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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

[Doc. No. AMS-SC-16-0064; SC16-980-1 PR]

Changes to Reporting Requirements - Vegetable and Specialty Crop Import Regulations; and Other Clarifying Changes - Fruit, Vegetable, and Specialty Crop Import Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under § 608(e) of the Agricultural Marketing Agreement Act of 1937 (section 8e of the Act) by requiring importers of those regulated commodities that have been certified by a designated governmental inspection service other than the Federal or Federal-State Inspection Service as meeting 8e requirements to provide the inspection certificate number and a copy of the certificate to AMS (currently, the Canadian Food Inspection Agency is the only entity so designated). In addition, the pistachio import regulations would be changed to provide for the electronic filing of aflatoxin test results and to eliminate a requirement to report the disposition of reworked or failed lots of pistachios. Other changes would

be made to several of the 8e regulations to remove or replace outdated information. These changes would allow AMS to confirm that section 8e regulatory requirements are being met and would also 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.

DATES: Comments must be received by [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. 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 proposal 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 proposed 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 to certify whether those 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, including the governmental inspection services that are authorized to perform certification.

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed 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 proposal invites comments on revisions to the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under part 980, the vegetable import regulations. This proposal would require importers of those regulated commodities that have been certified by a designated governmental inspection service other than the Federal or Federal-State Inspection Service as meeting the requirements to electronically enter the inspection certificate number and upload an electronic copy of the certificate to AMS. Currently, the Canadian Food Inspection Agency (CFIA) is the only designated non-Federal/Federal-State Inspection Service; therefore, references to the reporting requirement proposed in this rule will hereinafter be described as "CFIA" or "Canadian" inspection certificates and/or inspection information.

In the event an importer was unable to enter the CFIA inspection information electronically, he or she would be required to provide a copy of the certificate to AMS via email, mail, or facsimile.

In addition, this rule proposes changes to two pistachio import reporting requirements in § 999.600 of the specialty crop import regulations: the Imported

Pistachios - Lot Notification report (form FV-249) and the Imported Pistachios - Rework and Failed Lot Disposition report (form FV-251). Both forms have been previously approved for use by the Office of Management and Budget (OMB) under OMB No. 0581-0215, Pistachios Grown in California, Arizona, and New Mexico (although these two forms are included in the OMB information collection for the domestic pistachio marketing order, they are used strictly for reporting related to imported pistachios). The pistachio regulations currently require that USDA or USDA-accredited laboratories complete a form FV-249 for all lots of imported pistachios that fail to meet aflatoxin requirements and submit the form to USDA, CBP, and the importer who requested the aflatoxin test. The regulations also require that importers of pistachios complete and submit to USDA and CBP a form FV-251 for lots that fail to meet aflatoxin requirements when the lots are reworked for further testing or, when not reworked, are exported, sold for non-human consumption, or destroyed.

Under this proposal, the form FV-249 would be submitted electronically, and the regulations would require the reporting of all aflatoxin test results (both "meets"

and "fails") to USDA. AMS has confirmed with CBP that it does not need to receive the FV-249, and importers already receive "meets" and "fails" test results from the laboratories in the form of aflatoxin test certificates; therefore, the laboratories would electronically submit this form only to USDA. Importers would no longer be required to submit the form FV-251 because AMS has determined that information provided on this form is available from other sources. AMS will consider in the future if the FV-251 should be extracted from the information collection. Providing for electronic submission of the FV-249 and removing the requirement that importers submit the FV-251 would support the ITDS initiative by streamlining processes and reducing the burden on America's import trade without compromising AMS's ability to ensure compliance with its import regulations.

This proposed rule would also make other changes to the fruit, vegetable, and specialty crop import regulations in §§ 944.400, 944.401, 980.1, 980.117, 980.212, 999.1, 999.100, 999.300, and 999.400. These changes, which include updating agency and program names and contact information, and removing or updating other information

that is out of date, would help ensure the import regulations contain accurate information and align with the ITDS objective of streamlining import processes for the trade.

