



This document is scheduled to be published in the Federal Register on 12/05/2016 and available online at <https://federalregister.gov/d/2016-29022>, and on [FDsys.gov](https://fdsys.gov)

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

[Doc. No. AMS-SC-16-0083; SC16-944/980/999-1 IR]

Changes to Reporting and Notification Requirements and Other Clarifying Changes for Imported Fruits, Vegetables, and Specialty Crops

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: This rule updates reporting and notification requirements associated with, and makes clarifying changes to, the fruit, vegetable, and specialty crop import regulations for certain commodities regulated under section 608(e) (hereinafter referred to as "8e") of the Agricultural Marketing Agreement Act of 1937. The updates include shifting the exempt reporting requirement for imported tomatoes destined for noncommercial outlets for experimental purposes from the tomato import regulations to the safeguard procedures section of the vegetable import regulations. In addition, the pistachio import regulations will be updated by removing reference to a paper-based notification of entry process. Other administrative changes will be made to several of the 8e regulations to replace outdated information. These changes to the import regulations support the International Trade Data System

(ITDS), a key White House economic initiative that will streamline and automate the filing of import and export information by the trade.

DATES: Effective [INSERT DATE 3 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]; comments received by [INSERT DATE 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Fax: (202) 720-8938; or internet: <http://www.regulations.gov>. All comments should reference the document number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours or can be viewed at: <http://www.regulations.gov>. All comments submitted in response to this rule will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Shannon Ramirez, Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Specialty Crops Program, AMS, USDA; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Shannon.Ramirez@ams.usda.gov or VincentJ.Fusaro@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Richard Lower, Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act." Section 8e provides that whenever certain commodities are regulated under Federal marketing orders, imports of those commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, and/or maturity requirements as those in effect for the domestically produced commodities. The Act also authorizes The Department of Agriculture (USDA) to perform inspections and other related functions (such as

commodity sampling) on those imported commodities and to certify whether these requirements have been met.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify inspection, certification, and reporting requirements for imported commodities regulated under 8e. Additionally, these parts specify the imported commodities that may be exempt from grade, size, quality, and/or maturity requirements when imported for specific purposes (such as processing, donation to charitable organizations, or livestock feed) as well as the form importers must use to report to USDA and the U.S. Customs and Border Protection (CBP) imports of commodities exempt from 8e regulations.

USDA is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

This rule makes a clarifying change to part 980, the vegetable import regulations, by moving the procedure for filing an exempt commodity form for tomatoes destined for

noncommercial outlets for experimental purposes from § 980.212, the tomato import regulations, to § 980.501, the imported vegetable safeguard procedures section. This change removes reference to a form that does not exist for imports and makes the safeguard regulations consistent for all imported vegetables that are exempt from 8e regulations.

This rule also changes § 999.600, the pistachio import regulations, by removing reference to a paper-based notification of entry process, known in the industry as the "stamp and fax" process. This paper-based process is being replaced by an electronic filing requirement that was developed to comply with the International Trade Data System (ITDS) and is intended to be specified within AMS's Specialty Crops Inspection Division's regulations (form SC-357, Initial Inspection Request for Regulated Imported Commodities). Removing this outdated information streamlines the regulations and provides consistency among the specialty crop import regulations.

This rule also makes other minor administrative changes to §§ 944.401, 999.1, and 999.600 in the fruit and specialty crop import regulations. These changes, which include updating agency and program names and removing or updating other information that is duplicative or out of date, help ensure the import regulations contain accurate information

and align with the ITDS objective of streamlining import processes for the trade.

Imported Tomato Regulation Changes

The import regulations in parts 944, 980, and 999 provide that individual lots of some imported commodities may be exempted from the requirements if those commodities are intended to be used in processing or in some other exempted outlet, such as a charitable organization or as livestock feed. To import exempt commodities into the United States, importers and receivers are required to certify to USDA and CBP as to the intended, authorized exempt use of those commodities. Certification is reported by both importers and receivers using a paper or electronic FV-6 form, Importer's Exempt Commodity Form.

