



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

[Doc. No. AMS-FV-14-0093; FV15-944/980/999-1 FIR]

**Fruit, Vegetable, and Specialty Crops - Import Regulations;
Changes to Reporting Requirements to Add Electronic Form
Filing Option**

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that changed the reporting requirements for commodities exempt from import regulations under section 608(e) (hereinafter referred to as "8e") of the Agricultural Marketing Agreement Act of 1937 by adding an option to electronically file an "Importer's Exempt Commodity Form" (FV-6 form). These changes were needed to bring the import regulations into conformance with the current practice of filing FV-6 forms electronically using the Marketing Order Online System (MOLS), an internet-based application that was implemented in 2008. The interim rule also changed the import regulations for dates and raisins by moving the FV-6 form-

filing procedures for these two commodities to the safeguard procedure regulations for specialty crops and by making other administrative updates. These changes to the import regulations were also required to support the International Trade Data System (ITDS), a key White House economic initiative that will automate the filing of import and export information by the trade. All government agencies that are participating in the ITDS initiative, including AMS, are required by U.S. Customs and Border Protection (hereinafter referred to as "CBP") to make updates to import and export regulations to provide for the electronic entry of shipment data.

DATES: Effective June 29, 2015.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Senior Compliance and Enforcement Specialist, or Vincent Fusaro, Compliance and Enforcement Branch Chief, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Richard.Lower@ams.usda.gov or VincentJ.Fusaro@ams.usda.gov.

Small businesses may request information on complying with this regulation by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237,

Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax:
(202) 720-8938, or E-mail: Jeffrey.Smutny@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 USDA to perform inspections on those imported commodities and certify whether these requirements have been met.

Parts 944, 980, and 999 of title 7 of the Code of Federal Regulations (CFR) specify which imported commodities 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. These parts further specify the form importers must use to report to USDA and CBP imports of commodities exempt from 8e regulations.

In an interim rule published in the Federal Register on March 25, 2015, and effective on March 30, 2015 (80 FR

15673, Doc. No. AMS-FV-14-0093, FV15-944/980/999-1 IR), §§ 944.350, 980.501, and 999.500 of the import regulations were changed to allow for the electronic filing of an "Importer's Exempt Commodity Form" (FV-6 form). Changes were also made to these three import safeguard sections to reflect that the definition of an importer includes a customs broker, when that broker is acting as an importer's representative, and to clarify that both an importer and a receiver must certify an FV-6 form. Additionally, changes were made in these three sections to update AMS contact information. The interim rule also changed §§ 999.1 and 999.300, the date and raisin import regulations, respectively, by moving the procedures for filing FV-6 forms for dates or raisins that are exempt from 8e regulations from those sections to the specialty crops safeguard procedures section (§ 999.500). Finally, the interim rule also made minor administrative updates and corrections to §§ 999.1 and 999.300, such as updating AMS division names and correcting typographical errors.

The Department of Agriculture (USDA) is issuing this final rule in conformance with Executive Orders 12866, 13563, and 13175.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform, and 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.

Final 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 final 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. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Import regulations issued under the Act are based on those established under Federal marketing orders.

Small agricultural service firms, which include importers and receivers of commodities exempt from import regulations, are defined by the Small Business

Administration (SBA) as those having annual receipts of less than \$7,000,000 (13 CFR 121.201). USDA estimates that there are approximately 220 importers and receivers of commodities that are exempt from 8e 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 small entities.

This action continues in effect an interim rule that added to the import regulations the existing option of electronically reporting on shipments of imported fruits, vegetables, and specialty crops that are exempt from 8e regulations. Importers and receivers of exempt commodities have been filing FV-6 forms electronically for several years, since the implementation of MOLIS in 2008. There are an estimated 100 importers and 92 receivers of commodities exempt from 8e requirements who report exempt shipment information electronically using MOLIS. During the two-year period 2013-2014, USDA information shows that 637,818,253 pounds of exempt commodities were electronically reported on 12,832 FV-6 forms. The table below provides a breakdown of this information by commodity:

Commodities Reported Electronically as Exempt from Import Regulations - 2013-2014		
Commodity	Pounds	Electronic FV-6 Forms
Avocados	757,939	33

Dates	1,029,855	37
Grapefruit	511,965	14
Kiwifruit	360	1
Olives	79,858	3
Onions	17,959,787	418
Oranges	46,441,261	1,138
Potatoes	570,971,367	11,172
Tomatoes	65,861	16
TOTAL	637,818,253	12,832

In comparison, USDA received only 365 paper FV-6 forms from importers and receivers for all exempted commodities in 2013-2014. As mentioned earlier, the majority of FV-6 forms are filed electronically.

This change to the import regulations did not revise the procedures currently used by importers and receivers to report shipments that are exempt from 8e regulations. Most importers and receivers were already filing FV-6 forms electronically using MOLS and will continue to do so. In the future, importers and receivers will report these exempt shipments electronically through CBP's ACE system or MOAD's CEMS system, which is currently under development and will eventually replace MOLS. This change imposed no additional cost or burden on importers and receivers of any size.

The current process of electronically filing FV-6 forms streamlines business operations, both for filers of the forms as well as for USDA, which uses the electronic form data to monitor compliance with 8e regulations. Changing

the regulations to include the current standard industry practice of filing FV-6 forms electronically also met CBP's requirement to ensure that the regulations of those government agencies participating in the ITDS project provide for an electronic data collection. The electronic filing option for FV-6 forms has existed for many years, and this change aligned the regulations with that longstanding industry practice.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements for the FV-6 form and imported commodities exempt from 8e regulations were previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0167 (Specific Commodities Imported into the United States Exempt From Import Regulations), effective August 19, 2014. Administrative modifications to the FV-6 form and the shift of exemption authority for dates and raisins from §§ 999.1 and 999.300, respectively, to § 999.500, as necessitated by the interim rulemaking action, have been submitted to OMB for approval. Because importers and receivers of dates and raisins exempt from import regulations will continue to file FV-6 forms, the burden hours associated with OMB No. 0581-0167 remain unchanged at 17,734 hours. Should additional changes become necessary,

they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large importers or receivers of commodities exempt from 8e regulations. As with all import regulations, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

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 final rule.

Further, importers and receivers of commodities exempt from 8e regulations have been using MOLS for more than six years to electronically complete and certify FV-6 forms. The import trade is also fully aware of the ITDS initiative, which is designed to eliminate paper-based manual processes and replace those processes with electronic entry methods such as the one used to electronically file FV-6 forms.

Comments on the interim rule were required to be received on or before May 26, 2015. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to:

<http://www.regulations.gov/#!documentDetail;D=AMS-FV-14-0093-0001>.

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the Federal Register (80 FR 15673, March 25, 2015) will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, 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, Prunes, Raisins, Reporting and recordkeeping requirements, Walnuts.

Accordingly, the interim rule that amended 7 CFR parts 944, 980, and 999 that was published at 80 FR 15673 on March 25, 2015, is adopted as a final rule, without change.

Dated: June 18, 2015

Rex A. Barnes
Associate Administrator
Agricultural Marketing Service

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