accordance with §§ 989.79 and 989.80.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee, the comment received, and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) Handlers are already receiving 2002–03 raisin crop from growers; (2) the crop year began on August 1, 2002, and the assessment rate applies to all raisins received during the 2002–03 and subsequent seasons; (3) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (4) handlers are aware of this action which was recommended by the Committee at a public meeting. Also, a 10-day comment period was provided for in the proposed rule and the comment received was considered by USDA in reaching a decision on this matter.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2002, an assessment rate of $8.00 per ton is established for assessable raisins produced from grapes grown in California.

Dated: January 6, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–455 Filed 1–6–03; 4:34 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 996, 997, 998, and 999

[Docket No. FV02–996–1 FIR]

Establishment of Minimum Quality and Handling Standards for Domestic and Imported Peanuts Marketed in the United States and Termination of the Peanut Marketing Agreement and Associated Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, with changes, an interim final rule establishing a new part 996 which requires all domestic and imported peanuts marketed in the United States to be officially inspected. This action is mandated by the Farm Security and Rural Investment Act of 2002, enacted May 13, 2002. This rule continues handling standards that handlers and importers must follow and edible quality standards that all such peanuts intended for edible use must meet prior to entering human consumption channels. Safeguards to protect against peanut quality concerns are also specified. This rule also finalizes the termination of the Peanut Marketing Agreement No. 146 (Agreement) and the rules and regulations issued under the Agreement, and the termination of companion regulations that applied to imported peanuts and peanuts handled by persons not subject to the Agreement.

DATES: The changes to the interim rule of September 9, 2002 (67 FR 57129), are effective January 10, 2003.

FOR FURTHER INFORMATION CONTACT: Jim Wendland or Kenneth G. Johnson, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, suite 2A38, Unit 155, Riverdale, Maryland 20737; telephone (301) 734–5243, Fax: (301) 734–5275 or Ronald L. Cioffi, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW., Stop 0237, Washington, DC 20250–0237; telephone (202) 720–2491, Fax: (202) 720–8938; or E-mail: *james.wendland@usda.gov, kenneth.johnson@usda.gov* or *ronald.cioffi@usda.gov.*

Small businesses may request information on complying with this rule by contacting Jay Guerber, at the same DC address as above, or E-mail: jay.guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under section 1308 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), 7 U.S.C. 7958, hereinafter referred to as the ''Act.''

This final rule has been determined to be non-significant for the purposes of Executive Order 12866 by the Office of Management and Budget (OMB) and therefore has not been reviewed by OMB.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Prior documents in this proceeding are: an interim final rule published in the **Federal Register**, (67 FR 57129, September 9, 2002) and a correction (67 FR 63503, October 11, 2002).

Termination of the Peanut Marketing Agreement and the Peanut Non-signer and Import Regulations

This rule finalizes termination of Peanut Marketing Agreement No. 146 (7

CFR part 998.1–998.61) and the rules and regulations (7 CFR part 998.100–998.409) in effect under the Agreement on December 31, 2002, so that indemnification payments can be made on 2001 crop peanuts. This rule also finalizes termination of the companion regulations that apply to peanuts handled by persons not subject to the Agreement (7 CFR part 997) and to imported peanuts (7 CFR part 999.600) effective January 13, 2003.

The Peanut Marketing Agreement No. 146 (7 CFR part 998) has been in effect since 1965 under the authority of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (AMAA). The Agreement was administered by the Peanut Administrative Committee (PAC), which was comprised of peanut handlers and producers appointed by USDA. Minimum quality regulations were applied to handlers who signed the Agreement. The Agreement covered peanuts produced in the three regional production areas in the United States. The Agreement also included authority for indemnification payments to signatory handlers on peanuts involved in product and appeals claims due to aflatoxin content. Reporting and recordkeeping requirements also were prescribed. Handlers paid assessments to the PAC to cover program administrative and indemnification costs.

Consistent with the requirements of the AMAA, comparable quality requirements had been in effect for peanuts handled by persons not signatory to the Agreement (''non-signers''). The non-signer program (7 CFR part 997) was mandated in 1989 by Pub. L. 101–220, which amended the AMAA. The peanut import regulation had been authorized by section 108B(f)(2) of the Agricultural Act of 1949 (7 U.S.C. 1445c3), as amended in 1990 and 1993.

The non-signer regulations covered peanuts handled by persons not subject to the Agreement. The inspection and quality requirements were the same as those under the Agreement. Non-signer handlers had to pay the same administrative assessment rate as applied to signatory handlers under the Agreement.

The peanut import regulation required imported peanuts to meet the same quality and handling requirements as required under the Agreement. Imported peanuts were maintained under lot identification procedures and kept separate and apart from domestic peanuts until certified for human consumption use.

Under all three programs, failing peanuts could be reconditioned to meet edible requirements or disposed of in non-edible outlets. Safeguard provisions were included in the three programs to ensure that the Federal or Federal-State Inspection Service (Inspection Service) sampled, inspected, and certified the quality of all peanut lots intended for edible consumption, and that chemical analyses were performed by USDA laboratories or laboratories approved by USDA.

The Farm Security and Rural Investment Act of 2002 terminated the PAC effective July 1, 2002. That action, in turn, required termination of the Agreement and its implementing regulations. The Agreement and its implementing regulations are terminated effective January 1, 2003, by the interim final rule and indemnification payments for 2001 peanuts can be made through December 31, 2002. The companion regulations covering peanuts handled by persons not signatory to the Agreement and imported peanuts were terminated effective September 10, 2002. Assessments collected by the PAC under the Agreement and by USDA under the non-signer regulations ceased with 2001 crop peanuts.

New Peanut Program Authority

Section 1308 of the Act requires that USDA take several actions with regard to peanuts marketed in the United States, effective with 2002 crop peanuts.

Mandatory Inspection: Paragraph (a) requires that all peanuts marketed in the United States (including imported peanuts) be officially inspected and graded by Federal or Federal-State inspectors.

Termination of the Peanut Administrative Committee: Paragraph (b) terminated the PAC effective July 1, 2002. As noted above, because the PAC was charged with daily oversight of the Agreement's regulatory program, termination of the PAC necessitated termination of the Agreement and its implementing regulations. That termination is effective January 1, 2003, and indemnification payments on 2001 crop peanuts can be made through December 31, 2002. The companion non-signer and peanut import regulations were based on regulations under the Agreement. Those regulations were terminated effective September 10, 2002.

Establishment of a Peanut Standards Board: Paragraph (c) provides for the establishment of a Peanut Standards Board (Board), and requires USDA to consult with the Board prior to establishing or changing quality and handling standards for domestically produced and imported peanuts. The Board is not subject to the Federal Advisory Committee Act. A transition period is designated to allow time for USDA to implement nomination procedures and select a Board, as prescribed under the Act.

USDA received nominations and applications from interested persons to serve on the Board. A notice was published in the **Federal Register** on August 2, 2002 (67 FR 50409), and an application form was posted on the AMS website at: *http://www.ams.usda.gov/fv/peanut-farmbill.htlm.* Written nominations were received through September 3, 2002.

The Act also provides, in paragraph (g)(1) of section 1308, that during the transition period from the Agreement to the new program, USDA may designate persons serving as members of the PAC to serve as members of the Board, on an interim basis, for the purpose of carrying out the duties of the Board. USDA established the interim Board and consulted with it on three occasions to establish the quality and handling standards specified in this program.

Maintaining wholesome quality peanuts: Paragraph (d) directs USDA to make identifying and combating the presence of all quality concerns related to peanuts a priority in the development of quality and handling standards for peanuts and in the inspection of domestically produced and imported peanuts. The Act directs USDA to consult with appropriate Federal and State agencies to provide adequate safeguards against all quality concerns related to peanuts. USDA notified State government Inspection Service supervisors of the proposed text on the internet and met with supervisors on July 29 and August 15, 2002. USDA also has contacted officials in the United States Customs Service (Customs Service) and the Food and Drug Administration (FDA) with regard to this new program.

Imported peanuts: Paragraph (e) provides that imported peanuts shall be subject to the same quality and handling standards as apply to domestically produced peanuts.

Program Continuity

To maintain program continuity until the new peanut program could take effect, USDA continued the implementing regulations of the Agreement and the non-signer and import regulations as provided above. Assessments are not being collected and indemnification payments are not being made on 2002 crop peanuts.

The provisions of the new program apply to 2002 and subsequent crop year peanuts, to 2001 crop year peanuts not yet inspected, and to 2001 crop year failing peanuts that have not met disposition standards. This program continues in force and effect until modified, suspended, or terminated.

Pursuant to the Act, USDA consulted with interim Board members in the development of the quality and handling standards established in this rulemaking. USDA coordinated a conference call with interim Board members on July 2, 2002. An initial draft text with reduced USDA oversight was prepared by USDA and distributed to the interim Board members prior to the conference call. The draft was reviewed and initial changes and comments were proposed. At the interim Board's direction, four interim Board officers met with USDA on July 17, 2002. Three of the four officers proposed several additional changes, including a proposal to change the minimum kernel size that could be used in human consumption outlets. A second draft text was prepared reflecting those proposed changes. That draft was again distributed to interim Board members and State supervisors of the Inspection Service and was discussed at a meeting in Atlanta, Georgia, on July 30, 2002. In addition to the 18-member interim Board, approximately 50 industry members and Inspection Service State supervisors attended the meeting. The revised draft text was thoroughly reviewed and several modifications were recommended. Quality standards which would allow purchase of Segregation 2 and 3 quality peanuts for processing for human consumption use and the proposed change in the minimum kernel size were discussed by the interim Board. An implementation schedule also was discussed.

