



## **DEPARTMENT OF AGRICULTURE**

### **Agricultural Marketing Service**

#### **7 CFR Parts 944, 980, and 999**

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

**RIN 0581-AD68**

### **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:** Final rule.

**SUMMARY:** This final rule changes the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under section 608e of the Agricultural Marketing Agreement Act of 1937, as amended (section 8e). With this change, 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 section 8e requirements will be required to provide the inspection certificate number and a copy of the certificate to the Agricultural Marketing Service (AMS) (currently, the Canadian Food Inspection Agency is the only entity so designated). In addition, this rule changes the pistachio import regulations 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. This rule also changes several of the section 8e regulations by removing or replacing outdated information.

**DATES:** Effective [INSERT DATE 180 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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

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**SUPPLEMENTARY INFORMATION:**

**Executive Summary**

*Purpose of the Final Rule*

This final rule streamlines and automates import entry and reporting processes for the import trade as well as USDA and USDA-accredited laboratories. These changes support the International Trade Data System (ITDS) initiative and will reduce the burden on the import industry while also enhancing AMS' ability to ensure compliance with its import regulations. In addition, this rule allows AMS to meet a U.S. Customs and Border Protection (CBP) requirement that all government agencies participating in the ITDS project update their regulations to provide for the electronic entry of import information. This rule also ensures that the import trade has access to accurate and up-to-date information in AMS' import regulations.

*Legal Authority for the Final Rule*

This final 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 U.S. Department of Agriculture (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 section 8e, including the governmental inspection services that are authorized to perform certification.

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.

#### *Summary of the Provisions of the Final Rule*

This final rule:

1. Requires importers of certain Irish potatoes, tomatoes, and onions regulated under section 8e that have been certified by the Canadian Food Inspection Agency to electronically provide the inspection certificate number and a copy of the certificate to AMS. If unable to submit electronically, importers must submit the certificate via email, mail, or facsimile.
2. Changes the method of reporting aflatoxin test results from USDA and USDA-accredited laboratories to AMS by converting a paper form to an electronic format and expanding the reporting requirements for the laboratories to reflect the laboratories' current practice of reporting all test results instead of only failed test results.

3. Eliminates the requirement that importers of pistachios report the disposition of reworked or failed lots of pistachios to AMS.

4. Makes other miscellaneous changes to AMS' import regulations, including updating the agency and program names and contact information, and removing or updating other information that is out of date.

#### *Costs and Benefits*

To the extent that this rule will increase efficiency and cost savings, it would benefit importers. Revising the reporting requirements will streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

#### **Executive Orders 13563, 13175, 13771, 12866, and 12988**

USDA is issuing this final rule in conformance with Executive Orders 13563, 13175, 12866, and 13771. See OMB's Memorandum M-17-21 of April 5, 2017, containing guidance for implementing Executive Order 13771, titled 'Reducing Regulation and Controlling Regulatory Costs'" (February 2, 2017).

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect.

#### **Background**

This final rule revises the reporting requirements for certain Irish potatoes, tomatoes, and onions regulated under part 980, the vegetable import regulations. This rule requires 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 section 8e

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 in this rule will hereinafter be described as “CFIA” or “Canadian” inspection certificates and/or inspection information.

A proposed rule concerning this action was published in the *Federal Register* on December 6, 2016 (81 FR 87849). The proposed rule was made available through the internet by USDA and the Office of the Federal Register. A 30-day comment period ending January 5, 2017, was provided to allow interested persons to respond to the proposal. The import industry, USDA laboratories, and USDA-accredited laboratories are aware of ITDS and its goal to streamline processes. Members of the import industry have attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. Government over the past few years. No comments were received on the proposed rule

While no comments were received on the proposed rule, USDA believes that industry and laboratories would benefit from additional time to adjust to the new electronic filing and reporting requirements; accordingly, USDA is setting six months from the publication of this final rule as the effective date for these changes.

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

In addition, this rule changes 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 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 import 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, the CBP, and the importer who requested the aflatoxin test. The regulations also require that importers of pistachios complete and submit form FV-251 to USDA and CBP 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.