Certification by Canadian Food Inspection Agency (CFIA)

In part 980, the following sections prescribe the grade, size, quality, and maturity requirements for imported vegetable commodities that are regulated under section 8e of the Act: § 980.1(b) for potatoes, § 980.117(b) for onions, and § 980.212(b) for tomatoes. Further, the following sections in part 980 specify the governmental inspection services that are designated to certify that grade, size, quality, and maturity requirements of the commodities have been met: § 980.1(f) for potatoes, § 980.117(e) for onions, and § 980.212(e) for tomatoes. Part 980 also specifies that an inspection certificate issued by a designated government inspection service certifying that the potatoes, onions, and tomatoes meet the import requirements is required for all imports (§§ 980.1(g), 980.117(f), and 980.212(f) for potatoes, onions, and tomatoes, respectively).

As noted above, the vegetable import regulations specify those domestic and foreign government inspection services that are designated to certify that imported potatoes, onions, and tomatoes meet grade, size, quality, and maturity requirements. Currently, the only foreign designated governmental inspection service is the Canadian Food Inspection Agency (CFIA).

When importers have potatoes, onions, or tomatoes inspected in Canada prior to import into the United States, an inspection certificate is provided to the importer that certifies that the commodity meets section 8e import requirements. These certificates are comprised of various formats, including a Certificate of Inspection for Fresh Fruits and Vegetables - Shipping Point (also known as E2 and E3 forms) and an Export Document for C-PIQ Establishments - Fresh Fruits and Vegetables (also known as a C-PIQ form). CFIA issues C-PIQ forms to C-PIQ establishments that meet the requirements defined within the CFIA quality assurance program known as "Canadian Partners in Quality" (C-PIQ). The C-PIQ program is applicable to potatoes only (i.e., not onions or tomatoes). All of these certificates contain similar information as

required by the vegetable import regulations, including the date of inspection, the name of the shipper, the commodity inspected, the quantity of the commodity covered by the certificate, and a statement indicating that the commodity meets the import requirements of section 8e of the Act.

Currently, Canadian certificates that certify that potatoes, onions, and tomatoes meet 8e requirements are presented to the United States Customs and Border Protection (CBP) at the United States/Canadian border, prior to entry into the United States. AMS conducts periodic reviews at CFIA offices and potato handling facilities in various Canadian provinces during which inspectors from AMS's Specialty Crops Inspection (SCI) Division, as well as Compliance and Enforcement Specialists from AMS's Marketing Order and Agreement Division (MOAD), observe inspection processes and review records at traditional shipping points and maintained under the C-PIQ program for potatoes exported from Canada to the United States. However, importers are not currently required to submit copies of the Canadian E2, E3, or C-PIQ certificates or otherwise provide proof of Canadian inspection to AMS.

Electronic Entry of Canadian Certificate Information in the Automated Commercial Environment (ACE)

The United States Customs and Border Protection's (CBP) Automated Commercial Environment (ACE) is the primary system through which the global trade community electronically files information about imports and exports so that admissibility into the United States may be determined and government agencies may monitor compliance. ACE is the platform that provides a "single window" through which the global trade community electronically files shipment data, instead of completing or submitting paper-based forms to report the same information to different government agencies. This "single window" concept is a key component of the International Trade Data System (ITDS), a 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). ITDS is designed to greatly reduce the burden on America's import and export trade while still providing information to government agencies that is

necessary for the United States to ensure compliance with its laws.

In conjunction with the full implementation of the ITDS "single window," CBP is requiring that government agencies participating in the ITDS project, including AMS, ensure that regulations provide for the electronic entry of import and/or export information.

AMS has developed and deployed a new automated system called the Compliance and Enforcement Management System (CEMS) that interfaces with CBP's ACE system in support of ITDS. CEMS electronically links with the ACE system to create a "pipeline" through which data is transmitted between MOAD and CBP. CEMS validates information electronically entered by importers in ACE and transmits messages to CBP about whether a shipment may be released for importation into the United States.