USDA revised the draft text after the Atlanta meeting and posted it on the AMS website. Written comments were received from interim Board members after the meeting and a few comments were received in response to the posting of the draft standards text on the internet. Comments to the draft were accepted through August 12, 2002.

Comments From Interim Board Members and Others to the Draft Rule

Most interim Board members indicated that they did not seek radical or wholesale changes to the Agreement regulations. This was apparent from comments offered during the initial conference call and at the July 30, 2002, interim Board meeting.

Grower member representatives raised three general objections to establishment of new standards for the 2002 peanut crop. They believed that the new program should not have been implemented if the 2002 crop harvest had begun. Because of geographical location, peanuts in south Texas and north Florida, representing a small portion of the total crop, were harvested before USDA could complete this rulemaking process. Because the new quality standards offer potential benefits to growers and handlers, some grower members contended that implementation after the 2002 crop harvest had begun would be unfair to producers and handlers in those early-harvest areas.

Some interim Board members suggested that the greatest benefit from the program—purchase of Segregation 2 and 3 peanuts for possible edible use—would affect only a very small percentage of the early harvest peanuts, and that it may be possible to warehouse some of the early season farmers stock peanuts until the new standards become effective. Other interim Board members did not contest this assessment.

Section 1308 of the Act provides that its provisions take effect with the 2002 peanut crop. An alternative considered was to continue the more restrictive 2001 regulations for the entire 2002 crop and implement the new program for the 2003 crop. However, USDA believed that implementation of the program as soon as possible after harvest begins was better than that alternative. The benefits of the new program to the entire industry are compelling. Most interim Board members believe that there should not be further delay in implementing this action. Only a small number of early harvest producers were affected by the implementation date of this action. Further, storage accommodations can help alleviate any timing concerns. Finally, the Act mandates that the new program be in effect for 2002 crop peanuts.

The same interim Board members concerned about producer fairness also cautioned about making significant changes to incoming quality provisions without knowledge of changes being considered to the Marketing Assistance Program by USDA's Farm Service Agency. Pursuant to the Act, the FSA loan program also was being restructured, and the extent and nature of the loan provisions were not known until after the quality and handling standards in this program became effective.

These members stated that the provision to allow purchase of Segregation 2 and 3 quality peanuts for edible consumption could affect the FSA loan program. They questioned details relating to the loan payments, inspection costs and storage of farmers stock peanuts placed under FSA's loan program.

None of the definitions and other provisions addressed in the interim final rule are applicable to other peanut programs operated by USDA, such as the loan and direct payment, counter-cyclical payments, and quota buyout payment programs provided for in the 2002 Act. Thus, for example, the definitions of ''handle'' and ''handler'' set out in the interim final rule have no application to those other programs and do not govern eligibility for payments, or the kinds of payments that can be made, under those other programs. Rather, the definitions and other provisions implemented in the interim final rule were strictly developed for the limited purposes reflected in the rule and no other. The policy choices and any statutory interpretations involved reflect that limited purpose. FSA was consulted in that respect and assured that the understanding and intent was clearly that these rules would not in any way restrict policy determination made with respect to other programs. Rules for other peanut programs will be issued in due course. Further, references in this preamble to previous peanut programs is meant to refer to those peanut operations which were under the control of the Agricultural Marketing Service (AMS) and not those under the control of FSA or FSA's predecessor agency.

Written comments concerning provisions of the draft rule were received from a few independent handlers stating that not all handlers are able to remove all defective kernels, particularly in lots with concealed freeze damage or kernels with yellow pitting. Also, some alleged that not all peanut shelling operations have the latest technologies or their own dedicated blanching facilities to remove all kernels which contain aflatoxin.

Handlers must make decisions regarding the reconditioning of each failing lot. Those decisions are made on a lot-by-lot basis, based upon the grade factors identified in the lot's latest grade inspection or aflatoxin certificate. Handlers with the latest milling technologies or their own blanching operations may be better able to recondition failing lots than handlers without such equipment. Handlers are not prevented from remilling lots more than one time to remove defective or contaminated kernels. Custom blanching operations with current

technologies are available to all handlers. If reconditioning operations are not successful, other handlers with such equipment could acquire the failing lots or recondition them on a contract basis. Because handlers are not prevented from reconditioning other handlers' failing lots, high quality standards can be established and maintained.

In the 1980's, Agreement regulations prohibited small kernels from use in edible consumption lots because research showed a higher incidence of aflatoxin in small peanuts. Research conducted at that time indicated that aflatoxin occurs more frequently in peanuts which are under stress during the growing season and that many peanut kernels are small because the plants were under such stress.

Some large handlers contended in the interim Board meeting that modern sorting technologies are able to remove the smaller, contaminated kernels and that end-product manufacturers now have markets for smaller whole kernels in snack foods and other edible products. The handlers recommended that the change would allow more domestically produced peanuts to be used in human consumption outlets and, thus, result in a more efficient use of total domestic peanut production. They also claimed that foreign manufacturers of peanut products, such as peanut paste and peanut butter, are not under such minimum size restrictions for the manufactured product they export to the United States. The handlers contended that relaxation in the size and shape of the holes in the screens used to sort out small kernels would allow domestic handlers and manufacturers to better compete with foreign product.

However, interim Board members representing regional grower associations opposed smaller kernel sizes for food quality and wholesomeness reasons. They contended that the risk of increased aflatoxin contamination in the smaller kernels outweighs the benefit of any incremental increase in the use of small peanut kernels, or cost savings accrued. Those opposed to the use of small kernels contended that, in addition to having a higher incidence of aflatoxin, smaller kernels also have a bitter taste.

At the interim Board meeting, a representative from a peanut manufacturers' association said that manufacturers oppose use of smaller size kernels.

The draft text which USDA posted on the internet included a table displaying amended screen sizes that would allow smaller kernels in edible lots. Written comments were received, most from interim Board members, opposing the use of round hole screens and the smaller kernel size. Those comments cited concerns for wholesomeness and a loss of quality if smaller kernels were allowed in edible lots. Some suggested that the screen sizes should not be changed without further research on the increased risk of aflatoxin in small peanut kernels.

After review of the positions presented at the interim Board meeting and the written comments received, USDA determined that the kernel sizes specified under the previous peanut programs should be established in the interim final rule and continue in effect for the 2002 crop year. Therefore, the recommendation to change the minimum size standard was not accepted for 2002 crop peanuts.

An oilmill operator (crusher) commenting on the draft text stated that the mission of the new standards should be to ensure food safety and not to establish restrictions that increase costs and hinder trade between willing sellers and buyers. Therefore, it was the commenter's view that peanuts to be used for non-edible purposes such as crushing should not be subject to the same incoming identification and inspection requirements as edible peanuts. USDA discussed and explained in the Interim Final Rule why incoming inspection is necessary.

Several additional minor changes were made to the draft text, reviewed by the interim Board, and posted on the internet. Those changes were based on further USDA review of the draft text and discussions with Inspection Service supervisors. The changes included re-instituting Agreement requirements in the new program that help USDA monitor the disposition of sheller oilstock residuals, the movement of failing lots through the reconditioning processes, adjustments to positive lot identification procedures, and compliance oversight. A more thorough recordkeeping paragraph also was added to reflect current industry practice and the requirements of this program.

USDA published the interim final rule (67 FR 57129) establishing the new peanut minimum quality and handling standards on September 9, 2002. The rule became effective September 10, 2002. Comments were accepted through October 9, 2002. Twenty five comments were received and are addressed below.

Comments Concerning the Interim Final Rule

The major issue discussed in the comments was the large handlers' recommendation to change screen sizes to reduce the minimum kernel size for peanuts intended for human consumption. Twenty one comments were received on that topic. Five handlers, 10 growers, and 2 other persons supported the recommendation to change the minimum kernel size. Their position was not changed from that outlined in the interim final rule discussion: (1) Domestic and international markets exist for small peanut kernels; (2) allowing the use of smaller kernels in edible lots will enable domestic handlers to compete with foreign peanut butter produced without regard to kernel size; and (3) wholesomeness is ensured because the outgoing standards are not changed in the new Peanut Standards rule.

Two growers and two handlers commented that the screens should not be changed. They claimed that an Agricultural Research Service (ARS) study conducted in the late 1980s shows a higher incidence of aflatoxin contamination in small peanut kernels. They commented that allowing the use of smaller kernels is not worth the increased risk of aflatoxin contamination in those small kernels. They also cited the pungent taste of small kernels as a quality factor which should weigh against use of smaller peanut kernels.

Proponents of smaller kernel use also contend that wholesomeness is not a concern because the electronic sorting equipment identifies and removes all damaged and contaminated kernels, even small, contaminated kernels. Based upon compliance staff information, approximately 31 of 71 handlers have electronic equipment capable of efficiently sorting out contaminated small kernels. One commenter pointed out that a reduction in kernel size for domestic peanuts would be applied to imported peanuts, but that it is not known how many foreign peanut shelling operations utilize electronic equipment.