With the implementation of this rule, USDA or USDA-accredited labs will submit the form FV-249 electronically, reporting all aflatoxin test results (both “meets” and “fails”) to USDA. In March 2017, the Office of Management and Budget (OMB) approved AMS’ request to change the FV-249 form number to SC-249 to reflect the current program name (Specialty Crops), and references to the electronic form in this rule will be to SC-249. AMS has confirmed with CBP that it does not need to receive form SC-249, and importers already receive “meets” and “fails” test results from the laboratories in the form of aflatoxin test certificates; therefore, the laboratories will electronically submit this form only to USDA. Importers will 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. At the same time, AMS obtained OMB’s approval for changes to the information collection currently approved under OMB No. 0581-0215, including

removal of form FV-251 from the information collection. Providing for electronic submission of the form SC-249 and removing the requirement that importers submit the form FV-251 supports the ITDS initiative by streamlining processes and reducing the burden on America's import trade without compromising AMS' ability to ensure compliance with its import regulations.

This rule makes 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, will help ensure the import regulations contain accurate information and align with the ITDS objective of streamlining import processes for the trade.

This final rule does not remove any specific requirements related to the physical inspection of potatoes, onions, or tomatoes, only the manner in which inspection results are reported. All domestic and imported potatoes, onions, and tomatoes must still be inspected to ensure grade, quality and wholesomeness during the regulated period. All domestic growers of these commodities are also still required to register with the applicable marketing order committee or board. The marketing order committees/boards will still verify that inspections occur for domestically produced commodities. Importers are still required to register each entry by filing with CBP's Automated Commercial Environment (ACE). The AMS Marketing Order and Agreement Division (MOAD) will then verify whether imported products have met inspection requirements.

*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: § 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 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 Form CFIA/ACIA 5314 or E2 and E3 Certificates) 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). Currently, the C-

PIQ program is only active for potatoes. All of these Canadian certificates contain similar information as required by the AMS 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.

Currently, Canadian certificates that state that potatoes meet section 8e requirements are presented to CBP at the United States/Canada 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' Specialty Crops Inspection (SCI) Division, as well as Compliance and Enforcement Specialists from AMS' 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 have not been 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 ACE.*

CBP's 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 ITDS, a system that is designed to 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 required that government agencies participating in the ITDS project, including AMS, ensure that regulations provide for the electronic entry of import and/or export information. This mandate was instituted through the Border Interagency Executive Council’s (BIEC) effort to implement Executive Order 13659 and its governance structure to ensure coordination. CBP shares ACE data with Partnering Government Agencies (PGA) that have entered into a Memorandum of Understanding (MOU) with CBP. ACE data sharing MOUs with PGAs define and limit the scope and use of information shared pursuant to the PGA’s respective authorities.

AMS developed and in 2017 began deploying 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 are 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: (1) requiring importers of potatoes, tomatoes and onions to provide the inspection certificate number and a copy of the certificate issued by the non-USDA inspection agency; and (2) requiring the electronic filing of aflatoxin test results related to imported pistachios and eliminating the requirement to report disposition of reworked or failed lots of pistachios, as initially proposed, meet CBP’s requirements for ITDS by: (1) 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, and (2) providing for the electronic entry of aflatoxin test results related to imported pistachios into ACE . Data will be transmitted from CBP's ACE to AMS' CEMS, where it will be electronically validated. Upon validation, CEMS will transmit an electronic message back to ACE indicating the shipment is cleared for import into the United States. The changes to the vegetable import regulations will automate and streamline the entry and reporting process for importers while enhancing AMS' ability to ensure compliance with its import regulations.

These changes will 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)). Aflatoxins are a family of toxins produced by certain fungi that are found on agricultural products, including tree nuts. Aflatoxins are poisonous carcinogens. 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 form FV-249 and form FV-251 were previously approved as paper forms.

Section 999.600(f) requires 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. Thus, all aflatoxin test results are provided to importers by the testing laboratories.

Section 999.600 will be revised by changing the reporting requirements for laboratories (form SC-249) and importers (form FV-251). USDA and USDA-accredited laboratories currently submit a paper form FV-249 to USDA, CBP, and the 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 a paper form FV-251 to report the disposition of reworked or failed lots to USDA and CBP.

To streamline the regulations and eliminate the paper-based reporting process, AMS has converted the existing paper form to an electronic format, form SC-249. The electronic format provides 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 analysis of pistachios for aflatoxin content. The regulations will require accredited laboratories to submit aflatoxin test results to AMS using the electronic form SC-249, and USDA laboratories will also use the electronic form SC-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 will be required to electronically submit form SC-249 to only USDA and not to CBP or importers.

In addition to the changes to laboratory-reporting requirements, § 999.600 will 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' SCI 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. Importers will 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. In March 2017, AMS received approval from OMB to remove form FV-251 from the information collection package OMB No. 0581-0215.

