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## APPALACHIAN REGIONAL COMMISSION

### 5 CFR Part 1900

#### Repeal of Employee Responsibilities and Conduct Regulations for Appalachian Regional Commission Federal Employees (Federal Staff); Correction

**AGENCY:** Appalachian Regional Commission.

**ACTION:** Final rule; correction.

**SUMMARY:** The Appalachian Regional Commission is correcting one erroneous citation in its employee responsibilities and conduct regulation published on December 7, 1995.

**EFFECTIVE DATE:** This final rule is effective March 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Guy Paul Land, Counsel to the Federal Co-Chairman, Appalachian Regional Commission, 1666 Connecticut Avenue NW., Washington, D.C. 20235, 202-884-7660.

**SUPPLEMENTARY INFORMATION:** The Appalachian Regional Commission is correcting one erroneous citation to the Office of Government Ethics (OGE) executive branchwide standards of ethical conduct regulation which appeared in the ARC's revision to 5 CFR Part 1900, published in the Federal Register of Thursday, December 7, 1995, on page 62702. The OGE executive branchwide standards of ethical conduct regulation was erroneously cited as codified at CFR Part 3635. This final rule corrects that citation to read 5 CFR Part 2635.

#### Administrative Procedure Act

Pursuant to 5 U.S.C 553(b), the Appalachian Regional Commission finds good cause exists for waiving the general notice of proposed rulemaking as to this final rule. The notice is being waived because this rulemaking relating

to ARC Federal employees concerns matters of agency organization, practice and procedure. Further, it is in the public interest that the citation be corrected as soon as possible.

#### Executive Order 12866

In promulgating this final regulation, the Appalachian Regional Commission has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This final rule has not been reviewed by the Office of Management and Budget under that Executive order, since it deals with agency organization, management, and personnel matters and is not in any event deemed "significant" thereunder.

#### Regulatory Flexibility Act

The Appalachian Regional Commission has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant impact on small business entities because it affects only ARC Federal employees.

#### Paperwork Reduction Act

The Appalachian Regional Commission has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

#### List of Subjects in 5 CFR Part 1900

Conflict of interest, Government employees.

Approved: February 29, 1996.

Jesse L. White, Jr.,

*Federal Co-Chairman, Appalachian Regional Commission.*

For the reasons set forth in the preamble, the final rule published on December 7, 1995 (60 FR 62702) is corrected as follows:

#### § 1900.100 [Corrected]

On page 62702, in the third column, in § 1900.100, "5 CFR part 3635" is corrected to read "5 CFR part 2635".

[FR Doc. 96-6607 Filed 3-25-96; 8:45 am]

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

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

[Docket Nos. FV93-944-3FIR, FV93-980-1FIR and FV93-999-1FIR]

#### Exemptions From Import Regulations for Specified Fruit, Vegetable and Specialty Crop Commodities

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** This rule finalizes, with modifications, two interim final rules which exempt imported fresh fruit, vegetable and specialty crop commodities from grade, size, quality, and maturity requirements if those commodities are to be used in certain specified outlets. The exemptions correspond to exemptions in effect for the same commodities regulated under Federal marketing orders. This rule also finalizes, with modifications, safeguard procedures which were added to import regulations to assure that imported fresh commodities are utilized only in such specified exempt outlets. This rule also deletes import requirements for Tokay grapes. This rule is implemented in accordance with section 8e of the Agricultural Marketing Agreement Act of 1937 to make the import regulations more consistent with applicable domestic marketing order exemptions and with the North American Free Trade Agreement (NAFTA). Exempt uses include, but are not limited to, processing, livestock feed, and donation to charity.

**EFFECTIVE DATE:** May 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Barbara Schulke or Bill Addington, telephone (202) 720-4607 and (202) 720-2412 respectively, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, Fax (202) 720-5698.

**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) (Act), which provides that whenever certain specified commodities, including avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, potatoes, onions, tomatoes, dates

and walnuts, are regulated under a Federal marketing order, imports of those commodities must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodities.

The Act further provides that when two or more marketing orders for the same commodity produced in different areas are in effect, the imported commodity must meet the same grade, size, quality, and maturity requirements as the commodity produced in the area with which the imported commodity is in most direct competition.