On March 26, 1996, a final rule was published in the **Federal Register** (61 FR 13057) that changed, among other things, the safeguard section of the imported vegetable regulations (§ 980.501) by adding exemptions, subject to certain safeguard provisions, for tomatoes used for processing (canning and pickling), charity, and relief. At that time, the tomato import regulations already contained an exemption for tomatoes destined for noncommercial outlets for experimental purposes as well as an associated exemption reporting form (Certificate for Special Purpose Shipment) to

be completed by the importer and the receiver of the tomatoes (§ 980.212(b)). However, the Certificate of Special Purpose form is not used to report the exempt use of these imported tomatoes; instead, an Importer's Exempt Commodity Form (form FV-6) is completed by importers and receivers, pursuant to the long-standing safeguard procedures that are in place for imported fruits, vegetables, and specialty crops. Therefore, a clarifying change is made to move the exempt-use reporting requirements for tomatoes destined for noncommercial outlets for experimental purposes from the tomato import regulations (§ 980.212) to the safeguard section for imported vegetables (§ 980.501). Incorporating the safeguard procedures for imported tomatoes into the vegetable safeguard procedures reflects current practice and standardizes the vegetable import regulations.

Imported Pistachio Regulation Changes

The regulations for imported pistachios provide for aflatoxin sampling procedures, based on lot size (§ 999.600(d)). These procedures currently require that an importer provide the inspection service office that will draw and prepare samples of the pistachio shipment with a copy of Customs entry documentation and other information related to the shipment; and in turn, the inspection service

signs, stamps, and returns the entry documentation to the importer. This paper-based entry procedure is known in the industry as the "stamp and fax" process because the documentation is "stamped" by the inspection service and returned to the importer via "fax."

In support of ITDS, § 999.600(d) is revised to remove the paper-based "stamp and fax" process. This process is being replaced by an electronic process that importers will use to notify AMS of an initial request for inspection (form SC-357, Initial Inspection Request for Regulated Imported Commodities). The initial request is intended to alert the inspection service and CBP that a lot of pistachios will be arriving that will require inspection at the port of entry or at another location (this is identical to the purpose of the old "stamp and fax" process). AMS's Specialty Crops Inspection Division intends to amend its inspection application regulations (7 CFR part 51) to provide for the electronic filing of the initial request for inspection, thereby meeting CBP's requirement that the regulations of agencies participating in ITDS be revised to provide for electronic filing of shipment entry data.

Administrative Changes

To further ensure that the fruit, vegetable, and specialty crop import regulations provide accurate

information to the import trade, the USDA agency and program names are being updated where needed.

Also, a statement about the requirement that importers provide USDA inspectors with identifying information, including a Customs entry number, for each lot being inspected is simplified in the fruit and specialty crops import regulations in §§ 944.401(e) (olives) and 999.1(c)(1) (dates), respectively. These changes will make the olive and date import regulations consistent with the other fruit, vegetable, and specialty crop import regulations.

Finally, a paragraph titled "importation" in the date import regulations (§ 999.1(e)) is removed because it contains redundant and incomplete information about filing inspection or exemption documents with CBP. These requirements are more accurately explained elsewhere in the date regulations; specifically, § 999.1(b) provides the grade requirements that must be met by dates prior to importation, § 999.1(c) provides the inspection and certification requirements, and § 999.1(d) provides detailed exemption information and also references the safeguard section in the specialty crops import regulations (§ 999.500) that provides details on filing an electronic or paper FV-6 exemption form.

These changes will ensure the import regulations contain accurate and consistent information, which should benefit the import trade.

International Trade Data System (ITDS)

Changing the 8e import regulations to remove the paper-based notification of entry for imported pistachios supports the International Trade Data System (ITDS), a key White House economic initiative that has been under development for over ten years and is mandated for completion by December 31, 2016 (pursuant to Executive Order 13659, Streamlining the Export/Import Process for America's Businesses, signed by President Obama on February 19, 2014 (79 FR 10657)). Under ITDS, the import and export trade will file shipment data through an electronic "single window," instead of completing multiple paper-based forms to report the same information to different government agencies. ITDS will greatly reduce the burden on America's import and export trade while still providing information necessary for the United States to ensure compliance with its laws.

By the end of 2016, the ITDS "single window" will be presented to the import and export trade through CBP's Automated Commercial Environment (ACE) platform. ACE will be the primary system through which the global trade community will file information about imports and exports so

that admissibility into the U.S. may be determined and government agencies may monitor compliance.