Accordingly, §§ 999.600(e), (g), and (h) will 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 will be made:

Contact information for inspection offices and ports of entry, and references to importers making various advance arrangements for inspection services will 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' SCI Division has amended 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 (81 FR 93571, December 21, 2016). This rule adds 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 also makes the fruit, vegetable, and specialty crop regulations more current and consistent.

Administrative changes 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” will 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.

### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), AMS considered the information collection requirements necessary for form SC-357 (Initial Inspection Request for Regulated Imported Commodities) for importers to electronically complete to submit CFIA’s inspection certificates and certificate numbers. It was deemed not to place an additional paperwork burden on importers. No changes in the information collection requirements pertaining to OMB No. 0581-0125 (Regulations Governing Inspection Certification of Fresh & Processed Fruits, Vegetables, & Other Products) 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 SC-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 SC-249 is contained within the OMB information collection for the domestic pistachio marketing order but is used strictly for imported pistachios.

In March 2017, OMB approved AMS' request for changes to the information collection currently approved under OMB No. 0581-0215, Pistachios Grown in California, Arizona and New Mexico, by renaming the existing form number and name to form SC-249, Notification of Aflatoxin Levels, to reflect the USDA program name change to Specialty Crops (SC) and the inclusion of all aflatoxin test results; providing for the electronic submission of form SC-249; 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 form SC-249. The number of respondents changed from 7 to 9 to cover all 9 laboratories completing the form, the estimated number of responses per respondent increased from 4 to 7 to more accurately capture the number of times per year each laboratory typically submits the form to USDA, and the annual burden hours increased as a result of the increased number of respondents and annual responses from 5.6 hours to 11.55 hours (this is a slight reduction from the 12.60 annual burden hours that were previously calculated and included in the proposed rule concerning this action that was published in the *Federal Register* on December 6, 2016, 81 FR 87849). These changes necessitated by the rulemaking action were included in AMS' request to OMB to revise this information collection and were approved by OMB in March 2017. The revised form SC-249 was then included in the June 2017 three-year renewal of this information collection.

#### **EXECUTIVE ORDER 12866 AND THE REGULATORY FLEXIBILITY ACT**

A Regulatory Impact Analysis is required for significant rules by Executive Orders 12866 and 13563, which direct agencies to assess all costs and benefits of available regulatory

alternatives. If regulation is necessary, then agencies must select the action that maximizes net benefits, including potential economic, environmental, public health and safety effects, and equity. This analysis examines the costs and benefits of this rule on importers, Customs brokers, and USDA. This document also addresses the requirement of Executive Order 13771 that agencies provide the best approximation of total costs and savings associated with a new or repealed regulation.

### **Need for Regulatory Action**

This final rule streamlines and automates import entry and reporting processes for the import trade as well as USDA and USDA-accredited laboratories. These changes support the International Trade Data System (ITDS) initiative and will reduce the burden on the import industry while also enhancing AMS' ability to ensure compliance with its import regulations. In addition, this rule allows AMS to meet a U.S. Customs and Border Protection (CBP) requirement that all government agencies participating in the ITDS project update their regulations to provide for the electronic entry of import information. This rule also ensures that the import trade has access to accurate and up-to-date information in AMS' import regulations.

Importers of Canadian potatoes, onions, and tomatoes that are certified by CFIA as meeting section 8e requirements are not currently required to provide AMS with proof of this certification prior to import. This rule mandates that AMS receive proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates. Other agencies, such as CBP, already require importers to electronically enter information about shipments. The implementation of electronic filing capability via ACE and CEMS, will allow entries and associated paperwork to be transmitted to and verified electronically by AMS. Under

this system, the importer would electronically file entries via ACE, which would then electronically transmit data to CEMS. Once the data is received, CEMS automatically records information regarding the entry and transmits an electronic notification to the inspection office identified by the filer via email. The ACE Secure Data Portal is covered by OMB Control number 1651-0105 and is the primary means of importers and other trade filers to submit information to ACE and establish their user accounts. CBP published its Privacy Impact Analysis concurrent with a System of Records Notice on July 31, 2015. It is numbered DHS/CBP/PIA-003(b) and available at <https://www.dhs.gov/sites/default/files/publications/privacy-piaupdate-cbp-ace-july2015.pdf> CBP and AMS established a Memorandum of Understanding, dated May 29, 2019, formalizing their respective roles in sharing information that supports ACE's ability to service the trade community.