Manufacturer associations opposed changing screen sizes when the interim final rule was being prepared. A handler commented that brand-name manufacturers are the ones best prepared, but least likely (due to quality concerns) to use the small kernels, while smaller, low-end buyers are most likely to buy the low-priced small kernels but are least likely to have the equipment or expend extra funds for testing to assure the small kernels are free of aflatoxin contamination.

After consideration of comments received on minimum kernel size, USDA has determined the regulations should continue, for the 2002 peanut

crop, the same screen sizes established in the interim rule and used since the late 1980s. This decision is based on USDA's determination that further research on aflatoxin contamination in small kernels should be conducted. Such research has been started by ARS with the cooperation of the Federal-State Inspection Service and Agricultural Marketing Service aflatoxin laboratories in Georgia. Furthermore, this year's marketing season, using the present screen sizes, is well under way and any change in screen sizes at this stage would not cover the majority of the 2002 crop. If, based on USDA's research and studies, it is determined that a change in screen size is warranted, such change will be considered and discussed with the Board.

Four other issues were covered in comments on the interim final rule. A few handlers requested that a sampling and inspection fee of $.0027 per pound, formerly charged to buyers under the Peanut Marketing Agreement, be retained in the new peanut standard program. The interim final rule terminated the Agreement. As discussed in the interim final rule, USDA did not include the fee in that rule because the fee is considered a contractual matter between sellers and buyers. This rule does not reinstate such fee.

Several handlers pointed out that a separate moisture content requirement for Virginia-type seed peanuts was omitted in the interim final rule. This was corrected by memorandum from USDA to the Inspection Service dated October 4, 2002. The separate moisture requirement for Virginia-type seed peanuts is added to the final rule as a proviso to the incoming quality standards in paragraph (b) of § 996.30.

Three commenters in Oklahoma requested an increase in the incoming grade tolerance for foreign material content because their buying point does not have facilities to clean freshly pulled farmers stock peanuts to meet the required foreign material content tolerance. However, the tolerance is the same as required under USDA's previous peanut programs for many years. Moreover, alternative courses of action provided under the previous programs are continued in this program to help growers and buying point operators to meet the foreign material content tolerance. Paragraph (c) of § 996.30 provides that farmers stock peanuts with a foreign material content exceeding 10.49 percent may held separately until milled, moved over a sand-screen before storage, or shipped directly to a handler for prompt shelling.

Finally, one interim Board grower member opposed the relaxation to allow purchase of Segregation 3 peanuts for processing into edible peanuts. The commenter stated that this would increase the chances of kernels with aflatoxin ending up in edible peanut lots. The majority of other commenters supported the relaxation in comments to the draft provisions and interim final rule on the premise that contaminated kernels would be sorted out in the handling process. USDA will continue to allow the purchase of Segregation 3 peanuts for processing for human consumption use because this will enable a more efficient use of peanut production.

Clarification of Interim Final Rule

Clarification to certain provisions of the interim rule were suggested by the Inspection and the Customs Service. These are as follows:

The Inspection Service suggested that paragraph (b)(4) of § 996.40, regarding the sampling and testing of peanuts for outgoing requirements, should read that number 3 check samples may be ground by the Inspection Service or a USDA or USDA-approved laboratory. The interim final rule provided only that the Inspection Service would grind number 3 samples. The phrase ''USDA or USDA-approved laboratory'' is added to § 996.40(b)(4) to allow those entities to grind number 3 check samples if it is more convenient to the efficient testing of the number 3 samples.

Paragraph (g) of § 996.50 provides for the positive lot identification (PLI) of residual peanuts by red tags or other PLI means acceptable to the Inspection Service. The Inspection Service also suggested that it is not the responsibility of Inspection Service personnel to determine the appropriate use of other PLI methods in addition to the use of red tags. However, Inspection Service personnel are able to utilize lot identification methods, other than red tags, if other methods are determined suitable and appropriate to a particular situation or lot of peanuts and are documented on the inspection certificate. The paragraph will continue to read as provided in the interim final rule.

Paragraph (c) of § 996.60, regarding the early arrival and storage of foreign peanuts in the U.S. prior to the opening of an import quota, incorrectly specifies that the Inspection Service may require re-inspection. However, the Inspection Service does not have authority to demand re-inspection. USDA may require such re-inspection. Paragraph (c) of § 996.60 is revised accordingly.

The Customs Service clarified titles and citations of Customs Service regulations specified in the preamble on page 57135 of the interim final rule. The correct citations are specified in the preamble discussion under Import Entry Procedures.

Customs also suggested changes in the preamble discussion and text definition of ''conditionally released'' to clarify that merchandise is not conditionally released for storage or warehousing. Under Customs Service procedures, warehoused merchandise is not conditionally released. Appropriate changes in the preamble discussion under the stamp-and-fax procedure and in the definition of ''conditionally released'' under § 996.2 have been made in this final rule.

The Customs Service requested that the preamble discussion regarding limiting lot size to 200,000 pounds clarify that Customs has no requirement on the amount of merchandise that can be covered under a single entry. The 200,000 pound limit is required by USDA and the inspection service to assure an accurate sampling protocol. The preamble language has been clarified accordingly.

Customs also suggested clarifications in the use of some terms in the preamble to be consistent with Customs Service terminologies. The preamble has been edited to use ''Customs broker'' rather than ''import broker,'' ''port of arrival'' rather than ''port of entry,'' and ''warehousing'' rather than ''storage.'' In the discussion, the process involved in the conditional release of peanuts also has been clarified to conform with Customs Service procedures. The suggested clarifications are made in the preamble discussion in this final rule.

Finally, Customs Service suggested that the definition of importer under § 966.7 should include importers who enter peanuts intended for non-edible use. Importation of non-edible peanuts may not be economically feasible at this time, given the low value of oilstock and feed-quality peanuts. Further, it is not USDA's intention to restrict importation for such purposes. However, importers of all peanuts, regardless of intended use, must comply with the inspection and disposition requirements of this program. The definition of Importer under § 966.7 has been clarified accordingly.

After review of all comments received to the interim final rule, USDA finalizes, and continues in effect with changes, the interim final rule in 7 CFR part 996 as follows.

Peanut Quality and Handling Standards

This rulemaking action finalizes the interim final rule and continues in effect, with changes, part 996, peanut quality and handling standards. These standards are similar to the quality and handling requirements that were in effect under USDA's three previous peanut programs. The changes, described in the following discussion, are based on interim Board recommendations in developing the draft rule and on industry comments to the interim final rule.

No restrictions on use of farmers stock peanuts: Prior to issuance of the interim final rule, only farmers stock peanuts determined to be Segregation 1 quality peanuts could be acquired by handlers for preparation and disposition to human consumption outlets. Segregation 2 and 3 farmers stock peanuts were restricted to non-human consumption use such as seed, oilstock, animal feed, and birdseed.

This peanut standards program differs from the previous peanut programs in that handlers may purchase any segregation quality peanuts for shelling and eventual disposition to human consumption outlets, provided that such peanuts, after handling, meet the outgoing standards of this program. This change was recommended by several of the large peanut handling operations.

Some handlers on the interim Board stated that the prohibition on Segregation 2 and 3 peanuts for edible use is more than 35 years old and that modern technologies enable handlers to shell and mill failing quality peanuts of any segregation category. They stated that this will increase use of domestic peanut production for edible consumption without a loss in edible peanut quality. They also stated that raw, farmers stock peanuts produced in other countries are not subject to incoming quality requirements or restricted as to segregation levels in those countries. Thus, they believe, this change in the peanut program would place domestic handlers on an even playing field with shellers in other countries who might export to the United States peanuts shelled and handled from any quality raw peanuts.

At the interim Board meeting, at least one grower spoke in favor of removal of the restriction on the use of Segregation 2 and 3 farmers stock only in non-edible outlets. Many growers have long contended that a single moldy peanut in a wagonload of farmers stock greatly reduces the value of the entire wagon and, thus, significantly reduces the grower's income. These growers see this as unfair and believe that they should be able to market their peanuts without a restriction on segregation use.

Under this program, Segregation 3 peanuts with visible aflatoxin mold may be purchased by handlers and imported by importers. Safeguard procedures remain in place to assure peanut quality and wholesomeness. The requirement that any farmers stock peanuts shelled and milled for human consumption use must be inspected and certified as meeting outgoing quality standards for grade and aflatoxin content prior to disposition for human consumption use is continued in this final rule.

Storage of Segregation 2 and 3 farmers stock peanuts purchased by the handler is at the handler's discretion. Separate storage and shelling of Segregation 2 and 3 peanuts under the handler's ownership are no longer necessary because any peanuts intended for human consumption use must meet outgoing quality requirements before such use. Shelling of a handler's farmers stock peanuts and use of the handler's shelled peanuts also are at the handler's discretion, provided that any shelled peanuts which the handler disposes of for human consumption use are inspected and certified for outgoing grade quality, as indicated in the table in § 996.31(a), and certified negative as to aflatoxin pursuant to a chemical analysis carried out by a USDA or USDA-approved laboratory. Positive lot identification (PLI) practices covered under § 996.40(a) must also be followed. A handler may dispose of the handler's non-edible quality peanuts (sheller oilstock residuals) to such non-edible peanut uses as crushing into oil, or animal feed, or seed, pursuant to § 996.50. Disposition is at the handler's discretion, provided that non-edible peanuts are moved under positive lot identification procedures and records documenting all such dispositions are maintained by the handler pursuant to § 996.71(b).