AMS has determined that the changes to the vegetable import regulations proposed in this rule meet CBP's requirements for ITDS by providing for the electronic entry in ACE of certification information for potatoes, onions, and tomatoes inspected by CFIA prior to import into the United States. This data would be transmitted from CBP's

ACE to AMS's CEMS, where it would be electronically validated. Upon validation, CEMS would transmit an electronic message back to ACE indicating the shipment is cleared for import into the United States. The proposed changes to the vegetable import regulations would automate and streamline the entry and reporting process for importers while enhancing AMS's ability to ensure compliance with its import regulations.

These proposed changes would also provide an option for importers to provide AMS with a paper copy of a CFIA certificate, via email, mail, or facsimile, in the event an importer is unable to electronically provide the required certificate number and image in ACE.

Imported Pistachio Regulation Reporting Changes

The pistachio import regulations provide that each pistachio sample drawn and prepared for aflatoxin testing by a USDA-authorized inspector be submitted to a USDA or USDA-accredited laboratory for analysis (§ 999.600(e)). Lots that fail to meet the aflatoxin requirements currently must be reported by the laboratories to USDA, CBP, and the importer using an Imported Pistachios - Failed Lot Notification report (form FV-249), pursuant to

§§ 999.600(e), (g) and (h). Importers are also currently required to report the disposition of reworked and failed lots to USDA and CBP using an Imported Pistachios - Rework and Failed Lot Disposition report (form FV-251), pursuant to §§ 999.600(g) and (h). Both the FV-249 and FV-251 are paper forms.

Section 999.600(f) provides that the laboratories provide an aflatoxin inspection certificate to importers that contains, among other things, a statement as to whether the lot meets or fails the import requirements under section 8e of the Act. Thus, all aflatoxin test results are provided to importers by the testing laboratories.

Section 999.600 would be revised by changing the reporting requirements for laboratories (form FV-249) and importers (form FV-251). USDA and USDA-accredited laboratories currently submit a paper form FV-249 to USDA, CBP, and an importer when a lot fails to meet the aflatoxin requirements of the pistachio import regulations. The testing laboratories are now meeting this requirement and are also voluntarily providing information to USDA about lots that meet aflatoxin requirements; in other words, the

laboratories are providing all aflatoxin test results to USDA, not just failed lot notifications. Importers currently complete and submit to USDA and CBP a paper form FV-251 to report the disposition of reworked or failed lots.

To streamline the regulations and eliminate the paper-based reporting process, AMS would convert the existing FV-249 to an electronic format. The electronic format would provide for the laboratories to report all aflatoxin test results to AMS, in line with the current practice. USDA's Science and Technology Program approves and accredits laboratories to perform chemical analyses of pistachios for aflatoxin content. The regulations would require accredited laboratories to submit aflatoxin test results to AMS using the electronic form FV-249, and USDA laboratories would also use the electronic form FV-249 to submit test results to AMS. AMS has determined that CBP does not require this test result information, and the laboratories already provide importers with certificates for all aflatoxin tests; therefore, the laboratories would be required to electronically submit the FV-249 to only USDA and not to CBP or importers.

In addition to the changes to laboratory-reporting requirements, § 999.600 would be revised to remove the requirement that importers report the disposition of reworked or failed lots to USDA and CBP using the Imported Pistachios - Rework and Failed Lot Disposition report (form FV-251). When this form was included in a proposed rule published in the **Federal Register** on October 11, 2011 (76 FR 65411) and implemented in a final rule published in the **Federal Register** on August 27, 2012 (77 FR 51686), AMS believed that the most effective way to ensure compliance with the rework and failed lot disposition requirements of the pistachio import regulations was to require importers to submit the form FV-251 with details about reworked, exported, sold for non-human consumption, or destroyed lots. Since that time, however, AMS has determined that the information provided on this form is available from other sources (for example, destruction information is available from AMS's Specialty Crops Inspection Division) or requires additional follow up with an importer. The requirements for rework and final disposition of failed lots is not changing; only the reporting associated with these requirements is changing. The proposal to remove the

requirement that importers use the paper form FV-251 would support the full implementation of ITDS by streamlining processes and reducing the burden on importers while allowing AMS to continue to ensure compliance with import regulations. AMS will consider proposing removal of the form FV-251 from the information collection during the next renewal of the forms package.