Some marketing orders provide exemptions for commodities sold at roadside stands, shipped directly to consumers, or exported. However, such exemptions are not issued for commodities offered for importation because such outlets are not applicable to import regulations.

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility. Import regulations issued under the Act are based on those established under Federal marketing orders.

The following are updated estimates of the number of importers who may be affected by this final rule: avocados—147, grapefruit—96, kiwifruit—110, limes—147, olives—15, oranges—96, table grapes—80, potatoes—74, onions—148, tomatoes—142, dates—164, and walnuts—6. Small agricultural service firms, which include importers and processors of these commodities, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5 million. The majority of these importers may be classified as small entities.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule

would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

In accordance with section 8e, imported commodities destined for processing must be given the same or comparable treatment as that afforded domestic commodities destined for processing. The Federal marketing orders covering avocados, grapefruit, kiwifruit, limes, olives, oranges, table grapes, potatoes, onions and tomatoes provide exemptions from established quality and size requirements if the commodity is to be used in certain processing outlets. This final rule provides similar exemptions for imported products destined for processing.

Marketing Order No. 926 regulating Tokay Grapes Grown in San Joaquin County, California, has been terminated by the Department at the request of the order's Industry Committee. Thus, the import requirements for Tokay grapes established under section 8e of the Act are also terminated. This final rule removes all references to Tokay grapes that appeared in the interim final rule (58 FR 69182).

This rule finalizes exemptions for imported commodities to be utilized in other exempt outlets. These exemptions are consistent with section 8e of the Act which requires imported commodities to meet the same or comparable requirements established under the domestic marketing orders for the commodities. This rule finalizes, with modifications, amendments to the following 7 CFR sections:

- 944.28 Avocado import grade regulation,
- 944.31 Avocado import maturity regulation,
- 944.106 Grapefruit import regulation,
- 944.209 Lime import regulation,
- 944.312 Orange import regulation,
- 944.401 Olive regulation,
- 944.503 Table grape import regulation,
- 944.550 Kiwifruit import regulation,
- 980.1 Import regulations; Irish potatoes,
- 980.117 Import regulations; onions,
- 980.212 Import regulations; tomatoes,
- 999.1 Regulation governing the importation of dates, and
- 999.100 Regulation governing imports of walnuts.

Safeguard provisions, added by the interim final rules as §§ 944.350, 980.501, and 999.500, are modified in this final rule to provide that imported commodities not meeting grade, size, quality, and maturity requirements can be utilized in specified exempt outlets.

The two interim final rules were issued on December 23, 1993, and

published in the Federal Register (58 FR 69182 and 69186, December 30, 1993) with an effective date of January 1, 1994. The two rules amended 7 CFR parts 944, 980 and 999 and provided a two-month comment period which ended February 28, 1994. A minor correction to part 944 was issued on January 31, 1994 (59 FR 4245). At the request of industry members, the Department reopened the comment period for one additional month (59 FR 11529, March 11, 1994) for both interim final rules. The reopened comment period closed April 11, 1994.

Thirty five comments were received. Thirty four comments opposed various aspects of the two interim final rules and one comment favored the interim final rules. The primary concern of most commenters was the use of exemptions by processors. Thirty comments were from members of, or on behalf of, the potato, onion and tomato industries in the United States. The one favorable comment was received from the Canadian Produce Marketing Association.

Several commenters questioned the Department's commitment to the safeguard program. They claimed that there is no plan to monitor exempt shipments and that the AMS lacks personnel to enforce compliance of the program.

The AMS is responsible for administering Federal fruit, vegetable, and specialty crop marketing order programs and the corresponding import regulations. A number of different resources are being utilized to implement and monitor the safeguard program, including the Fruit and Vegetable Division's (Division) Marketing Order Administration Branch (MOAB) (which monitors exempt entries), the inspection services of Fresh Products Branch and Processed Products Branch and the AMS Compliance Staff. The Department's Animal and Plant Health Inspection Service (APHIS), and the U.S. Customs Service (Customs Service) also must review and clear all agricultural shipments prior to entry into the United States. This rule does not supersede the Federal Plant Quarantine Act of 1912, the Federal Food, Drug, and Cosmetic Act, or any other applicable laws or food and sanitary regulations of city, county, state or Federal agencies.

Every attempt is made to keep importers, known processors, and other exempt receivers aware of these rules and the safeguard procedures. The interim final rules, exemption forms and updated import summary sheets for the affected commodities have been sent to all known importers and processors.