After the import undergoes a mandatory grading inspection, the inspection service electronically transmits pertinent inspection information to CEMS. If the inspection information identifies the entry as having met import requirements, CEMS automatically reconciles the inspection information against the entry information it previously stored. If the entry does not meet import requirements, a case is created in CEMS, which is electronically assigned to MOAD for investigation.

This process reduces or eliminates the handling and processing of paper forms and adheres to the Paperwork Reduction Act of 1995. The previous paper-based filing method remains available for instances when the system may be temporarily off-line, or for filers with an inability to file electronically.

This electronic filing option should streamline business operations, both for importers of these commodities, and for USDA, which will use the electronically submitted data to monitor compliance with section 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 should create little to no burden on importers while providing AMS with the ability to properly monitor imported vegetable shipments for compliance with the import regulations.

This rule also changes the reporting requirements of aflatoxin test results of imported pistachios. Currently, USDA and USDA-accredited laboratories are required to submit documentation for all lots of imported pistachios that fail the test for aflatoxin to USDA, CBP, and the importer. The importer is also required to submit documentation to USDA and CBP for lots that fail the test for aflatoxin when lots are reworked for further testing, or are exported, sold for non-human consumption, or destroyed. This rule changes these requirements in that laboratories will electronically report all aflatoxin test results (both "meets" and "fails") to USDA. Importers already receive these results from laboratories through aflatoxin test certificates. CBP has reported that it does not need to receive documentation of aflatoxin test results. As all USDA and USDA-accredited laboratories already electronically supply USDA with all aflatoxin test results of imported pistachios, this rule should have little to no impact on these entities.

This rule is expected to generate time and cost-savings for importers, Customs brokers, MOAD specialists, and USDA and USDA-accredited laboratories. The benefits, assessed both

qualitatively and quantitatively, are expected to outweigh any costs of this rule. The burden on the impacted entities is anticipated to be minimal.

### **Affected Entities**

The entities that are most likely to be affected by this rule primarily include importers of potatoes, tomatoes, and onions from Canada, and importers of pistachios. Also likely to be impacted are Customs brokers hired by importers to file the CFIA certification with CBP, MOAD specialists who are responsible to ensure that imports meet section 8e standards, and USDA and USDA-accredited laboratories that perform chemical analysis of aflatoxin levels in imported pistachios. All entities are expected to gain time and cost-savings as a result of this rule.

Based on 2015 information from CBP, the most recent data available to AMS, USDA estimates that there are 25 importers of potatoes from Canada, 13 importers of onions from Canada, and 12 importers of tomatoes from Canada. The Harmonized Tariff Schedule (HTS) codes of imports of potatoes, tomatoes, and onions that are subject to quality inspection are listed in Table 1. Using these codes, USDA retrieved data from the Global Agricultural Trade System

(GATS), which is administered by the USDA’s Foreign Agricultural Service (FAS).

HTS Codes	Description
0701.90.5015	Potatoes, fresh, other: in immediate containers not over 1200 kg net weight, russet or netted gem
0701.90.5025	Potatoes, fresh, other: in immediate containers not over 1200 kg net weight, red skin
0701.90.5035	Potatoes, fresh other: in immediate containers not over 1200 kg net weight, other
0701.90.5045	Potatoes, fresh other, other, russet or netted gem
0701.90.5055	Potatoes, fresh, other, other, red skin
0701.90.5065	Potatoes, fresh, other, other
0702.00.2099	Tomatoes, fresh, entered from 3/1-7/14 or 9/1-11/14, other, other
0702.00.4098	Tomatoes, fresh, entered 7/15-8/31, other, other
0702.00.6099	Tomatoes, fresh, entered 11/15-last day of February, other, other
0703.10.20	Onions, onion sets
0703.10.30	Onions, pearl onions not over 16 mm in diameter
0703.10.40	Onions, other

Source: CBP and Trade Automated Interface Requirements, September 2016.

Table 2 shows three-year average import volumes for potatoes, tomatoes, and onions from Canada and from all U.S. trading partners for the years 2015 through 2017. As shown in the fourth column, almost all potatoes imported into the United States come from Canada. About 13 percent of imported onions originate in Canada, as do 4 percent of tomatoes.

Commodity	Imports from Canada (lbs.)	Total Imports (lbs.)	Imports from Canada as Share of Total
Potatoes	777,061,999	777,115,645	99.99%
Tomatoes	13,208,999	307,818,502	4.29%
Onions	152,630,386	1,144,195,001	13.34%

Source: FAS - GATS.