Accordingly, §§ 999.600(e), (g), and (h) would be revised to reflect the changes to reporting noted above.

Other Changes

To further ensure that the fruit, vegetable, and specialty crop import regulations provide accurate information to the import trade and in furtherance of streamlining processes in support of ITDS, the following changes would be made:

Contact information for inspection offices and ports of entry, and references to importers making various advance arrangements for inspection services would be revised or removed from the fruit import regulations at §§ 944.400(a) (designated inspection services and procedures), 944.401(c) (olives); the vegetable import regulations at §§ 980.1(g)(1)(ii) (potatoes), 980.117(f)(3)

(onions); 980.212(f)(3) (tomatoes); and in the specialty crop regulations at §§ 999.1(c)(1) (dates), 999.100(c)(4) (walnuts), 999.300(c)(3) (raisins), and 999.400(c)(2) (filberts). The contact information for individual inspection offices and ports of entry is currently out of date in many of these sections. Under ITDS, importers will electronically file initial requests for inspection (SC-357, Initial Inspection Request for Regulated Import Commodities), which will alert the appropriate inspection office and CBP that a regulated commodity will be arriving that will require inspection at the port of entry or at another location. This electronic process will provide the needed advance notice to the inspection service. AMS's Specialty Crops Inspection (SCI) Division intends to amend its inspection application regulations (7 CFR parts 51 and 52) 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. This proposed rule would add contact information (address, telephone number, and facsimile numbers) for the main SCI office in Washington, D.C., in the event importers

need any information about inspection services. This change would also make the fruit, vegetable, and specialty crop regulations more current and consistent.

Proposed administrative changes would include updating the USDA agency and program names in §§ 944.400(a) (designated inspection services and procedures) and 944.401(a)(5) and (c) (olives) in the fruit import regulations; 980.1(f) (potatoes), 980.117(e) (onions), and 980.212(e) (tomatoes) in the vegetable import regulations; and 999.600(h) (pistachios) in the specialty crop import regulations. Additionally, the word "nectarines" would be removed from § 944.400(a) (designated inspection services and procedures) of the fruit import regulations. Nectarines were regulated in the past but are not currently regulated under the fruit import regulations and should not, therefore, be listed in this section.

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, are defined by the Small Business Administration (SBA) as those having annual receipts of less than \$7,500,000 (13 CFR 121.201).

This proposed action would change the import regulations for potatoes, onions, and tomatoes by requiring importers to enter the certificate number and upload an electronic image of the certificate for those shipments certified by CFIA as meeting the requirements into CBP's ACE system, for transmission to AMS, prior to import into the United States. If an importer is unable to provide this information electronically in ACE, a copy of the certificate would have to accompany the shipment at entry into the United States, and the importer would also have to submit a copy of the certificate to AMS via email, mail, or facsimile.

Based on 2015 information from CBP, USDA estimates there are 25 importers of potatoes from Canada, 13

importers of onions from Canada, and 12 importers of tomatoes from Canada. Although USDA has limited access to data about the business sizes of these importers, it is likely that the majority may be classified as small entities.