Additional exemption forms are sent immediately upon request.

A compliance plan has been developed utilizing follow-up telephone calls and spot compliance checks of exempt outlets. Division personnel currently make telephone calls to importers and customs brokers who initiate the FV-6 "Importer's Exempt Commodity Form" (FV-6 or FV-6 forms) and calls to exempt receivers who must certify receipt and disposition of the exempt shipments. The FV-6 was established under the interim final rule as an integral part of the safeguard reporting procedures. This final rule modifies the FV-6 (below).

Experience over the last year indicates that the notification process outlined in the interim final rules (58 FR pages 69182 and 69186, December 30, 1993) should be modified to ensure that the Department is aware of all shipments entered as exempt under 8e provisions. Under a Memorandum of Understanding between the AMS and the Customs Service, AMS will be provided import data on all entries of 8e commodities. The MOAB has worked with the fresh and processed products inspection offices and the Customs Service to coordinate efforts for an effective 8e compliance program. In addition, MOAB maintains an extensive and comprehensive list of importers, customs brokers and receivers for mailing and field audits. Division representatives attend regional and national importers and customs brokers meetings to educate importers and Customs Service officials on the requirements of the Act. MOAB enters and reconciles data from the FV-6 forms, Customs Service data, and the inspection service offices, and the PIERS report (Port, Import/Export Reporting Service) to identify lots which enter ports under the exemption rule.

Some commenters asked what penalties would be applied to those who violate the safeguard procedures. The compliance plan provides for on-the-spot inspections and checks of processors and other exempt outlet receivers to gather evidence of violations. Pursuant to section 8e of the Act, the Department can bring legal action against those who violate import regulations. Penalties may be assessed under section 608a(5). Upon conviction, penalties as prescribed in 608c(14)(A) also may be imposed. Section (14)(A) provides for fines from \$50 to \$5,000 per violation, per day, for those convicted of violating regulations, including import regulations. In addition, section 608c(14)(B) provides for administrative adjudication to issue civil penalties of up to \$1,000 per day,

per violation, against importers and exempt receivers who violate the import regulations, including safeguard procedures.

Further, using Customs Service regulatory authorities (19 CFR part 113), the AMS can also request the Customs Service to demand redelivery of a lot imported as exempt under section 8e if certification of exempt use has not been received by the AMS. Failure to redeliver the lot is punishable by a penalty of three times the value of the shipment. The AMS is developing a computerized data base to identify exempt shipments for which the reporting process has not been completed within specified time frames. This rule does not supersede or replace Customs Service entry procedures.

A few commenters, evidently referring to the \$1,000 fine cited on the exemption form, stated that \$1,000 is not a sufficient deterrent to prevent some from violating the safeguard procedures. However, the \$1,000 fine is for making false statements on the form. False representation to any Federal agency on any matter within its jurisdiction, knowing it to be false, is a criminal offense and a violation of 18 U.S.C. 1001 which provides for a fine or imprisonment or both.

The Department is fully committed to enforcing the import regulations.

Most of the commenters questioned whether the safeguard procedures would prevent substandard product from entering fresh marketing channels. With modifications implemented in this final rule, the Department believes that the enhanced safeguard procedures represent practicable, aggressive, and effective procedures for monitoring exempt shipments. In addition, the management staffs of many marketing orders follow similar procedures in monitoring and enforcing special purpose shipment provisions relating to their respective commodities.

A few commenters suggested that the marketing order committees should be allowed to assist the Department with enforcement activities. The Department is responsible for enforcing import regulations and cannot delegate that compliance activity to committee managers. However, the Department encourages managers to notify the AMS of suspected violations of safeguard procedures or improper dispositions.

A few commenters contended that the reporting deadlines (15 days at the port of entry and 15 days after receipt by the exempt receiver) are too long for the Department to effectively monitor the disposition of lots. They stated that during the 15-day reporting period an exempt lot could easily be disposed of

in fresh market channels and there would be no proof of such illegal activity. The Department agrees that a more timely notification of the release of exempt lots into the United States will enhance the Department's ability to enforce the safeguard procedures and ensure compliance with the import regulations. The time period should be short enough to enable the Department, when conducting on-site inspection of receivers' facilities, to determine ultimate disposition of exempt lots. The Department believes that a two-day reporting period will be sufficient for mailing reports of entry and exempt disposition. Thus, this final rule establishes that original copies of FV-6 forms must be submitted by importers, customs brokers, and exempt receivers, and such copies must be postmarked no later than two days after importation or receipt of the commodity shipment being reported. FV-6 forms must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456 (telephone (202) 720-4607. FV-6 forms submitted by fax must be followed by a mailed, original copy of the FV-6. Fax transmissions may be sent to the MOAB at (202) 720-5698.