According to GATS data, potatoes account for approximately 28 percent of U.S. fresh vegetable import volume from Canada. Canada is the second-largest trading partner of the United States in terms of fresh vegetable import volume, accounting for 18 percent of fresh vegetable imports.

In-shell and shelled pistachio imports are also subject to quality inspection under section 8e requirements. Table 3 lists the HTS codes of imported pistachios subject to aflatoxin testing and the three-year average volume of imports from 2015 to 2017. Turkey is the largest supplier of both in-shell and shelled imported pistachios into the United States, supplying 74 percent and 66 percent of their totals, respectively. Altogether, Turkey accounts for 70 percent, on average, of total U.S. pistachio import volume. Greece supplies 14 percent of in-shell imports, and Italy supplies 14 percent of shelled imports.

<b>Table 3. HTS codes for imported pistachios subject to aflatoxin testing and average import volumes for 2015-2017</b>		
HTS Codes	Description	Imports (lbs.)
0802.51	Pistachios: in shell	525,803
0802.52	Pistachios: shelled	377,946
Sources: CBP and Trade Automated Interface Requirements, September 2016; FAS - GATS.		

In addition to importers, Customs brokers are expected to be impacted by the change in reporting requirements as a result of this rule. Customs brokers are hired by importers to coordinate and file the paperwork that allows an import to enter the country. Customs brokers, who may be private individuals or corporations, are authorized by CBP to assist importers and exporters in meeting Federal requirements governing trade. According to CBP, there are approximately 14,454 active licenses for Customs brokers in the United States.

MOAD, along with USDA and USDA-accredited laboratories, are the final groups expected to be impacted by this rule. MOAD ensures that imports subject to section 8e regulations meet the same quality standards as the commodity produced domestically. MOAD oversees the compliance of 14 such commodities that are subject to section 8e regulations. As of

January 2019, there were nine USDA and USDA-accredited laboratories that perform chemical analysis on aflatoxin levels of pistachios. One of these laboratories is the USDA facility in Blakely, Georgia. The other eight are privately-owned USDA-accredited laboratories all in California.

### **Baseline Definition**

In fiscal year 2018, CEMS received and processed 34,686 electronic filings of CFIA certification from CBP's ACE system. Importers and Customs brokers have commented that the multi-step paper-based filing process, which relied on the coordination of multiple parties, could take up to half a day to complete, compared to less than five minutes for filing electronically. Assuming an eight-hour workday, AMS concludes that CEMS may generate a time savings of four hours per filing for importers and Customs brokers. Applying this time savings to the number of electronic filings in CEMS in 2018 results in a total of 138,744 hours saved by importers and Customs brokers for the year. The Bureau of Labor Statistics reports a mean hourly wage for Office and Administrative Support Occupations of \$19.58 as of May 2018. Multiplying the total hours of time saved by importers and Customs brokers who used CEMS to file electronically in 2018 by the hourly wage of an Office and Administrative Support worker in 2018 leads to an estimated baseline cost savings of \$2,716,608.

In 2018 and prior to CEMS, MOAD required at least one full-time employee to manage the manual data-entry that accompanied the paper-based filing system. The time of this full-time employee represents a cost to the USDA of \$83,462, which is the 2018 total compensation (wages and benefits) for a full-time employee at the GS-8, Step 1 pay-grade, adjusted for locality

pay in the Washington, D.C., region, and with benefits assumed to account for 39 percent of total compensation.

### **Cost-Savings of the Action**

Based on industry feedback, AMS estimates that approximately 25 to 30 percent of Customs brokers and importers already used ACE to electronically file CFIA certification in fiscal year 2018, even though it was not yet mandatory. This speaks to importers' and Customs brokers' approval of CEMS and a willingness to file electronically. While businesses are generally drawn to practices that maximize efficiency and profits, the voluntary adoption of the electronic filing system by Customs brokers and importers has not been immediate. AMS attributes this to resistance to change. Since 2018, the portion of Customs brokers and importers to voluntarily utilize the system has increased to more than half. It may be true that over time, the incentives to maximize efficiency and profits would overcome resistance to change, and all Customs brokers and importers would voluntarily adopt the electronic filing system. AMS recognizes, therefore, that the estimated cost-savings attributed to this rule may be overstated in the analysis that follows.

Customs brokers and importers have responded positively to the change in reporting requirements, particularly in regard to the integration of CEMS in creating and filing an Importer Exempt Commodity Certificate (SC-6 form). Customs brokers and importers report to have had little or no difficulty in creating an electronic copy of the form in CEMS and report that using CEMS is an improvement compared to the former paper-based system. Based on feedback from the industry, the cost for Customs brokers and importers to use CEMS to electronically file CFIA certification will be minimal.