According to data from CBP and USDA's Foreign Agricultural Service (FAS), USDA estimates that in 2015, there were 894,945,959 pounds of potatoes, onions, and tomatoes that were subject to 8e regulations that were imported from Canada into the U.S. The table below provides a breakdown of this information by commodity:

| Vegetables Regulated Under Section 8e - Imported from Canada in 2015 | | |
|---|-------------------|------------------|
| Commodity | Number of Entries | Weight in Pounds |
| Potatoes | 20,146 | 728,594,707 |
| Onions | 13,591 | 158,918,237 |
| Tomatoes | 634 | 7,333,015 |

Currently, importers of Canadian potatoes, onions, and tomatoes that are certified by CFIA as meeting 8e requirements are not required to provide AMS with proof of this certification. The proposed change to require electronic entry of a CFIA certificate number and an electronic copy of the certificate through ACE would provide importers with an automated method of submitting

this information to AMS at the same time they are electronically entering information about the shipment as required by other agencies, such as CBP. This electronic filing option should streamline business operations, both for importers of these commodities and for USDA, which would use the electronically submitted data to monitor compliance with 8e regulations. Electronic submission of this certificate information would meet CBP's requirement to ensure that the regulations of those government agencies participating in the ITDS project, such as AMS, provide for the electronic submission of required data. This change would create a minimal burden on importers while providing AMS with the ability to properly monitor imported vegetable shipments for compliance with the import regulations.

In the event an importer would be unable to electronically provide the required certificate number and electronic copy of the certificate in ACE, this proposed change would require that a paper copy of the CFIA certificate accompany the shipment at entry and would also provide for the submission of a copy of the certificate to AMS via email, mail, or facsimile.

This proposed action would also change the pistachio import regulations by modifying the reporting requirements for USDA or USDA-accredited laboratories that perform chemical analyses of aflatoxin levels in imported pistachios. The regulations would require these laboratories to submit all aflatoxin test results to USDA instead of only the results of failed lots; however, the laboratories are already voluntarily providing all test results to AMS. AMS reports that most of the aflatoxin chemical analyses are performed by the USDA Science and Technology Program laboratory in Blakely, Georgia, which is not subject to RFA analysis.

There are currently nine USDA-accredited laboratories that perform chemical analyses on aflatoxin levels for imported pistachios to determine if they meet the requirements. Although USDA does not have access to data about the business sizes of these laboratories, it is likely that the majority may be classified as large entities.

USDA's Foreign Agricultural Service (FAS) estimates that in 2015, 2,743,823 pounds of pistachios (shelled and inshell) were imported into the United States. According

to FAS data, most of those pistachios were imported from Turkey, with additional imported pistachios coming from other countries that include Canada, Italy, the United Kingdom, Greece, Thailand, and Germany. For those pistachios imported in 2015, AMS received 8 failed lot notifications from two of the USDA-accredited laboratories, as required by the regulations, and voluntarily received notifications from four of the USDA-accredited laboratories that 54 lots met 8e aflatoxin level requirements. The total test results received in 2015 (62) divided among the nine USDA-accredited labs would average 7 test results per year for each USDA-accredited laboratory. Because the laboratories currently provide AMS with both "meets" and "fails" aflatoxin test results, there is not expected to be any additional cost as a result of this action.

Regarding alternatives to this action, AMS determined that these changes to the regulations are needed to comply with the ITDS mandate and to provide AMS with information it requires to ensure compliance with its regulations. As noted earlier, CBP is requiring all government agencies who are partnering with CBP on the ITDS initiative (including AMS) to update their regulations to provide for the

electronic entry of import and export shipment data. Providing for the entry of certificate information in ACE for potatoes, onions, and tomatoes imported from Canada that have been certified by CFIA as meeting 8e requirements enhances AMS's ability to monitor compliance while also meeting the objectives of ITDS to streamline processes for the import trade. In addition, changing the pistachio regulations by revising the reporting requirements would streamline the regulations and reduce the burden on the trade. The other changes proposed in this action would also provide the import trade with accurate information.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS considered the information collection requirements necessary for importers to electronically submit CFIA's inspection certificates and certificate numbers, and it was deemed not to place an additional paperwork burden on importers. No changes in the information collection requirements for the vegetable import regulations are necessary as a result of this action. Should any changes become necessary, they would be submitted to OMB for approval.