Prior to the implementation of the ITDS "single window," CBP is requiring that the 47 partnering government agencies that are participating in the ITDS project, including AMS, ensure that agency regulations provide for the electronic entry of import and/or export information.

AMS's Marketing Order and Agreement Division (MOAD) is currently developing the functionality of a new automated system called the Compliance and Enforcement Management System (CEMS) that will interface with CBP's ACE system in support of ITDS. CEMS will electronically link with the ACE system to create a "pipeline" through which data will be transmitted between MOAD and CBP. CEMS will contain several features, including an exempt imported commodities module and the ability to message CBP about whether a shipment may be released for importation into the United States.

AMS has determined that the changes in this rule meet CBP's requirements for ITDS by streamlining a notification process for imported pistachios; shifting an exempt-tomato reporting requirement to the proper safeguard section of the vegetable regulations, which was revised in 2015 to provide an electronic filing option; and by removing duplicate or revising outdated information. These changes will reduce

the burden on America's import trade without compromising AMS's ability to ensure compliance with its import regulations.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

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

Small agricultural service firms, which includes importers and USDA-accredited laboratories who perform services required by import regulations, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000 (13 CFR 121.201).

Based on 2015 reporting, USDA estimates that there were two importers and two receivers of tomatoes that were exempt from the requirements. Although USDA does not have access to data about the business sizes of these importers and receivers, it is likely that the majority may be classified as large entities.

This action moves the requirements for reporting imported tomatoes destined for noncommercial outlets for experimental purposes, which are exempt from 8e regulations, from the tomato import regulations to the safeguard section of the vegetable import regulations. This change to the regulations does not revise the procedures currently used by importers and receivers of exempt tomatoes; instead, it shifts the outdated requirements currently listed under § 980.212 to the more appropriate safeguard section in § 980.501. Most importers and receivers already file FV-6 forms electronically using AMS's Marketing Order Online System (MOLS), while some paper forms are still submitted. In 2015, AMS estimates it received five electronic FV-6 forms and no paper FV-6 forms for approximately 14,900 pounds of exempt tomatoes.

As part of the full implementation of ITDS, importers and receivers will report exempt shipments through CBP's ACE system and AMS's CEMS system, which, as noted earlier, is currently under development and will eventually replace MOLS. An affirmation of interim rule as final rule was published in the **Federal Register** on June 25, 2015 (80 FR 36465) that provided for the electronic submission of FV-6 forms, a practice that has existed since MOLS was implemented in 2008 but was not reflected in the

regulations. This action imposes no additional burden on importers and receivers of exempt tomatoes.

Regarding alternatives to this action, AMS determined that these changes to the regulations were needed to comply with the ITDS mandate. Moving an outdated, paper-based exempt form-filing requirement from the import tomato regulations to the safeguard section of the vegetable import regulations standardizes the regulations and properly provides for the current requirement of filing a paper or electronic form FV-6, which will benefit importers and receivers who import these exempt tomatoes. In addition, changing the pistachio regulations by removing the paper-based "stamp and fax" requirement streamlines the regulations and reduces the burden on the trade. The other administrative changes made in this action will also provide the import trade with accurate information.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements for the form FV-6 (for commodities exempt from 8e requirements) have been previously approved by OMB and assigned OMB No. 0581-0167 (Specific Commodities Imported into United States Exempt From Import Regulations). No changes in the requirements for the FV-6 form as a result of this action are necessary. The shift of the requirements

for exempt-use filings from the tomato import regulations to the safeguard section for imported vegetables is administrative in nature and does not change the practice that has existed for many years. Should any changes to form FV-6 become necessary in the future, they would be submitted to OMB for approval.

AMS is committed to complying with the E-Government Act, to promote the use of the internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

In addition, USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, importers are already familiar with the long-existing process and requirement to file FV-6 forms for commodities exempt from 8e regulations. Also, the import trade is fully aware of the ITDS initiative, which is designed to streamline and automate the filing of import shipment data.

Finally, interested persons are invited to submit comments on this interim rule, including the regulatory and informational impacts of this action on small businesses.

This rule invites comments on updates to reporting and notification requirements, as well as other clarifying and administrative changes, to the regulations for fruit, vegetable, and specialty crop import regulations. Any comments received will be considered prior to finalization of this rule.

