



DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 944, 980, and 999

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

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

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of the interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule that updated reporting and notification requirements associated with, and made 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 interim rule shifted 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 were updated by removing reference to a paper-based notification of entry process. Other administrative changes were 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regulations to replace outdated information.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 system that streamlines and automates 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].

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 obtain 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 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. These parts also list 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). Additionally, these parts specify 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, 13771, 13563, and 13175.

This rule continues in effect an interim rule clarifying change to part 980, the vegetable import regulations. The interim rule moved the procedure for

filing an exempt commodity form for tomatoes destined for noncommercial outlets for experimental purposes from § 980.212 of the tomato import regulations to § 980.501 of the vegetable safeguard procedures import regulations. This change removed reference to a form that does not exist for imports and made the safeguard regulations consistent for all imported vegetables that are exempt from 8e regulations.

This rule also continues in effect the change to § 999.600 of the pistachio import regulations that removed the reference to a paper-based notification of entry process, known in the industry as the "stamp and fax" process. This paper-based process was replaced by an electronic filing requirement that was developed to comply with the International Trade Data System (ITDS) and was specified within the USDA's Agricultural Marketing Service (AMS) Specialty Crops Inspection Division's regulations in an interim rule published in the **Federal Register** on December 21, 2016 (81 FR 93571). Removing this outdated information streamlines the regulations and provides consistency among the specialty crop import regulations.

This rule also continues in effect other minor administrative changes to §§ 944.401, 999.1, and 999.600 of the fruit and specialty crop import regulations. These

changes, which include updating agency and program names and removing or updating other information that was duplicative or out of date, helps ensure the import regulations contain accurate information and align with the ITDS objective of streamlining import processes for the trade.

AMS has determined that these changes to the fruit, vegetable, and specialty crop import regulations meet CBP's requirements for ITDS by shifting an exempt-tomato reporting requirement to the proper safeguard procedures section of the vegetable import regulations. These regulations were revised in 2015 to provide an electronic filing option; streamline an entry notification process for imported pistachios; and remove or revise duplicative or outdated information. These changes help reduce the burden on America's import trade without compromising AMS' ability to ensure compliance with its import regulations.

In an interim rule published in the **Federal Register** on December 5, 2016, and effective on December 8, 2016 (81 FR 87409, Doc. No. AMS-SC-164-0083, SC16-944/980/999-1 IR), clarifying changes were made to part 980 by moving the exempt-use reporting requirements for tomatoes destined for noncommercial outlets for experimental purposes from

§ 980.212 (tomato import regulations) to § 980.501 (safeguard procedures section for imported vegetables).

In addition, § 999.600(d) of the pistachio import regulations was revised to remove the paper-based "stamp and fax" process, which has been replaced by an electronic process that importers now use to notify AMS of an initial request for inspection.

Finally, several administrative changes were made to various sections in parts 944 and 999 (the fruit and specialty crop import regulations, respectively). First, the USDA agency and program names were updated, where needed. Second, §§ 944.401(e) (olives) and 999.1(c)(1) (dates) were changed by simplifying the language regarding the requirement that importers provide USDA inspectors with identifying information about each lot being inspected. Finally, § 999.1(e) (dates) was updated by removing a paragraph titled "importation," because it contained redundant and incomplete information about filing inspection or exemption documents with CBP.

Executive Orders 12866 and 13771, and Final Regulatory Flexibility Analysis

This rule does not meet the definition of a significant regulatory action contained in section 3(f) of Executive Order 12866, and is not subject to review by the

Office of Management and Budget (OMB). Additionally, because this rule does not meet the definition of a significant regulatory action it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Interim Guidance Implementing Section 2 of the Executive Order of January 30, 2017 titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017). Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612), 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.

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).

Based on 2015 reporting, USDA estimates that there were two importers and two receivers of tomatoes that were 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 large entities.

This rule continues in effect the action that moved 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 did not revise the procedures currently used by importers and receivers of exempt tomatoes; instead, it shifted the outdated requirements contained in § 980.212 to the more appropriate safeguard procedures section in § 980.501. Most importers and receivers already file FV-6 forms electronically with AMS, while some paper forms are still submitted to AMS. 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 report exempt shipments through CBP's Automated Commercial Environment (ACE) system and AMS' Compliance and Enforcement Management System (CEMS). CEMS was developed by AMS to replace AMS' Marketing Order Online System (MOLS), an online system that was used from its implementation in 2008 until it was replaced by CEMS in

2016. 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 ITDS requirements. Moving an outdated, paper-based exempt form-filing requirement from the import tomato regulations to the safeguard section of the vegetable import regulations standardized the regulations and properly provided for the current requirement of filing a paper or electronic form FV-6, which benefits importers and receivers who import these exempt tomatoes. In addition, changing the pistachio regulations by removing the paper-based "stamp and fax" requirement streamlined the regulations and reduced the burden on the trade. The other administrative changes made in the interim rule provided 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 was administrative in nature and did 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.

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. 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.

Comments on the interim rule were required to be received on or before February 3, 2017. 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:

<https://www.regulations.gov/document?D=AMS-SC-16-0083-0001>

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** (81 FR 87409, December 5, 2016) 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, 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.

PARTS 944, 980, AND 999 [AMENDED]

Accordingly, the interim rule that amended 7 CFR parts 944, 980, and 999 that was published at 81 FR 87409 on December 5, 2016, is adopted as a final rule, without change.

Dated: May 19, 2017.

Bruce Summers,
Acting Administrator,
Agricultural Marketing Service.

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