Assuming that the number of electronic filings is evenly distributed among importers and Customs brokers, and that the figure of 34,686 electronic filings represents 25 to 30 percent of the greater population of filings, AMS estimates that the total number of filings in 2018, both electronic and paper-based, to be between 115,620 and 138,744. Multiplying this range by the four hours required to complete the paper-based filing process results in 462,480 to 554,976 total hours required to complete the filing process prior to CEMS. The product of the total hours and the mean hourly wage of an Office and Administrative Support worker in 2018 is \$9,055,358 to \$10,866,430 in total costs to importers and Customs brokers to administer the paper-based filing process prior to CEMS. This range represents the potential cost-savings for all importers and Customs brokers to use CEMS, including those that had already adopted its use in 2018. Subtracting the baseline hours and cost-savings of 138,744 hours and \$2,716,608 from the potential time and cost-savings for all importers and Customs brokers to use CEMS results in a range of additional time-savings of 323,736 to 416,232 hours and cost-savings of \$6,338,751 to \$8,149,823. Additionally, the streamlining of the process of gathering information and harmonizing data through CEMS results in a cost-savings to USDA of \$83,462.

The requirement in this rule for USDA and USDA-accredited laboratories to report to USDA all test results of chemical analysis of aflatoxin levels in pistachios is expected to generate little to no change in costs or benefits for involved parties. This is because all nine laboratories currently provide USDA with both “meets” and “fails” aflatoxin test results voluntarily. Converting the process from reporting results of failed lots only on paper to instead reporting all results electronically does not result in substantial change in burden.

#### **Executive Order 13771**

In accordance with Executive Order 13771, this action has been designated as neither regulatory nor deregulatory as its resultant costs and savings are de minimis.

### **Alternatives to the Rule**

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. CBP is requiring that all government agencies partnering on the ITDS initiative (including AMS) 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, tomatoes, and onions imported from Canada that have been certified by CFIA as meeting section 8e requirements enhances AMS' 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 will streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

As this rule aims to streamline processes and improve efficiency, the only alternative considered was the status quo of a paper-based filing system and the reporting of only failed lots from aflatoxin tests to AMS. AMS believes that the changes in reporting requirements in this rule represent the best alternative to maximize benefits to importers, Customs brokers, MOAD specialists, and USDA and USDA-accredited laboratories.

### **REGULATORY FLEXIBILITY ANALYSIS**

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601-612), AMS has considered the economic impact of this action on small entities. AMS has

prepared this final Regulatory Flexibility Analysis, the purpose of which 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.

### **Need for Regulation**

Importers of Canadian potatoes, onions, and tomatoes that are certified by CFIA as meeting section 8e standards are not currently required to submit this certification to AMS prior to import. By mandating that AMS receive proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates, AMS can better ensure compliance of imports with section 8e standards.

Similarly, the requirement in this rule for USDA and USDA-accredited laboratories to electronically submit all aflatoxin test results to USDA will replace outdated reporting practices and promote greater efficiency. Currently, these laboratories are required to submit documentation for all lots of imported pistachios that fail the test for aflatoxin to USDA, CBP, and the importer. The importer is also required to submit documentation to USDA and CBP for lots that fail the test for aflatoxin when lots are reworked for further testing, or are exported, sold for non-human consumption, or destroyed. This rule eliminates the need for these documents, replacing them with the requirement that laboratories electronically report all aflatoxin test results (both “meets” and “fails”) to USDA. Importers already receive these results from laboratories and CBP has reported that it does not need to receive documentation of aflatoxin test results.

### **Objectives of the Action**

This final rule changes the import regulations for potatoes, onions, and tomatoes by requiring proof of CFIA certification through electronic entry of CFIA certificate numbers and electronic copies of certificates. Prior to import into the United States, importers must enter into CBP's ACE system the certificate number and upload an electronic image of the certificate for those shipments certified by CFIA as meeting section 8e requirements. This information is then transmitted through CEMS to AMS. If an importer is unable to provide this information electronically in ACE, a copy of the certificate must accompany the shipment at entry into the country, and the importer must also submit a copy of the certificate to AMS via email, mail, or facsimile.