One commenter suggested that the Act should be changed to allow for regulation of processors. Amendment of the Act would require Congressional action. In any event, the Food and Drug Administration of the Department of Health and Human Services is responsible for regulating the wholesomeness of processed peanut products.

One commenter claimed that the Department has reversed its long-standing position that section 8e requirements cannot be applied to pack and container requirements. However, section 8e of the Act states that imported commodities must meet the grade, size, quality and maturity requirements established under respective marketing orders. Because section 8e does not authorize pack and container requirements, those requirements cannot be applied to imported commodities. The Department has not changed its position on this issue.

Some commenters claimed that the exemptions for processing make it easier for imported culls to be used in local processing markets than domestic culls and that this would have a negative impact on economically depressed production areas that utilize domestically produced culls in processing. However, the objective of this rule is that section 8e import

regulations and the exemption provisions of domestic marketing orders be the same or comparable. An importer who properly files FV-6 forms when using imported culls in processing outlets does not violate the import regulation.

A few commenters stated that import barriers still exist in some countries and that the import exemption rule gives unfair advantage to foreign producers. However, the efficacy of this rule in the United States is not dependent on the absence of trade barriers in other countries. The exemption form may be used for exempt commodities imported from any country. The interim final rules were issued to be consistent with section 8e of the Act, and thus, may be applied to the specified commodities imported from any country.

One commenter, referring to Section A of Annex 703.2 of the NAFTA, stated that the Department "went beyond the specific requirements of the NAFTA by applying the rule to Canada." The Department did not intend to imply that Section A of Annex 703.2 applies to Mexico, Canada and other countries. Implementation of the NAFTA caused the Department to review all 8e provisions applicable to fruits and vegetables. After such review it became apparent that the regulations concerning the 8e commodities covered in this regulation needed to be amended to be consistent with marketing order regulations and requirements, as well as the NAFTA. Therefore, pursuant to Section 8e of the Act and the provisions of the NAFTA, the Department amended its regulations relating to these commodities.

One commenter suggested that new food technologies now tend to blur the distinction between fresh and "fresh processed" activities. To assist the importer or customs broker, specific processes that qualify for exemption are added to the regulatory text (e.g. canning, freezing, dehydrating, etc.) as appropriate for individual commodities. The listing of qualified processes for each commodity should assist importers and customs brokers in determining whether the process designated on the exemption form is considered to be an exempt process. The entries may be updated by future rulemaking, as necessary.

Several commenters suggested that the Department establish a "pre-approved processor" list for each commodity covered in parts 944, 980 and 999. According to the comments, a pre-approved processor list would contain the names of processor companies that have certified to the respective marketing order committee

and to the Department that the processor agrees to dispose of exempt shipments only in approved processing operations. Commenters suggested that such lists be used to approve or reject exempt shipments at the port of entry, depending on whether the processor is on the approved list. Commenters suggested that the approval be granted either by the Customs Service, the respective marketing order committee manager, or the Department. However, the Customs Service cannot be expected to maintain a list of approved processors and to refer to it every time an exempt shipment is presented for importation. Oversight of import regulations cannot be delegated to marketing order managers. In response to comments, however, MOAB has obtained approved-processor lists for some commodity committees and is referring to the lists as part of MOAB's compliance procedures when reviewing FV-6 forms.

Some commenters cited phytosanitary concerns in opposing the import exemptions. The commenters believe that exempt shipments would enter the United States and not be subject to APHIS regulations or inspection. However, exempt shipments, including culls removed from reconditioned fresh shipments, continue to be subject to APHIS inspection and certification.