The information collection requirements for the form FV-249 (for imported pistachios) have been previously approved by OMB and assigned OMB No. 0581-0215 (Pistachios Grown in California, Arizona, and New Mexico). As noted earlier, form FV-249 is contained within the OMB information collection for the domestic pistachio marketing order but is used strictly for imported pistachios.

AMS has submitted a request to OMB to make changes to the information collection currently approved under OMB No. 0581-0215, which was last renewed in 2014, by providing for the electronic submission of form FV-249; renaming the existing form Notification of Aflatoxin Levels to reflect the inclusion of all aflatoxin test results; and relaxing the submission requirements so that laboratories submit the form to only USDA, eliminating the need to also submit the form to CBP and importers. There are currently nine USDA-accredited laboratories that could potentially submit all aflatoxin test results to USDA instead of only failed test results using the FV-249. As a result, the number of respondents is changing from 7 to 9, the estimated number of responses per respondent is increasing from 4 to 7, and the annual burden hours is increasing from 5.6 hours to

12.6 hours. These changes have been included in AMS's request to OMB to revise this information collection.

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.

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

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/rules-regulations/moa/small-businesses>. Any questions about the compliance guide should be sent to Rick Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposal. Thirty days is deemed appropriate because (1) the import industry is fully aware of ITDS and its goal to streamline and automate paper-based processes and has attended annual ITDS

Trade Support Network plenary sessions conducted by the U.S. government over the past few years; (2) USDA and USDA-accredited laboratories are already voluntarily providing all imported pistachio aflatoxin test results to USDA; and (3) CPB is requiring the timely update of import and export regulations to meet the ITDS electronic data submission requirement. All written comments timely received will be considered before a final determination is made on this matter.

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 proposed to be 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 § 944.400 to read as follows:

§944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, kiwifruit, oranges, prune variety plums (fresh prunes), and table grapes regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

(a) The Federal or Federal-State Inspection Service, Specialty Crops Program, Agricultural Marketing Service, United States Department of Agriculture is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, oranges, prune variety plums (fresh prunes), and table grapes that are imported into the United States. Agriculture and Agri-Food Canada is also designated as a governmental inspection service for the purpose of certifying grade, size, quality and maturity of prune variety plums (fresh prunes) only. Inspection by

the Federal or Federal-State Inspection Service or the Agriculture and Agri-Food Canada, with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective services, applicable to the particular shipment of the specified fruit, is required on all imports. Inspection and certification by the Federal or Federal-State Inspection Service will be available upon application in accordance with the Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products (7 CFR part 51). For further information about Federal or Federal-State inspection services, contact Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, STOP 0240, Washington, DC 20250-0237; telephone (202) 720-5870; fax (202) 720-0393.

* * * * *

3. In § 944.401, revise paragraphs (a)(5) and (c) to read as follows:

§944.401 Olive Regulation 1.

(a) * * *

(5) USDA Inspector means an inspector of the Specialty Crops Inspection Division, Specialty Crops

Program, Agricultural Marketing Service, U.S. Department of Agriculture, or any other duly authorized employee of the Department.

* * * * *

(c) The Specialty Crops Inspection Division, Specialty Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade and size of processed olives from imported bulk lots for use in canned ripe olives and the grade and size of imported canned ripe olives. Inspection by said inspection service with appropriate evidence thereof in the form of an official inspection certificate, issued by the service and applicable to the particular lot of olives, is required. With respect to imported bulk olives, inspection and certification shall be completed prior to use as packaged ripe olives. With respect to canned ripe olives, inspection and certification shall be completed prior to importation. Any lot of olives which fails to meet the import requirements and is not being imported for purposes of contribution to a charitable organization or processing into oil may be exported or

disposed of under the supervision of the Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, with the cost of certifying the disposal borne by the importer. Such inspection and certification services will be available, upon application, in accordance with the applicable regulations governing the inspection and certification of Processed Fruits and Vegetables, Processed Products Thereof, and Certain Other Processed Food Products (part 52 of this title). * For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, Room 1536-S, STOP 0240, Washington, DC 20250-0237; telephone (202) 720-5870; fax (202) 720-0393.