This final rule also changes the pistachio import regulations by modifying the reporting requirements for USDA and USDA-accredited laboratories that perform chemical analysis of aflatoxin levels in imported pistachios. The regulations will require these laboratories to submit all aflatoxin test results to USDA instead of only the results of failed lots.

### **Legal Basis for the Action**

This final 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 U.S. Department of Agriculture (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 section 8e, including the governmental inspection services that are authorized to perform certification.

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.

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

A 30-day comment period ending January 5, 2017, was provided to allow interested persons to respond to the proposal. The import industry, USDA laboratories, and USDA-accredited laboratories are aware of ITDS and its goal to streamline processes. Members of the import industry have attended annual ITDS Trade Support Network plenary sessions conducted by the U.S. Government over the past few years. No comments were received on the proposed rule; accordingly, no changes will be made to the rule as proposed.

### **Potentially Affected Small Entities**

Importers of potatoes, tomatoes, onions, and pistachios may be engaged in a variety of different industries and in varying segments of the supply chain. The North American Industry Classification System (NAICS) categorizes industries based on their activities. Table 5 lists potential industries with which importers may be involved that may be impacted by this rule, along with information about their sizes.

<b>Table 5. Profiles of potentially impacted importers</b>					
NAICS Codes	NAICS Industry Description	Total No. of Firms	Firms with less than 100 employees	Firms with 100-499 employees	Firms with 500 employees and more
<b>Subsector 311 – Food Manufacturing</b>					
311411	Frozen Fruit, Juice and Vegetable Manufacturing	153	102	24	27
311423	Dried and Dehydrated Food Manufacturing	181	142	20	19
311911	Roasted Nuts and Peanut Butter Manufacturing	233	184	29	20
<b>Subsector 424 – Merchant Wholesalers, Nondurable Goods</b>					
424410	General Line Grocery Merchant Wholesalers	2,443	2,300	80	63
424420	Packaged Frozen Food Merchant Wholesalers	2,570	2,377	113	80
424480	Fresh Fruit and Vegetable Merchant Wholesalers	4,415	4,157	208	50
<b>Subsector 445 – Food and Beverage Stores</b>					
445110	Supermarkets and Other Grocery (except Convenience) Stores	41,264	39,827	1,118	319
445292	Confectionery and Nut Stores	2,132	2,084	35	13

Source: U.S. Census Bureau - 2016 County Business Patterns.

Potatoes, tomatoes, onions, and pistachios may be imported for further processing or be re-entered into the stream of commerce as a fresh market product. For example, an importer of potatoes in the food manufacturing industry (Subsector 311) may utilize imports for frozen French fries or dehydrated potatoes. An importer may also purchase fresh potatoes to sell to restaurants as a wholesaler (Subsector 424), or to sell in a supermarket or grocery store (Subsector 445). According to 2016 data from the U.S. Census Bureau, most firms in the industries listed in Table 5 employ fewer than 100 people. Time-savings from the automation that CEMS provides is expected to particularly benefit importers with a smaller workforce.

The Small Business Administration (SBA) determines standards by which entities are considered to be “small”. These standards may be determined by the average annual receipts or the average employment of a firm. Table 6 shows the small business standards for the industries in which importers of potatoes, tomatoes, onions, and pistachios may be employed. Table 6 also

shows the portion of businesses in these industries likely to be considered “small”, using the information in Table 5.

<b>Table 6. Industry comparison with SBA standards of small businesses</b>				
NAICS Codes	NAICS Industry Description	SBA size standards in dollars	SBA size standards in no. of employees	Portion of industry estimated to meet standard
<b>Subsector 311 – Food Manufacturing</b>				
311411	Frozen Fruit, Juice and Vegetable Manufacturing		1,000	82% (at least)
311423	Dried and Dehydrated Food Manufacturing		750	90% (at least)
311911	Roasted Nuts and Peanut Butter Manufacturing		750	91% (at least)
<b>Subsector 424 – Merchant Wholesalers, Nondurable Goods</b>				
424410	General Line Grocery Merchant Wholesalers		250	94% (at least)
424420	Packaged Frozen Food Merchant Wholesalers		200	92% (at least)
424480	Fresh Fruit and Vegetable Merchant Wholesalers		100	94% (at least)
<b>Subsector 445 – Food and Beverage Stores</b>				
445110	Supermarkets and Other Grocery (except Convenience) Stores	\$ 32,500,000		Likely the majority
445292	Confectionery and Nut Stores	\$ 7,500,000		Likely the majority
Sources: U.S. Small Business Administration Size Standards Table (Oct. 2017); U.S. Census Bureau - 2016 County Business Patterns; U.S. Census Bureau - 2016 Monthly Retail Trade Survey.				