To the extent that farmers stock peanuts are imported, the importer has the same discretionary control over the storage, handling, and disposition of such peanuts.

Any storage or subsequent inspection that a handler may carry out for farmers stock peanuts held under USDA's Farm Service Agency's (FSA) loan program are subject to the provisions of the loan program.

Likewise, a handler may receive or acquire farmers stock peanuts or shelled peanuts from another handler and proceed to mill and prepare those peanuts for edible or non-edible use. Any contractual arrangements covering storage, shelling, milling, or disposition of such peanut lots are up to the two handlers. However, any peanuts intended for human consumption must be certified for such use pursuant to § 996.31(a).

This final rule continues the same outgoing quality standards for damage, defects, foreign material and moisture, and maximum allowable aflatoxin content as required under the previous peanut programs. The 15 parts-per-billion (ppb) maximum aflatoxin content is specified in the definition of the term ''negative aflatoxin content'' in § 996.11.

Direct blanching without prior inspection: Under the previous programs, all peanuts were required to be sampled and inspected for grade quality and aflatoxin content as the peanuts completed the shelling operation. The peanuts also were positive lot identified at that time and kept separate and apart from other milled lots. After the peanuts were moved to a blanching operation and blanched, a second sampling and grade inspection was conducted.

Under this program, handlers intending to blanch peanuts pursuant to a buyer's demand, may move peanuts from the handler's shelling facility to the handler's dedicated blanching facility without obtaining outgoing inspection and PLI prior to movement. Under this provision, the handler's blanching operation may not blanch peanuts belonging to other handlers. Movement of such peanuts under these conditions may be without grade inspection and PLI.

This change from the previous peanut programs was recommended by interim Board handler members, who have their own blanching facilities, as a method of reducing handling and inspection costs and improving the efficiency of handling operations for peanuts that the handler intends to blanch. This provision does not apply to peanuts sent to a custom blancher for blanching because those peanuts may be commingled with peanuts from another handler. To help safeguard against inadvertent commingling with another handler's peanuts, peanut lots sent to a custom blancher must be maintained under positive lot identity and be accompanied by a valid grade inspection certificate.

Because the peanuts are sampled and inspected for grade and aflatoxin content after completion of the blanching operation, and PLI is applied at that time, the outgoing quality and identity of the peanuts is not jeopardized.

Reporting farmers stock acquisitions: Because handlers and importers may

shell and mill Segregation 2 and 3 peanuts into edible quality peanuts, it is necessary that USDA account for all farmers stock peanuts acquired by handlers and importers. This final rule continues to require that all farmers stock acquisitions, regardless of segregation category, must be reported by the handler and importer to USDA. Form FV–305, Handlers/Importers Monthly Report is similar to the form previously used under the non-signer peanut program and to the PAC–1 filed by signatory handlers under the Agreement.

Reporting failing lots: Under the previous programs, non-signer handlers and importers were required to file with USDA copies of the outgoing grade and aflatoxin certificates on every peanut lot failing quality or aflatoxin standards. USDA used these certificates to monitor reconditioning and proper disposition of the failing lots. Under the Agreement, the Inspection Service and the aflatoxin laboratories filed with PAC, all grade and aflatoxin certificates on behalf of the signatory handlers.

Reporting procedures similar to those used under the Agreement are used for all handlers and importers in this program. Thus, handlers and importers are not required to file failing grade quality and aflatoxin certificates with USDA. These certificates are filed by the Inspection Service and USDA and USDA-approved aflatoxin laboratories.

The incoming quality, outgoing quality, and handling standards established under the interim final rule and finalized in this rule are the same as, or similar to, the requirements under the previous peanut programs and are intended to maintain the peanut industry's high standards for peanut quality and wholesomeness.

Quality Standards

The following categories of peanuts are subject to inspection requirements and quality and handling standards established under part 996.

Incoming quality—farmers stock peanuts: Under this program, all farmers stock peanuts received by handlers or importers must be sampled and inspected by the Federal or Federal-State Inspection Service (Inspection Service) inspectors to determine the moisture content of the peanuts, the amount of foreign material in the peanuts, and the amount of damage and concealed damage in the peanuts. Moisture and foreign material content not exceeding 10.49 percent meet incoming quality standards—the same as under the previous peanut programs. The peanuts also are inspected for visible *Aspergillis flavus* mold. Seed peanuts produced in the Virginia-Carolina area may be received or acquired containing up to 11.49 percent moisture.

Domestically produced farmers stock peanuts are required to undergo incoming inspection at a buying point prior to shelling or storage. Incoming quality standards are found in paragraph (a) of § 966.30. Incoming inspection is conducted by the Inspection Service to determine the general grade level of raw, farmers stock peanuts presented by the producer at buying points in the various domestic production areas. Peanuts are graded for foreign material, loose-shelled kernels, and moisture content. Segregation 1 farmers stock peanuts may contain 2 percent or less damaged kernels and 1 percent or less concealed damage caused by rancidity, mold, or decay. Segregation 2 peanuts are lesser quality peanuts containing more than 2 percent damaged kernels, or more than 1 percent concealed damage. Segregation 3 peanuts are those which contain visible *Aspergillus flavus.* Segregation 2 and 3 peanuts may be shelled and entered into human consumption outlets provided the peanuts meet outgoing quality and wholesomeness requirements. Imported farmers stock peanuts must be transported directly to a buying point and subjected to incoming inspection to determine Segregation quality.

It is the handler's option to keep farmers stock peanuts segregated by category or to commingle Segregation 1, 2, and 3 peanuts in the handler's warehouse. Domestically produced and imported farmers stock peanuts, however, must be kept separate and apart because imported peanuts are subject to Customs Service redelivery demands until the imported peanuts are certified as meeting outgoing quality requirements specified in § 996.31.

Incoming inspection determines the quality of the farmers stock peanuts based on moisture content, foreign material, damage, loose-shelled kernels, and visible *Aspergillus flavus* mold. Handlers and importers must report to USDA acquisitions of all Segregation 1, 2, and 3 farmers stock peanuts. The Inspection Service issues USDA form FV–95, ''Federal-State Inspection Service Notesheet'' designating the lot as either Segregation 1, 2, or 3 quality. Reporting requirements are discussed in more detail below.

Because USDA cannot determine whether peanuts produced and milled in a foreign country originated from Segregation 1 quality peanuts, importers do not have to provide evidence of Segregation 1 quality for foreign peanuts imported in shelled or cleaned-inshell condition.

Outgoing quality—shelled peanuts: Both domestic and imported shelled peanuts must be sampled, inspected, and certified as meeting the outgoing grade standards specified in the table in § 996.31(a) entitled ''Minimum Quality Standards—Peanuts for Human Consumption.'' The table lists, for different peanut varieties, maximum percentage tolerances for damaged kernels; unshelled kernels and kernels with minor defects; split and broken kernels and sound whole kernels (size factors); foreign material, and moisture content. All categories and tolerances in the table are the same as those in effect under the Agreement at the time the PAC was terminated.

Each shelled peanut lot also must undergo chemical testing by a USDA laboratory or a private laboratory approved by USDA. AMS' Science and Technology Programs assures that all of the laboratories conducting chemical analyses follow the same testing procedures. The maximum allowable presence of aflatoxin is 15 parts per billion (ppb)—the same standard as required under the three previous peanut programs. This tolerance has been in effect for more than 15 years and was in effect at the time the PAC was terminated.

Once certified as meeting outgoing quality standards under § 996.31(a) for shelled peanuts, a lot may not be commingled with any lot that has failed outgoing quality standards or any residual peanuts from reconditioning operations.

Outgoing quality—Cleaned-inshell peanuts: Based on the changes in the edible use of Segregation 2 and 3 peanuts, cleaned-inshell peanuts are no longer restricted to Segregation 1 peanuts. Cleaned-inshell peanuts are farmers stock peanuts that are cleaned, sorted, and prepared for human consumption markets in the U.S. and must be inspected against minimum quality standards not exceeding 2 percent damage, 10 percent moisture, and 0.5 percent foreign material. Cleaned-inshell peanuts also may not exceed more than 1 percent mold unless the lot is also chemically tested and found ''negative'' as to aflatoxin. These standards are found in paragraph (b) of § 996.31.

Handling Standards

Positive lot identification procedures are continued in effect under § 966.40. These procedures are necessary to maintain identification of peanut lots and ensure that lots certified for edible consumption are not commingled with

peanuts of lower quality. This section also establishes consistent procedures for collecting samples from peanut lots that are being inspected. Lot identification and sampling procedures must be applied consistently on all peanut lots undergoing inspection to ensure that all peanut lots are handled uniformly and lots once certified as meeting outgoing standards are maintained and shipped without loss of quality. PLI standards under this final rule are the same as the positive lot identification requirements previously used by the Inspection Service under the Agreement, non-signer, and import peanut programs.

The Inspection Service works with domestic peanut handlers, importers, and storage warehouses to determine the most appropriate PLI or lot identity method to be used on individual peanut lots. Several factors dictate which PLI method should be used: (1) Size of the lot; (2) storage space on the dock or in the warehouse; (3) whether any further movement of the lot is required prior to certification; and (4) other needs of the handler, importer, dock or warehouse operators, or the Customs Service.