Several commenters complained that the rulemaking procedure used by the Department to issue the two interim final rules was abbreviated and did not provide for adequate industry input. The interim final rules were issued under informal rulemaking procedures used by the Department to implement regulations, and there was good cause not to postpone the effective date of the rule. More than three months were provided for comment on the two interim final rules. The lengthy comment period allowed interested persons time to comment on the interim final rules and also provided the Department with more opportunity to monitor and evaluate the safeguard procedures in operation.

Finally, customs brokers complained that they have no control over the ultimate disposition of exempt lots and, thus, should not be expected to certify as to the ultimate disposition of the lot. However, certification by either the importer or customs broker is needed to provide some validity to the safeguard procedure. Importers and customs brokers are responsible for seeking out and representing clients who will act in accordance with law. If a customs broker cannot, in good faith, certify as to the eventual exempt usage, then that

person should not act as the agent of the importer.

On the basis of comments received, review of ongoing safeguard procedures, and review of the exemption form, the Department clarifies and modifies some requirements and procedures specified on the FV-6 form. These clarifications and modifications are intended to eliminate confusion when completing the exemption form, improve the functioning of the safeguard process, and improve the compliance capability of the Department.

This final rule establishes that the FV-6, Importer's Exempt Commodity Form will be sequentially numbered. Sequentially numbered forms will enable the Department to better monitor use of the form by importers and brokers and enhance compliance efforts by the Department. The new forms will be mailed to all known importers, customs brokers and inspection service offices serving major ports of entry. Use of the new forms must begin no later than 60 days after publication of this final rule in the Federal Register. During unforeseen or emergency situations, a special, sequentially numbered FV-6 form can be faxed to an importer or customs broker for one-time use. Additional copies of the new FV-6 form and single use copies are available on request by calling (202) 720-6585 or sending a fax to (202) 720-5698.

Under initial instructions, the white copy (#1) was to be retained by the Customs Service office at the port of entry upon entry. Under this final rule, the importer or customs broker must present the FV-6 to the Customs Service at the port of entry with Section I completed. The importer or customs broker then retains the white Copy 1 of the FV-6 as a record of the exempt entry. Further distribution of the form remains unchanged—the yellow Copy 2 is forwarded to the AMS and the pink Copy 3 is forwarded to the exempt outlet receiver with the exempt shipment.

The FV-6 is used when an entire lot (in bags or bulk) is imported exempt from quality requirements and shipped directly to an exempt outlet. An importer or customs broker usually arranges or facilitates the business transaction between a foreign producer (seller) and the domestic processor or other exempt entity. In these instances, the importer or customs broker is responsible for initiating the FV-6 form and the exempt user is the buyer.

An 8e commodity imported for fresh market use must be inspected and certified as meeting fresh market quality requirements. Prior to issuance of the two interim final rules in this

rulemaking procedure, if an imported 8e commodity shipment failed to meet applicable quality requirements, the importer had three options: (1) Export; (2) destroy the lot under inspection supervision; or (3) recondition the lot and return or destroy the culls. This rule provides another option for the importer. The FV-6 may be used to ship a failing lot, or the culls from a reconditioned lot, to an exempt outlet.

The "Date and Place of Inspection" entry (Item 2 on the FV-6 form) is to be completed only when a lot imported for fresh market use is inspected and all or a portion of the lot is subsequently sent to an exempt outlet. Item 2 would include the fresh inspection certificate number of the inspection performed on the lot. Some importers and customs brokers have not completed item 2 with this information or provided a copy of the inspection certificate when using the FV-6 form to import a lot failing fresh market quality requirements. In addition to filing an FV-6 form, the importer should also file a copy of the inspection certificate applicable to the exempt lot.

One FV-6 may be used for multiple deliveries to the same exempt outlet, if the deliveries are made at the same time. In such instances, item 4, "Vehicle Identification," on the FV-6 must contain the license tag numbers or other identification for each vehicle delivering the exempt shipments. Also, item 7, "Total Quantity Imported," must show the total weight of all loads delivered from the imported lot to the exempt outlet. The receiver who signs Section II of the exemption form for the exempt outlet certifies as to the receipt of all loads listed on the FV-6, the total volume received, and that the disposition is consistent with exempt usage.

If a shipment is entered as exempt and shipped to two or more exempt outlets, an FV-6 must be completed for each exempt shipment and outlet. Each receiver who signs section II of the exemption form for an exempt outlet is certifying receipt of the shipment at that exempt outlet. In such cases, the combined volume of exempt shipments to each outlet must equal the total volume reported on the exemption form.