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PART 980 - VEGETABLES; IMPORT REGULATIONS

4. In § 980.1, revise paragraphs (f), (g)(1)(i), and (g)(1)(ii) to read as follows:

§980.1 Import regulations; Irish potatoes.

* * * * *

(f) Designation of governmental inspection services.

The Federal or Federal-State Inspection Service, Specialty

Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of Irish potatoes that are imported, or to be imported, into the United States under the provisions of §608e of the Act.

(g) * * *

(1) (i) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables, and other products (part 51 of this title), and each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, Room 1536-S, STOP 0240, Washington, DC 20250-0237; telephone (202) 720-5870; fax (202) 720-0393.

(ii) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.1(f), an importer shall electronically transmit to USDA, prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email, mail, or fax to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; email ComplianceInfo@ams.usda.gov; or fax (202) 720-5698.

* * * * *

5. In § 980.117, revise paragraphs (e), (f)(2), and (f)(3) to read as follows:

§ 980.117 Import regulations; onions.

* * * * *

(e) Designation of governmental inspection service.

The Federal or Federal-State Inspection Service, Specialty

Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of onions that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

(f) * * *

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, Room 1536-S, STOP 0240, Washington, DC 20250-0237; telephone (202) 720-5870; fax (202) 720-0393.

(3) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.117(e), an importer shall electronically transmit to USDA, prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email, mail, or fax to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; email ComplianceInfo@ams.usda.gov; or fax (202) 720-5698.

* * * * *

6. In § 980.212, revise paragraphs (e), (f)(2), and (f)(3) to read as follows:

§ 980.212 Import regulations; tomatoes.

* * * * *

(e) Designation of governmental inspection service.

The Federal or Federal-State Inspection Service, Specialty

Crops Program, Agricultural Marketing Service, U.S. Department of Agriculture, and the Food of Plant Origin Division, Plant Products Directorate, Canadian Food Inspection Agency, are hereby designated as governmental inspection services for the purpose of certifying the grade, size, quality, and maturity of tomatoes that are imported, or to be imported, into the United States under the provisions of section 8e of the Act.

(f) * * *

(2) Inspection and certification by the Federal or Federal-State Inspection Service will be available and performed in accordance with the rules and regulations governing certification of fresh fruits, vegetables and other products (7 CFR part 51). Each lot shall be made available and accessible for inspection as provided therein. Cost of inspection and certification shall be borne by the applicant. For questions about inspection services or for further assistance, contact: Specialty Crops Inspection Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue, SW, Room 1536-S, STOP 0240, Washington, DC 20250-0237; telephone (202) 720-5870; fax (202) 720-0393.

(3) If certification is provided by a designated governmental inspection service other than the Federal or Federal-State Inspection Service, in accordance with 980.212(e), an importer shall electronically transmit to USDA, prior to entry, the certificate number and an electronic image of the certificate using the U.S. Customs and Border Protection's Automated Commercial Environment system. If this information is not provided electronically prior to entry, a paper copy of the certificate must accompany the shipment at the time of entry, and a copy of the certificate must be submitted by email, mail, or fax to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (202) 720-2491; email ComplianceInfo@ams.usda.gov; or fax (202) 720-5698.

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PART 999 - SPECIALTY CROPS; IMPORT REGULATIONS

§999.100 [Amended].

7. In § 999.100, amend paragraph (c)(4) by removing the last sentence.

8. In § 999.300, revise paragraph (c)(3) to read as follows:

§999.300 Regulation governing importation of raisins.

* * * * *

(c) * * *

(3) Whenever raisins are offered for inspection, the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as the inspector may request.

* * * * *

9. In § 999.400, revise paragraph (c) (2) to read as follows:

§999.400 Regulation governing the importation of filberts.