For domestic lots and repackaged import lots, PLI includes PLI stickers, tags or seals applied to each individual package or container in such a manner that is acceptable to the Inspection Service and maintains the identity of the lot. For imported lots, PLI tape may be used to wrap bags or boxes on pallets, PLI stickers may be used to cover the shrink-wrap overlap, doors may be sealed to isolate the lot, bags or boxes may be stenciled with a lot number, or any other means that is acceptable to the Inspection Service. The crop year or quota year shown on the positive lot identification tags shall be the year in which the peanuts in the lot were produced domestically or imported into the United States, as appropriate.

PLI practices for both domestic and imported peanuts also include affixing a PLI seal to the door of a shipping container so that it cannot be opened without breaking the seal, and affixing a red tag on sewn bags of failing quality peanuts. Other methods acceptable to the Inspection Service that clearly identify the lot and prevent peanuts from being removed or added to the lot may be used. Any peanuts moved in bulk or bulk bins shall have their lot identity maintained by sealing the conveyance and, if in other containers, by other means acceptable to the Inspection Service. All lots of shelled or cleaned-inshell peanuts shall be handled, stored, and shipped under positive lot identification procedures.

The standard peanut lot size is 40,000 pounds, but may vary at the handler or buyer's preference. Lot size is limited to 200,000 pounds, which is the largest amount of peanuts that can be adequately sampled by the Inspection Service. The limitation was used under the agreement, non-signer, and import peanut programs.

Sampling procedures: This rule continues in effect uniform sampling procedures and sample sizes that the Inspection Service follows when conducting grade inspections, and in collecting peanuts for chemical analysis. The portion of the peanuts collected for chemical analysis are sent to a USDA or USDA-approved laboratory. A portion of the peanuts sampled are held by the Inspection Service as check samples if the lot is determined to fail either grade or aflatoxin analysis. These procedures and sample sizes are the same as those previously used under the Agreement, non-signer, and import peanut programs.

All required sampling and positive lot identification procedures are performed by inspectors of the Federal or Federal-State Inspection Service. Imported peanuts are subject to Customs Service redelivery demands if determined in violation of these quality or handling standards or Customs Service entry requirements referenced below. Handlers and importers must reimburse the Inspection Service and chemical laboratories for sampling and grade inspection and chemical analyses for aflatoxin. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. The fee schedule for USDA laboratories appears at 7 CFR part 91.37.

Import Entry Procedures

The import entry and safeguard procedures established under the interim final rule and finalized in this rule are similar to the procedures applied under the previous peanut import program (7 CFR part 999.600).

U.S. Customs Service requirements: Importers of foreign produced peanuts must follow established Customs Service entry procedures and AMS stamp-and-fax notification and inspection procedures specified below. Customs Service importation procedures and requirements are set out in title 19 of the Code of Federal Regulations. The Customs Service regulations applicable to peanut handling and processing include, but are not be limited to: Bond requirements (19 CFR part 113); transfer of merchandise from port of arrival to another Customs Service office location (19 CFR parts 18 and 112); entry of merchandise for consumption (19 CFR parts 141 and 142; warehouse entry and withdrawal from warehouse for consumption (19 CFR part 144); establishment of bonded warehouses (19 CFR part 19); and within these parts, manipulation in bonded warehouses (19 CFR part 19.11); substitution of actual owner as importer of record (19 CFR part 141.20); failure to recondition merchandise (19 CFR part 113.62(e); and redelivery of merchandise to Customs custody (19 CFR part 113.62(d)) and 19 CFR 141.113). For Customs Service purposes, the term ''consumption'' means ''use in the United States.'' Customs Service entry procedures are not superseded by the import procedures in this program.

It is the importer's responsibility to file import entry documentation and notify the Inspection Service with documentation sufficient to insure inspection of all imported peanut lots. It also is the importer's responsibility to account for disposition of all failing quality peanut lots imported by the importer. A bond secured by surety or U.S. Treasury obligations must be posted by the importer with the Customs Service to guarantee the importer's performance. For more information on these procedures, importers should contact their customs broker, the Customs Service office at the port where peanuts are expected to be entered, or *www.ustreas.gov/education/duties/bureaus/uscustoms.html.*

Safeguard procedures: The safeguard procedures in this part are similar to safeguard procedures already in place for peanuts and other imported fresh agricultural commodities and are consistent with the inspection, identification, and certification requirements applied to domestically produced peanuts.

To obtain information on importing peanuts or making arrangements for necessary inspection and certification, importers may contact the Fresh Products Branch headquarters office in Washington, DC, which will direct them to the closest regional inspection office. The telephone number of headquarters office is (202) 720–5870, and the fax number is (202) 720–0393.

Stamp-and-fax procedure: Under USDA safeguard procedures established in this program, the importer must provide advance notice of inspection needs to the Inspection Service office that will collect samples of the peanuts for inspection. The importer must file

completed entry documentation (usually Customs Service forms CS 3461 and CF 7501, or other equivalent forms) with the Inspection Service office by mail or facsimile transmission. To expedite entry procedures, the filing should occur prior to, or upon arrival of the shipment at the port of entry. The Inspection Service office stamps, signs, and dates the entry document and returns it to the importer or Customs broker by fax or mail. The importer/broker then submits the stamped copy to the Customs Service. This ''stamp-and-fax'' procedure is unchanged from the procedure used under the previous peanut import program and is similar to procedures in place for other imported agricultural commodities under USDA jurisdiction. Failure to file the entry documentation stamped by the Inspection Service may result in a delay in entry of the product.

The importer must file a copy of each stamp-and-fax entry document with USDA and forward a copy, with any lot that is transported in-bond to an inland destination for inspection or warehousing. The importer must provide sufficient information to identify the peanut lot being entered and to ensure that arrangements are made for sampling and inspection. This information must include the Customs Service entry number, container identification, weight of the peanut lot, the city, street address, and building number (if known) receiving the peanut lot, the requested date and time of inspection, and a contact name and telephone number at the destination. If the destination is changed from that listed on the stamp-and-fax document, the importer must immediately advise Inspection Service offices at both the original destination and the new destination of such change. Shipments that are not made available pursuant to entry documentation, or are not properly displayed for sampling purposes, will be reported to the Customs Service as failing to follow required entry procedures.

Boatload shipments exceeding 200,000 pounds must be entered as two or more items on Customs Service entry documents. This limit on lot size is required by USDA and the Inspection Service for sampling purposes and is the same as the limit on lot sizes of domestically produced peanuts. Lot size and identification arrangements must be made cooperatively between the importer and the Inspection Service. This facilitates subsequent lot identification, inspection, and reporting of large imported shipments.

Release for importation: Depending on condition (shelled or inshell) and containerization, foreign-produced peanuts may be either: (1) Held at the port-of-entry until certified by the Inspection Service as meeting the edible quality requirements of this rule; or, (2) conditionally released under Customs Service entry procedures and transported inland for inspection and certification.

Under option (1), foreign-produced shelled or cleaned-inshell peanuts which are held at the port-of-arrival must be presented in containers or bags that allow appropriate sampling of the lot pursuant to Inspection Service requirements. After sampling, such lots are held at the port-of-arrival under Customs Service custody, under positive lot identification requirements of the Inspection Service, pending results of the inspection and chemical analysis. If determined to meet the applicable edible quality requirements of this part, the shelled or cleaned-inshell peanuts may be entered for consumption without further inspection. Reports of such entries do not have to be filed with USDA.

If a lot is held at the port-of-arrival under Customs Service custody and subsequently determined to fail edible quality standards, the lot, at the importer's discretion, may be: Exported; moved inland under bond for reconditioning and, if satisfactorily remilled or blanched, used for edible consumption; or entered for non-edible consumption. Such failing peanuts that remain under Customs Service custody until exported do not have to be reported to USDA because the peanuts were not officially entered into the U.S. Failing lots that are moved in-bond for reconditioning at a remilling or blanching facility inland must be reported to USDA, pursuant to option 2, below. The importer is responsible for ensuring that such lots remain under PLI until reconditioned and determined to meet edible quality requirements. Records of disposition of residual peanuts to non-edible outlets also must be maintained. Such records must be maintained for the time frames discussed under Reporting and Recordkeeping Requirements, below.

Under option (2), foreign produced peanuts moved inland from the port-of-arrival for sampling, inspection, and certification. All imported farmers stock peanuts must be shipped inland for sampling and inspection because specialized sampling facilities at buying points are not available at ports of entry. All in-bond entries must be maintained under PLI. Shelled and cleaned-inshell lots which are subsequently sampled and determined to meet both grade and aflatoxin quality standards may be entered directly into human consumption channels of commerce and not reported to USDA. For monitoring and compliance-assurance purposes, in-bond entries which fail to meet outgoing quality standards are reported to USDA by the Inspection Service and/or the aflatoxin laboratory.

Peanuts transported from the port-of-arrival to another location must be transported by a carrier designated by the Customs Service under 19 U.S.C. 1551. Peanuts entered for warehousing must be stored in a Customs Service bonded warehouse. Such peanuts must remain in Customs Service custody until they are determined to meet the quality and handling standards of this program, at which point they may be withdrawn from warehouse and entered for consumption.

Imported shipments of farmers stock peanuts must be transported inland to a buying point where sampling equipment is available to conduct the incoming sampling operation. Importers are required to maintain all records showing compliance with these standards and all Customs Service requirements.

Importers must not release failing lots for edible consumption until reconditioned and certified as meeting the standards of this program.