The quality of product shipped exempt is a business decision between the exporter, importer and processor or other exempt receiver. If an importer or processor receives exempt product below needed quality specifications, the importer or processor could discontinue use of the exemption form and require that further shipments be inspected against applicable import grade, size, quality, or maturity requirements.

An exempt receiver may reject a shipment, send it to an alternate exempt outlet, destroy it, return it to the importer, or export it. It is the responsibility of the importer to notify the MOAB of any such action and final disposition of the shipment. In such cases, a second exemption form must be completed in full and filed with the MOAB. The second FV-6 should be initiated by the exempt receiver and certified by a representative of the alternate exempt outlet or disposition outlet. If the shipment is exported, a copy of the Customs Service export document should be included with the second FV-6.

Under "Total Quantity Imported" (currently item 7), the importer or customs broker must enter, in pounds, the quantity of product being imported as exempt. Other terms of measurement common in some countries or commodity industries, such as kilograms, basket, container, or bulk, must be converted to pounds. This will provide the receiving exempt outlet with a common, measurable term on which to determine that all of the product has been delivered. The conversion to pounds will also assist the Department in its compliance efforts. The weight entered should be only the quantity imported as exempt. In instances where the exempt commodity is the culled subplot of a larger fresh market lot, the weight entered should be only the weight of the exempt subplot.

Under "Intended Use" (currently item 9) the importer or customs broker should enter the type of processing use or other exempt use for which the exempt product is intended. The type of processing should be entered on the line after the word "Type" in item 9. This change is made at the request of commenters and is a modification from the interim final rules which did not require designation of the type of processing or other exempt use. This modification of the form will help the Department monitor exempt shipments.

The Customs Service Entry Number (currently item 10a) and the Harmonized Tariff Code Number (currently item 10b) must be entered on each exemption form. These data enable the Department to obtain a baseline of exempt shipments released by the Customs Service and, thus, are essential to the Department's monitoring and compliance responsibilities.

After consideration of comments received and evaluation of safeguard procedures, the Department finalizes the two interim final rules and makes minor modifications and additions to individual commodity import regulations for consistency and clarity.

Discussions regarding fruit crop import regulations under 7 CFR part 944 follow.

#### Avocados

The avocado import grade regulation (7 CFR 944.28) is based on those in effect for avocados grown in Florida under Marketing Order No. 915 throughout the year. Under Marketing Order No. 915 any person may handle avocados without regard to established grade, size, quality, or maturity requirements provided that such avocados are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; (4) seed; or (5) individual shipments of up to 55 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the avocado import regulation was for individual shipments of up to 55 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import regulation. Commercial processing includes canning, freezing, dehydrating, drying, the addition of chemical substances, or fermentation.

The Department suspended § 944.31 Avocado import maturity regulation on May 15, 1991 (56 FR 23009). The suspension was in place at the time of issuance of the import exemption interim final rule (58 FR 69182, December 23, 1993). Subsequently, the Department issued a proposed rule on April 4, 1994 (59 FR 15661) to lift the suspension. Because the avocado import maturity regulation was not in effect when the exemption interim final rule was issued, exemptions under § 944.31 were not included in the exemption interim final rule. However, a final rule removing the temporary suspension of avocado import maturity regulation was issued on June 16, 1994 (59 FR 30866). Because the exemptions for imported avocados under § 944.31 maturity regulations also apply to § 944.28 grade regulations, this rule finalizes the addition of charitable institutions, distribution by relief agencies, seed, and commercial processing into products to the list of exemptions allowed under the avocado import maturity regulation.

#### Grapefruit

The grapefruit import regulation (7 CFR 944.106) is based on those in effect for grapefruit grown in Florida under Marketing Order No. 905 throughout the year. Under Marketing Order No. 905, any person may handle grapefruit without regard to established grade, size, quality, or maturity requirements

provided that such grapefruit are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into canned or frozen products or into a beverage base; (4) animal feed; or (5) individual shipments of up to 15 standard packed cartons (12 bushels). Prior to issuance of the interim final rule, the only exemption allowed under the grapefruit import regulation was that for individual shipments of up to 15 standard packed cartons (12 bushels). This rule finalizes the addition of charitable institutions, distribution by relief agencies, commercial processing into canned or frozen products or into a beverage base, and animal feed to the list of exemptions allowed under the grapefruit import regulation.