* * * * *

(c) * * *

(2) Inspection. Inspection shall be performed by USDA inspectors in accordance with the Regulations Governing the Inspection and Certification of Fresh Fruits and Vegetables and Related Products (7 CFR part 51). The cost of each such inspection and related certification shall be borne by the applicant. Whenever filberts are offered for inspection,

the applicant shall furnish any labor and pay any costs incurred in moving and opening containers as may be necessary for proper sampling and inspection. The applicant shall also furnish the USDA inspector the entry number and such other identifying information for each lot as the inspector may request. Inspection must be completed prior to the importation of filberts.

* * * * *

10. Amend § 999.600 by:

- a. Revising paragraphs (e) (2) and (e) (3);
- b. Revising paragraph (g);
- c. Redesignating paragraph (h) (1) as (h) and revising newly redesignated paragraph (h); and
- d. Removing paragraph (h) (2).

The revisions to read as follows:

§999.600 Regulation governing the importation of pistachios.

* * * * *

(e) * * *

(2) Lots that require a single test sample will be certified as "negative" on the aflatoxin inspection certificate if the sample has an aflatoxin level at or

below 15 ppb. If the aflatoxin level is above 15 ppb, the lot fails. The laboratory shall electronically submit the results to USDA (Form FV-249) as described in paragraph (h) of this section.

(3) Lots that require two test samples will be certified as "negative" on the aflatoxin inspection certificate if Test Sample #1 has an aflatoxin level at or below 10 ppb. If the aflatoxin level of Test Sample #1 is above 20 ppb, the lot fails and the laboratory shall electronically submit the results to USDA (Form FV-249) as described in paragraph (h) of this section. If the aflatoxin level of Test Sample #1 is above 10 ppb and at or below 20 ppb, the laboratory may, at the importer's discretion, analyze Test Sample #2 and average the test results of Test Samples #1 and #2. Alternately, the importer may elect to withdraw the lot from testing, rework the lot, and resubmit it for testing after reworking. If the importer directs the laboratory to proceed with the analysis of Test Sample #2, a lot will be certified as negative to aflatoxin and the laboratory shall issue an aflatoxin inspection certificate if the averaged result of Test Samples #1 and #2 is at or below 15 ppb. If the

average aflatoxin level of Test Samples #1 and #2 is above 15 ppb, the lot fails. The laboratory shall electronically submit the results to USDA (Form FV-249) as described in paragraph (h) of this section.

* * * * *

(g) Failed lots/rework procedure. Any lot or portion thereof that fails to meet the import requirements prior to or after reconditioning may be exported, sold for non-human consumption, or disposed of under the supervision the Federal or Federal-State Inspection Programs, with the costs of certifying the disposal of such lot paid by the importer.

(1) Inshell rework procedure for aflatoxin. If inshell rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section, except that the

lot sample size and the test sample size shall be doubled. If, after the lot has been reworked and tested, it fails the aflatoxin test for a second time, the lot may be shelled and the kernels reworked, sampled, and tested in the manner specified for an original lot of kernels, or the failed lot may be exported, used for non-human consumption, or otherwise disposed of.

(2) Kernel rework procedure for aflatoxin. If pistachio kernel rework is selected as a remedy to meet the aflatoxin requirements of this part, then 100 percent of the product within that lot shall be removed from the bulk and/or retail packaging containers and reworked to remove the portion of the lot that caused the failure. Reworking shall consist of mechanical, electronic, or manual procedures normally used in the handling of pistachios. The reworked lot shall be sampled and tested for aflatoxin as specified in paragraphs (d) and (e) of this section.

(3) Failed lot reporting. If a lot fails to meet the aflatoxin requirements of this part, the testing laboratory shall electronically submit the results to USDA (Form FV-249) as described in paragraph (h) of this section within

10 working days of the test failure. This information must be submitted each time a lot fails aflatoxin testing.

(h) Reports and Recordkeeping. Form FV-249, Notification of Aflatoxin Levels. Each USDA or USDA-accredited laboratory shall notify the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA of all aflatoxin test results for all lots by electronically submitting this form within 10 days of testing.

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Dated: November 29, 2016.

Elanor Starmer
Administrator
Agricultural Marketing Service
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