Reporting and Recordkeeping

This rule finalizes reporting and recordkeeping standards under § 996.71 that are necessary for USDA to monitor compliance with program quality and handling standards.

Farmers stock acquisitions: Handlers and importers are required to report to USDA the volume of Segregation 1, 2, and 3 farmers stock peanuts acquired from growers or others, or imported. Under previous peanut programs, the information was used, in part, to determine the assessment owed by signatory handlers to the PAC and non-signatory handlers to USDA.

Because all farmers stock peanuts can now be shelled for human consumption use, all three categories of farmers stock must be reported. This information is used for compliance purposes and in the compilation of reports by USDA. The monthly report must include the volume, by variety, of Segregation 1, 2, and 3 farmers stock peanuts acquired in the preceding month. Form FV–305, Handlers/Importers Monthly Report is used by handlers and importers to report their monthly farmers stock acquisitions.

To collect farmers stock information, the interim Board recommended that USDA use the assessment form used under the national Peanut Promotion,

Research, and Information Order (7 CFR part 1216). However, that form has been discontinued and the new ''First Handler's Report'' form used under that research and promotion program does not require disclosure of volume handled, peanut variety, or Segregation of the peanuts acquired. Thus, the form cannot be used for the purposes needed under this program.

The new form, Handlers/Importers Monthly Report, must be sent to USDA. Facsimile or express mail deliveries may be used to ensure timely receipt of certificates and other required documentation. Mail deliveries must be addressed to the DC Marketing Field Office, MOAB, FVP, AMS, USDA, 4700 River Road, Unit 155, Riverdale, MD 20737, Attn: Report of Peanuts. The Fax number is (301) 734–5275.

Falsification of any report submitted to USDA is a violation of Federal law and is punishable by fine or imprisonment, or both.

Documentation of edible and non-edible peanuts: This program continues the procedures previously used under the Agreement to monitor disposition of edible and failing quality peanuts. The Inspection Service sends copies of all grade inspections and the chemical laboratories send copies of all aflatoxin assays to USDA. USDA uses this information to monitor proper disposition of all lots failing either grade or aflatoxin certification.

This represents a relaxation of reporting requirements for importers. Under the previous peanut import program, non-signatory handlers and importers were required to file copies of all failing grade and aflatoxin certificates with AMS. Importers are no longer required to do so, unless specifically requested by USDA or unless the Customs Service demands such documentation of importers. These certificates will be provided by the Inspection Service, USDA laboratories, or USDA-approved laboratories, as the case may be.

Recordkeeping: Handlers and importers are required to maintain all relevant documentation on the disposition of inedible peanuts. If a lot is remilled, blanched, or roasted, the handler or importer must maintain grade certificate(s) and/or aflatoxin certificate(s) showing that the lot has been reconditioned and subsequently meets outgoing, edible quality standards. Grade and aflatoxin inspections conducted on reconditioned lots reference the applicable lot number and previous grade and aflatoxin certificate numbers so that a record of the lot's reconditioning is maintained. Documents showing the disposition of non-edible residuals (pick-outs, etc.) must be maintained by each handler and importer. For example, if the lot is crushed for oil, the oil mill's report of crushing must be maintained. That crushing report must tie the crushed residual peanuts to their original failing lots. If the failing lot is sold for seed or for animal feed, the sales receipt of the transaction must tie the purchased lot to the failing lot through the inspection certificate number. If the failing lot is exported, an export certificate must be filed showing the inspection certificate number of the failing peanut lot. Failing peanut lots sent to a landfill or buried also must be reported with proof of such disposition through the inspection certificate number.

In total, the documentation maintained and distributed to USDA must be sufficient to document and substantiate the proper disposition of all peanut lots failing grade or aflatoxin quality standards, as well as the residuals resulting from those failing lots.

Documentation on lot dispositions must be maintained for at least two years after the crop year of applicability.

Confidentiality

This rule includes a confidentiality provision in § 996.72 to protect handler and importer reports and records required to be submitted to USDA under this program. Confidential information includes data or information constituting a trade secret or disclosing a trade position, financial condition, or business operations of handlers or their customers. Confidentiality provisions do not extend to disclosure of peanut lots determined to be within the provisions in § 996.74(b).

Verification of Reports

Provisions are included in § 996.73 of this part that allows USDA access to any premises where peanuts may be held or processed, and access to any business files containing information regarding the handling, importing, and disposition of peanuts. USDA, at any time during regular business hours, is permitted to inspect any peanuts held and any and all records with respect to the acquisition, holding, or disposition of any peanuts which may be held or which may have been disposed of by that handler or importer.

Compliance Oversight

USDA will take action against any handler or importer in violation of the Act or this part. Such action includes instances when a handler or importer: (1) Acquires farmers stock peanuts without official incoming inspection; (2) fails to obtain outgoing inspection on shelled or cleaned-inshell peanuts and ships such peanuts for human consumption use; (3) ships failing quality peanuts for human consumption use; (4) commingles failing quality peanuts with certified edible quality peanuts and ships the commingled lot for human consumption use; (5) fails to maintain PLI on peanut lots certified for human consumption use; (6) fails to maintain and provide access to records on the reconditioning or disposition of failing quality peanuts; or (7) otherwise violates any provisions of the Act or this program.

USDA will use injunctions to restrain violations and withdraw inspection services from alleged violators.

AMS will notify the FDA of the names of any handlers or importers known to have shipped un-inspected or failing peanuts into human consumption channels and the lot numbers of such peanuts. AMS also will publish on the AMS Web site the names of any handler and importer and the failing lots not reported as reconditioned or disposed to non-edible outlets.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS had prepared this final regulatory flexibility analysis.

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 were approximately 45 peanut handlers and 38 importers that were subject to regulation under the Agreement and non-signer program, and the peanut import regulation. An estimated two-thirds of the handlers and nearly all of the importers may be classified as small entities, based on the documents and reports received by USDA. Small agricultural service firms, which include handlers and importers, are defined by the Small Business Administration (SBA) (13 CFR 121.201), as those having annual receipts of less than $5,000,000.

An approximation of the number of peanut farms that could be considered small agricultural businesses under the SBA definition (less than $750,000 in annual receipts from agricultural sales) can be obtained from the 1997 Agricultural Census, which is the most recent information on the number of farms categorized by size. There were 10,505 peanut farms with sales valued at less than $500,000 in 1997,

representing 86 percent of the total number of peanut farms in the U.S (12,221). Since the Agricultural Census does not use $750,000 in sales as a category, $500,000 in sales is the closest approximation. Assuming that most of the sales from those farms are attributable to peanuts, the percentage of small peanut farms in 1997 (less than $750,000 in sales) was likely a few percentage points higher than 86 percent, and may have shifted a few percentage points since then. Thus, the proportion of small peanut farms is likely to be between 80 and 90 percent.

Two-year average peanut production for the 2000 and 2001 crop years was 3.711 billion pounds, harvested from 1.363 million acres, yielding 2,723 pounds per acre. The average value of production for the two-year period was $948.777 million, as reported on the National Agricultural Statistics Service (NASS) Web site as of August 2002 (*http://www.nass.usda.gov:81/idepd/report.htm*). The average grower price over the two-year period was $0.26 per pound, and the average value per harvested acre was $707. Dividing the two-year average value of production ($948.177 million) by the estimated 12,221 farms yields an estimated revenue per farm of approximately $77,600.

The Agricultural Census presents farm sizes in ranges of acres, and median farm size in 1997 was between 50 and 99 acres. The median is the midpoint ranging from the largest to the smallest. Median farm size in terms of annual sales revenue was between $100,000 and $250,000. Several producers may own a single farm jointly, or, conversely, a producer may own several farms. In the peanut industry, there is, on average, more than one producer per farm. Dividing the two-year average value of production of $948.777 million by an estimated 23,000 commercial producers (2002 Agricultural Statistics, USDA, Table 11–10) results in an estimate of average revenue per producer of approximately $41,251.

Oilmill operators, blanchers, and private chemical laboratories are subject to this rule to the extent that they must comply with reconditioning provisions under § 996.50 and reporting and recordkeeping requirements under § 996.71. There are several such entities in the peanut industry and these requirements are applied uniformly to these entities, whether large or small. In addition, there are currently 10 State inspection programs (FSIS) that will perform inspection under this new program.

Importers of peanuts cover a broad range of business entities, including fresh and processed food handlers and commodity brokers who buy agricultural products on behalf of others. Under the 2001 import quota, approximately 38 business entities imported approximately 126 million pounds of low duty peanuts (sometimes called ''duty free'' quota peanuts). That import quota period ended December 31, 2001, for Mexico, and March 31, 2002, for Argentina, Israel, and other countries. Some large, corporate handlers are also importers of peanuts. AMS is not aware of any peanut producers who imported peanuts during any of the recent quota years. The majority of peanut importers have annual receipts under $5,000,000. Customs brokers may provide import services to importers who are regulated under, and accountable, to this rule. They must assure that entry requirements under § 996.60 and reporting and recordkeeping requirements under § 996.71 are met. These requirements are not applied disproportionately to small Customs brokers.

In view of the foregoing, it can be concluded that the majority of peanut producers, handlers, and importers may be classified as small entities. In addition, it may be assumed that many oilmill operators and blanchers also are small entities.