The industries listed in Table 6 under NAICS Code Subsectors 311 and 424 have small business standards based on number of employees. Using the information in Table 5 on business firm size, AMS concludes that most importers of potatoes, tomatoes, onions, and pistachios in these industries are likely considered “small”. The industries listed in Table 6 under NAICS Code Subsector 445 have small business standards based on average annual receipts. The U.S. Census Bureau, unfortunately, does not publish retail sales data specific to six-digit NAICS Code. AMS, therefore, used the business firm size data in Table 5 to estimate sales by businesses with NAICS Codes 445110 and 445292 based on the retail sales data of all businesses under NAICS Code Subsector 445. In this estimate, AMS assumes retail sales to be evenly spread

among all industries falling within NAICS Code Subsector 445. The results are average annual sales receipts of \$1.15 million for Confectionary and Nut Stores, and \$14.5 million in average annual sales receipts for Supermarkets and Other Grocery Stores. The majority of businesses in these industries are, therefore, likely “small”.

As of January 2019, there were a total of nine USDA and USDA-accredited laboratories that perform chemical analysis on aflatoxin levels of pistachios. One of these laboratories is the USDA facility in Blakely, Georgia. As a government entity, it is not subject to RFA analysis. The other eight are privately-owned USDA-accredited laboratories in California. The SBA classifies testing laboratories (NAICS code 541380) as small businesses if they receive no more than an average of \$15 million annually. AMS could find no data on the average annual receipts of testing laboratories and is, therefore, unable to determine whether these eight USDA-accredited laboratories would be considered small businesses under the SBA standards.

### **Alternatives to Minimize Impacts of Rule**

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. CBP is requiring that all government agencies partnering on the ITDS initiative (including AMS) 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, tomatoes, and onions imported from Canada that have been certified by CFIA as meeting section 8e requirements enhances AMS’ 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 will

streamline the regulations and reduce the burden on the trade. The other changes finalized in this action will provide the import trade with accurate information.

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 final rule.

AMS conducted extensive stakeholder outreach as part of this rulemaking. During the summer of 2015, AMS staff members participated in 13 outreach sessions to the U.S. import industry. The sessions took place both in person as well as via webcast. The goal of these sessions was to introduce the new ACE system and the government agencies that are participating in the program. USDA presented extensive overviews of the proposed regulations and encouraged the trade to participate by creating their own companion software. Additionally, through 2017 and 2018, AMS staff coordinated extensively with CBP to prepare for the changes detailed in this 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 Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

### **Civil Rights Impact Analysis**

AMS has reviewed this final rule in accordance with Departmental Regulation 4300-4, Civil Rights Impact Analysis (CRIA), to identify and address any major civil rights impacts the

rule might have on any protected groups of people. After a careful review of the rule's intent and provisions, AMS has determined that this rule would not disproportionately or adversely impact any importers of commodities regulated under section 8e who are members of any protected group or employees of any USDA or USDA-accredited laboratories who are members of any protected group.

### **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 § 944.400(a) 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, unless imports arrive by vessel in which case the date of inspection and certification may be after the date of 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 (7 CFR part 52). 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.

\* \* \* \* \*

## **PART 980 – VEGETABLES; IMPORT REGULATIONS**

4. In § 980.1, revise paragraphs (f) and (g)(1)(i) and (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 (7 CFR part 51), 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 or mail to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (888) 551-3523; or email [8eImports@ams.usda.gov](mailto:8eImports@ams.usda.gov).

\* \* \* \* \*

5. In § 980.117, revise paragraphs (e) and (f)(2) and (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 or mail to the Marketing Order and Agreement Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (888) 551-3523; email 8eImports@ams.usda.gov; or fax (202) 720-5698.

\* \* \* \* \*

6. In § 980.212, revise paragraphs (e) and (f)(2) and (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 or mail to the Marketing Order and Agreement Division,

Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250-0237; telephone (888) 551-3523; email 8eImports@usda.gov; or fax (202) 720-5698.

\* \* \* \* \*

## **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, unless imported by vessel, in which case for filberts, the date of release may be used.

\* \* \* \* \*

10. Amend § 999.600 by revising paragraphs (e)(2) and (3), (g), and (h) 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 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 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 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 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: 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 through a format specified by the Secretary.

\* \* \* \* \*

Dated: February 21, 2020

**Bruce Summers,**

*Administrator,*

*Agricultural Marketing Service.*

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