After consideration of all relevant material presented, it is found that this interim rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) this rule clarifies and standardizes exempt commodity form-filing requirements and does not impose any new requirements, which should benefit importers and receivers; (2) this rule eliminates a paper-based notification of entry requirement that is no longer going to be used by importers of pistachios; (3) the import industry is well aware of the ITDS initiative and its goal to automate paper-based processes; (4) CBP is requiring

timely update of import regulations to meet the ITDS electronic data submission requirement; and (5) this rule provides a 60-day comment period, and any comments received will be considered prior to finalization of this rule.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Olives, Oranges.

7 CFR Part 980

Food grades and standards, Imports, Marketing agreements, Onions, Potatoes, Tomatoes.

7 CFR Part 999

Dates, Filberts, Food grades and standards, Imports, Nuts, Pistachios, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 944, 980, and 999 are amended as follows:

1. The authority citation for 7 CFR parts 944, 980, and 999 continues to read as follows:

Authority: 7 U.S.C. 601-674.

PART 944 - FRUITS; IMPORT REGULATIONS

2. Revise § 944.401 paragraph (e) to read as follows:

§944.401 Olive Regulation 1.

* * * * *

(e) Inspection shall be performed by USDA inspectors in accordance with said regulations governing the inspection and certification of processed fruits and vegetables and related products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant therefore. Applicants shall provide USDA inspectors with the entry number and such other identifying information for each lot as the inspector may request.

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PART 980 - VEGETABLES; IMPORT REGULATIONS

3. Amend § 980.212 as follows:

- a. Revise paragraph (b) introductory text; and
- b. Remove and reserve paragraphs (b)(2) and (3).

§980.212 Import regulations; tomatoes.

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(b) Grade, size, quality and maturity requirements. On and after the effective date hereof no person may import fresh tomatoes except pear shaped, cherry, hydroponic and greenhouse tomatoes as defined herein, unless they are inspected and meet the following requirements:

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4. In § 980.501, revise the first sentence of paragraph (a) introductory text and paragraph (a)(4), and add paragraph (a)(5) to read as follows:

980.501 Safeguard procedures for potatoes, onions, and tomatoes exempt from grade, size, quality and maturity requirements.

(a) Each person who imports or receives any of the commodities listed in paragraphs (a)(1) through (5) of this section shall file (electronically or paper) an "Importer's Exempt Commodity Form" (FV-6) with the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA.

* * *

(4) Pearl onions; or

(5) Tomatoes to be used in noncommercial outlets for experimental purposes.

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PART 999 - SPECIALTY CROPS; IMPORT REGULATIONS

5. Amend § 999.1 as follows:

a. Revise paragraph (c)(1);

b. Remove paragraph (e); and

c. Redesignate paragraphs (f) through (i) as (e) through (h), respectively.

§999.1 Regulations governing the importation of dates.

* * * * *

(c) Inspection and certification requirements-(1)
Inspection. Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection

and Certification of Processed Fruits and Vegetables and Related Products (part 52 of this title). The cost of each such inspection and related certification shall be borne by the applicant. Applicants shall provide USDA inspectors with the entry number and such other identifying information for each lot as the inspector may request.

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6. Amend § 999.600 as follows:

a. Remove paragraph (d) (1); and

b. Redesignate paragraphs (d) (2) and (3) as (d) (1) and (2), respectively, and revise the newly designated paragraph (d) (1).

§999.600 Regulation governing the importation of pistachios.

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(d) Sampling. (1) All sampling for aflatoxin testing shall be performed by USDA-authorized inspectors in accordance with USDA rules and regulations governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR part 51). The cost of each such sampling and related certification shall be borne by the importer. Whenever pistachios are offered for sampling and testing, the importer shall furnish any labor and pay any costs incurred for storing, moving, and opening containers

as may be necessary for proper sampling and testing. The importer shall furnish the USDA inspector with the customs entry number and such other identifying information for each lot as he or she may request. Importers may make arrangements for required sampling by contacting the Inspection Service office closest to where the pistachios will be made available for sampling. For questions regarding sampling, a list of Federal or Federal-State Inspection Program offices, or for further assistance, importers may contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW., Room 1536-S, Washington, DC, 20250; Telephone: (202) 720-5870; Fax: (202) 720-0393.

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Dated: November 29, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
[FR Doc. 2016-29022 Filed: 12/2/2016 8:45 am; Publication Date: 12/5/2016]