The quality and handling requirements of the prior peanut quality programs have been in effect for more than 36 years and for imported peanuts for more than six years. Handlers and importers have been the segment of the industry directly regulated under the three peanut programs, and they are in general agreement that the industry has changed greatly since the establishment of the Agreement in 1965.

With only a few exceptions, the quality and handling standards in this peanut program are the same as, or similar to, the requirements previously in effect for domestically produced and imported peanuts. The few exceptions are relaxations in requirements that will benefit handlers and importers. These requirements were subject to regulatory flexibility analysis and were found to not disproportionately affect small entities.

The Act requires that all peanuts marketed in the United States be officially inspected and graded by Federal or Federal-State inspectors. The Act further requires that USDA make identifying and combating the presence of all quality concerns a priority in the development of quality and handling standards and in the inspection of all peanuts in the domestic market. Finally, USDA is to ''* * * provide adequate safeguards against all quality concerns related to peanuts.'' The new peanut program is to be established in consultation with the Board.

This program establishes under part 996 the minimum quality and handling standards that were in effect on May 13, 2002, the date the Act became effective, with relaxations recommended by interim Board members and peanut growers and handlers. Peanuts may not be entered into human consumption channels unless the peanuts are inspected and meet minimum quality standards for size, damage, defects, foreign material and moisture, and not exceed maximum aflatoxin content specified in this rule. Handling standards include the same positive lot identification, sampling and inspection procedures, and prohibitions on commingling certified and non-edible peanuts as were in effect under the three previous programs. Peanuts failing to meet the quality standards of this part, or which are not handled consistent with the handling standards of this part, may not be used for human consumption in the United States.

All USDA required sampling, quality certification, and lot identification is conducted by the Inspection Service. Chemical analysis is conducted by USDA or USDA-approved laboratories. Private laboratories must, among other things, agree to send copies of all aflatoxin analyses conducted by the laboratory to USDA. Foreign produced peanuts stored in bonded warehouses are subject to Customs Service audits. Handlers and importers must reimburse the Inspection Service and USDA laboratories and approved private laboratories, for services provided and costs incurred in the sampling, grade inspection and chemical analysis of peanuts. Incoming inspections range from $4.00 to $6.25 per ton of farmers stock peanuts. Sampling and outgoing grade inspections vary with the Federal and each Federal-State Inspection Service and range from $1.50 to $3.00 a ton. Chemical analysis for aflatoxin averages $40.00 per analysis. These costs to handlers and importers also were incurred under the previous three programs. Thus, there is no net increase in financial burden attributable to these aspects of the new program.

This action imposes on handlers and importers a minor reporting requirement in addition to that imposed under the previous peanut programs (reporting acquisitions of Segregation 2 and 3 farmers stock peanuts). However, importers and non-signatory handlers under the previous programs have a

minor decrease in reporting requirements, because they are no longer required to submit evidence of proper disposition of failing lots. That task is completed by the USDA. Recordkeeping requirements remain the same as required under the three previous peanut programs. The information collection burden under the previous programs totaled 411 reporting hours and 269 recordkeeping hours. These were approved under OMB Nos. 0581–0067 (Agreement), 0581–0163 (non-signers), and 0581–0176 (imports).

Changes affecting regulated entities: Under this program, handlers are no longer subject to any payment of assessments on farmers stock peanuts acquired. Under the Agreement and non-signer program, handlers were assessed $.33 per net farmers stock ton of peanuts acquired. This totaled over $515,000 for the 2000 crop. Assessments collected from signatory handlers provided for the administration of the PAC. Assessments collected from non-signatory handlers helped reimburse USDA for administration of the non-signer program. There are no such assessments under this peanut program.

The previous peanut programs prohibited the use of Segregation 2 and 3 farmers stock peanuts in human consumption channels. This program removes that prohibition and allows such peanuts to be handled and marketed in higher return outlets. Handlers sought this change. As noted above, handlers believe that modern milling technologies enable handlers to remove poor quality and contaminated peanut kernels in the shelling and milling operation. This change from the previous programs' requirements enables more peanuts to be marketed at higher market values for human consumption. Segregation 2 and 3 peanuts, in a normal crop year, average around 1 percent of total production. Thus, for the 2000 and 2001 crop years, an estimated 37 million pounds of additional farmers stock peanuts would have been available for human consumption channels.

Handlers stated that peanuts used in the manufacturing of imported peanut butter and peanut paste are not restricted to Segregation 1 quality peanuts produced in those exporting countries. They contended that use of Segregation 2 and 3 quality peanuts for human consumption, after careful and efficient sorting and milling processes, would level the playing field for the U.S. peanut industry. Outgoing inspection will ensure that poor quality peanuts do not enter domestic edible consumption market channels.

Grower and handler revenues are likely to increase slightly due to the ability to sell Segregation 2 and 3 quality peanuts for human consumption use. This change is not expected to affect small and large entities differently.

If Segregation 2 and 3 peanuts are handled for human consumption, it is reasonable to assume that fewer poor quality peanuts will be available for crushing into oil and other non-edible use such as animal feed. Thus, if normal supply and demand factors take affect, the price of oilstock quality peanuts could rise. A higher percentage of sheller oilstock residuals are likely to be sorted out of Segregation 2 and 3 peanuts during the initial shelling process. Therefore, not all of the peanuts in Segregation 2 and 3 lots will be edible, and the supply of oilstock peanuts will not be cut off completely. The market value of peanuts used for crushing into oil and added to animal feed could increase.

Further, blanching operations could realize an increase in business because blanching, as a last resort in reconditioning a failing lot, will likely be used in the final preparation of shelled peanuts originating from Segregation 2 and 3 peanuts for human consumption.

Finally, handlers with blanching facilities dedicated exclusively to the handler's own peanuts may move a lot of shelled peanuts directly from the shelling operation to their dedicated blanching operations without first obtaining grade inspection and PLI on the lot. Handlers recommended removing the required inspection and PLI prior to blanching at their own, dedicated facilities because the nature of the peanuts change in the blanching process and the peanuts must be inspected immediately after blanching, rendering the first inspection redundant. This would apply only to lots blanched in the handler's own blanching facility that does not blanch peanuts belonging to others, thus eliminating the need to establish PLI prior to blanching. This streamlined handling process will increase efficiency of the handling of peanuts that the handler intends to blanch. Handler costs for such lots are reduced by inspecting the lot once, rather than twice. While this change may tend to be most beneficial to those handlers who are mostly larger operations with their own, dedicated, blanching facilities, it should not have an adverse impact on small handlers.

Reporting and recordkeeping requirements under this peanut program are not expected to adversely impact small businesses, and there is no indication that large and small businesses would be impacted differently. Under this program, handlers and importers must report monthly acquisitions of Segregation 2 and 3 peanuts—a minor increase from the previous programs when only Segregation 1 peanuts were reported. However, the benefits of being able to handle those peanuts for possible edible consumption outweigh the increased reporting requirement. Further, this minor increase in reporting is offset by a decrease in reporting disposition of failing peanut lots for non-signatory handlers and importers. In the case of imports, few, if any, peanuts are imported in farmers stock form because of the extra weight and bulk of the peanut shell.

The other provisions in this peanut program are the same as, or similar to, the requirements in effect for domestically produced and imported peanuts for the last several years. Those requirements were subject to prior regulatory flexibility analysis.

USDA has considered alternatives to this program. The Act provides that a new program be established for the 2002 peanut crop. An alternative would have been to continue the 2001 regulations for the entire 2002 crop. However, based on industry comment, implementation of a new program as soon as possible after harvest began was preferable to continuing the previous programs. USDA has met with the interim Board which is representative of the industry and has included nearly all of its recommendations in this rule. The initial draft prepared by USDA proposed a streamlined program with less USDA oversight of handling standards. However, the interim Board suggested that oversight provisions in the previous programs be included in this program to assure the continued high quality and wholesomeness of peanuts entered into human consumption channels in the U.S. Draft provisions were posted on the USDA website and comments were received. Most comments confirmed the Board's consensus that significant changes in the previous programs were not necessary. One proposal included changing screen sizes to allow smaller kernels to be included in lots intended for human consumption use. Comments advised against such a relaxation in the interim final rule. The majority of comments to the interim final rule on this topic favored the relaxation. However, USDA has decided to review this proposal further and not to make such a change at this time. Thus, this program is substantially the same as

USDA's three previous peanut programs.

Except as previously discussed, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. A small business guide on complying with AMS' fresh fruit, vegetable, and specialty crop programs similar to this peanut program may be viewed at the following web site: *http://www.ams.usda.gov/fv/moab.html.* Any questions about the compliance guide or compliance with this program should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

Information Collection

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements under the Agreement, non-signers and import programs were approved by the Office of Management and Budget (OMB) and assigned OMB Nos. 0581–0067, 0581–0163 and 0581–0176, respectively. However, with the termination of those peanut programs, reporting and recordkeeping burdens on peanut handlers and importers have been terminated. OMB burden hours under the previous programs were 540 hours. The burden under the new program is estimated to be 463 hours. An estimated 367 hours (nearly 80 percent) of the new program burden is for recordkeeping, which handlers and importers would normally do under good business practices.

The Act specifies in § 1604(c)(2)(A) that any new quality and handling standards, established pursuant to the Act, may be implemented without regard to the Paperwork Reduction Act. Nonetheless, USDA has considered the reporting and recordkeeping burden on handlers and importers under the new program.

Handlers and importers are required to complete and submit only one report to USDA—a monthly acquisition of farmers stock peanuts. Acquisitions of Segregation 2 and 3 peanuts must now be reported because those peanuts can be prepared for edible markets. Because Segregation 2 and 3 peanuts normally account for around 1 percent of each peanut crop, this change is expected to represent only a minor increase in the reporting burden under the new program. Non-signatory handlers and importers are no longer required to submit evidence of disposition of failing lots, which reduces their reporting burden. Recordkeeping requirements remain the same as required under the three previous peanut programs.

USDA held several meetings with the interim Board, Inspection Service supervisors, posted a draft rule on the internet for comments, and considered all comments, prior to publishing the interim final rule. Twenty-five comments were received to the interim final rule and all were carefully considered in developing this finalization action. As earlier discussed, changes have been made to the interim final rule. Any additional changes will be considered in consultation with the Peanut Standards Board, as provided for in the Act. USDA also has reviewed this rule with FSA and incorporated the suggested clarifications suggested by the Customs Service. The program established in the interim final rule and finalized in this rulemaking action is substantially the same as the three previous peanut programs. The 2002 crop harvest is now complete.

Section 1601 of the Act also specifies that promulgation of the standards and administration of the new peanut quality program shall be made without regard to: (A) The Paperwork Reduction Act; (B) the Statement of Policy of the Secretary of Agriculture effective July 24, 1971 (36 FR 13804), relating to notices of proposed rulemaking and public participation in rulemaking; and (C) the notice and comment provisions of section 553 of title 5, United States Code.

Section 553 of title 5 provides that, upon good cause, the rule may be made effective less than 30 days after publication in the **Federal Register**. The Farm Bill required that the rule be effective for the 2002 crop year and the interim final rule became effective at the beginning of the 2002 harvest season. A 30 day comment period was provided in the interim final rule and all comments received were considered. This rule finalizes the interim final rule and implements five minor revisions which improve the overall effectiveness of the interim final rule. Based on the above, USDA finds that good cause exists for making this rule effective one day after publication in the **Federal Register**.

List of Subjects in 7 CFR Part 996

Food grades and standards, Imports, Peanuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, and under authority of 7 U.S.C. 601–674 and Public Law 107–171, 7 CFR chapter IX is amended as set forth below.

Accordingly, the interim final rule amending 7 CFR part 996 which was published at 67 FR 57129 on September 9, 2002, is adopted as a final rule with the following changes:

PART 996—MINIMUM QUALITY AND HANDLING STANDARDS FOR DOMESTIC AND IMPORTED PEANUTS MARKETED IN THE UNITED STATES

Authority: Secs. 1308, Pub. L. 107–171, 116 Stat. 178 (U.S.C. 7958).

Definitions

1. Section 996.2 is revised to read as follows:

§ 996.2 Conditional release.

Conditional release means release from U.S. Customs Service custody to the importer for purposes of handling and USDA required sampling, inspection and chemical analysis.

2. Section 996.7 is revised to read as follows:

§ 996.7 Importer.

Importer means a person who engages in the importation of foreign produced peanuts into the United States.

3. Section 996.30 is amended by revising paragraph (b) to read as follows:

§ 996.30 Incoming quality standards.

* * * * *

(b) *Moisture.* No handler or importer shall receive or acquire farmers stock peanuts for subsequent disposition to human consumption outlets containing more than 10.49 percent moisture: *Provided,* That peanuts of a higher moisture content may be received and dried to not more than 10.49 percent moisture prior to storing or milling; and *Provided further,* That Virginia-type peanuts used for seed may be received or acquired containing up to 11.49 percent moisture.

* * * * *

4. Section 996.40 is amended by revising paragraph (b)(4) to read as follows:

§ 996.40 Handling standards.

* * * * *

(b) * * *

(4) Upon call from the laboratory, the handler or importer shall cause Sample 2 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a ''subsampling mill.'' The resultant ground subsample from Sample 2 shall be of a size specified by the Inspection Service and it shall be designated as ''Subsample 2–AB.'' Upon call from the laboratory, the handler shall cause Sample 3 to be ground by the Inspection Service, USDA or USDA-approved laboratory in a ''subsampling mill.'' The resultant ground subsample from Sample 3 shall be of a size

specified by Inspection Service and shall be designated as ''Subsample 3–AB.'' ''Subsamples 2–AB and 3–AB'' shall be analyzed only in a USDA laboratory or a USDA-approved laboratory and each shall be accompanied by a notice of sampling. The results of each assay shall be reported by the laboratory to the handler and to USDA.

* * * * *

5. Section 996.60 is amended by revising paragraph (c) to read as follows:

§ 996.60 Safeguard procedures for imported peanuts.

* * * * *

(c) *Early arrival and storage.* Peanut lots sampled and inspected upon arrival in the United States, but placed in storage for more than one month prior to beginning of the quota year for which the peanuts will be entered, must be reported to USDA at the time of inspection. The importer shall file copies of the Customs Service documentation showing the volume of peanuts placed in storage and location, including any identifying number of the storage warehouse. Such peanuts should be stored in clean, dry warehouses and under cold storage conditions consistent with industry standards. USDA may require re-inspection of the lot at the time the lot is declared for entry with the Customs Service.

* * * * *

Dated: January 3, 2003.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 03–367 Filed 1–8–03; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 211

Regulation K; Docket No. R–1114

International Banking Operations; International Lending Supervision

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations relating to international lending by simplifying the discussion concerning the accounting for fees on international loans to make the regulation consistent with generally accepted accounting principles (GAAP).

EFFECTIVE DATE: February 10, 2003.

FOR FURTHER INFORMATION CONTACT: Michael G. Martinson, Associate Director (202/452–3640), Division of Banking Supervision and Regulation; or Ann Misback, Assistant General Counsel (202/452–3788), or Melinda Milenkovich, Counsel (202/452–3274), Legal Division, Board of Governors of the Federal Reserve System, 20th & Street, NW, Washington, DC 20551. For users of Telecommunications Device for the Deaf (''TDD'') only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The International Lending Supervision Act of 1983 (ILSA), 12 U.S.C. 3901, *et seq.*, requires each federal banking agency to evaluate the foreign country exposure and transfer risk of banking institutions within its jurisdiction for use in examination and supervision of such institutions. To implement ILSA, the federal banking agencies, through the Interagency Country Exposure Review Committee (ICERC), assess and categorize countries on the basis of conditions that may lead to increased transfer risk. Transfer risk may arise due to the possibility that an asset of a banking institution cannot be serviced in the currency of payment because of a lack of, or restraints on, the availability of foreign exchange in the country of the obligor. Section 905(a) of ILSA directs each federal banking agency to require banking institutions within its jurisdiction to establish and maintain a special reserve whenever the agency determines that the quality of an institution's assets has been impaired by a protracted inability of public or private borrowers in a foreign country to make payments on their external indebtedness, or no definite prospects exist for the orderly restoration of debt service. 12 U.S.C. 3904(a). In keeping with the requirements of ILSA, on February 13, 1984, the Board, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (collectively, the federal banking agencies) issued a joint notice of final rulemaking requiring banking institutions to establish special reserves, the allocated transfer risk reserve (ATRR), against the risks presented in certain international assets. (49 FR 5594).

ILSA also requires the federal banking agencies to promulgate regulations for accounting for fees charged by banking institutions in connection with international loans. Section 906(a) of ILSA (12 U.S.C. 3905(a)) deals specifically with the restructuring of international loans to avoid excessive debt service burden on debtor countries. This section requires banking institutions, in connection with the restructuring of an international loan, to amortize any fee exceeding the administrative cost of the restructuring over the effective life of the loan. Section 906(b) of ILSA (12 U.S.C. 3905(b)) deals with all international loans and requires the federal banking agencies to promulgate regulations for accounting for agency, commitment, management and other fees in connection with such loans to assure that the appropriate portion of such fees is accrued in income over the effective life of each such loan.

When ILSA was enacted in 1983 and the regulation on accounting for international loan fees was promulgated on March 29, 1984, Congress and the federal banking agencies considered that the application of the broad fee accounting principles for banks contained in GAAP were insufficient to accomplish adequate uniformity in accounting principles in this area. Accordingly, the Board's regulation provided a separate accounting treatment for each type of fee charged by banking institutions in connection with their international lending. Since that time, the Financial Accounting Standards Board (FASB) has revised the GAAP rules for fee accounting for international loans in a manner that accommodates the specific requirements of section 906 of ILSA. In order to reduce the regulatory burden on banking institutions, and simplify its regulations, the Board proposed to eliminate from Subpart D the requirements as to the particular accounting method to be followed in accounting for fees on international loans and require instead that institutions follow GAAP in accounting for such fees.

No public comments were received concerning the Board's proposal and it is being adopted as proposed. In the event that the FASB changes the GAAP rules on fee accounting for international loans, the Board will reexamine its regulation in light of ILSA to assess the need for a revision to the regulation.

Regulatory Flexibility Act

The Board has reviewed the final rule in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule revises accounting mechanisms for fees associated with international loans and harmonizes their treatment with accounting principles set forth in other regulations. Both the underlying regulation and the final rule primarily affect financial institutions engaged in significant international loan transactions, and the overall impact of the final rule will be to reduce regulatory burden. Accordingly, pursuant to 5 U.S.C.