#### Limes

The lime import regulation (7 CFR 944.209) is based on those in effect for limes grown in Florida under Marketing Order No. 911 throughout the year. Under Marketing Order No. 911 any person may handle limes without regard to established grade, size, quality, or maturity requirements provided that such limes are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 55 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the lime import regulation was that for individual shipments of up to 250 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the lime import regulation. Commercial processing includes canning, freezing, dehydrating, drying, the addition of chemical substances, or fermentation. Limes imported for conversion into juice without further processing or preservative treatment are deemed fresh limes and may not be imported exempt from inspection requirements.

#### Oranges

The orange import regulation (7 CFR 944.312) is based on those in effect for oranges grown in Texas under Marketing Order No. 906 throughout the year. Under Marketing Order No. 906 any person may handle oranges without regard to established grade, size, quality, or maturity requirements provided that such oranges are handled for (1) consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 400 pounds. Prior to issuance of the interim

final rule, the only exemption allowed under the orange import regulation was that for individual shipments of up to ten  $\frac{7}{10}$  bushels (400 pounds). In addition, Marketing Order No. 906 requires handlers to certify to the order's committee that receiving processors have no facilities, equipment, or outlet to repack or sell fruit in fresh form (§ 906.123(b)(7)). This final rule adds a corresponding proviso to the orange import regulation that oranges, imported as exempt under this regulation, cannot be shipped to processors who have facilities, equipment, or outlets to repack or sell fruit in fresh form. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the orange import regulation.

The minimum grade requirement for oranges under the orange import regulation (7 CFR 944.312) was suspended effective October 24, 1991 (56 FR 55983) but was not addressed in the interim final rule because the minimum grade requirement was not directly affected by the exemptions. That minimum grade requirement was reinstated on May 12, 1994 (59 FR 25791), at the same U.S. No. 2 grade that was effective for imported oranges prior to suspension in 1991. The reinstatement rule also amended the definition of the term "oranges" and changed the minimum quantity exemption from "ten  $\frac{7}{10}$  bushels," which is the equivalent of 420 pounds, to 400 pounds. This final rule reflects the changes established in the reinstatement action.

#### Olives

The olive import regulation (7 CFR 944.401) is based on those in effect for olives grown in California under Marketing Order No. 932 throughout the year. Under Marketing Order No. 932 any person may handle olives without regard to established grade, size, quality, or maturity requirements provided that such olives are handled for processing into oil or donated to charitable institutions. Although there is no minimum quantity exemption for olives regulated under Marketing Order No. 932, an exemption is allowed under the olive import regulation for individual shipments up to 100 pounds. This rule finalizes the addition of processing into oil and donations to charitable institutions to the list of exemptions allowed under the olive import regulation.

This rule also replaces the original text in paragraph (c) of § 944.401 concerning procedures for importing

olives and the Department offices contacted prior to importation. The interim final rule published December 30, 1993 (58 FR 69186) inadvertently omitted the procedures and offices specified in the latter portion of paragraph (c). This rule replaces, without change, the procedures to be followed and updates the office addresses and numbers to be contacted prior to importation.

#### Table Grapes

The table grape import regulation (7 CFR 944.506) is based on those in effect for table grapes grown in southeastern California under Marketing Order No. 925 from April 20 through August 15. Under Marketing Order No. 925 any person may handle table grapes without regard to established grade, size, quality, or maturity requirements provided that such table grapes are handled for processing into products. Currently, no imported shipments of table grapes are exempt from the import regulations. This rule finalizes the addition of processing into products as an exemption allowed under the table grape import regulation.

#### Kiwifruit

The kiwifruit import regulation (7 CFR 944.550) is based on those in effect for kiwifruit grown in California under Marketing Order No. 920 throughout the year. Under Marketing Order No. 920 any person may handle kiwifruit without regard to established grade, size, quality, or maturity requirements provided that such kiwifruit is handled for (1) Consumption by charitable institutions; (2) distribution by relief agencies; (3) commercial processing into products; or (4) individual shipments of up to 200 pounds. Prior to issuance of the interim final rule, the only exemption allowed under the kiwifruit import regulation was that for individual shipments of up to 200 pounds. This rule finalizes the addition of charitable institutions, distribution by relief agencies, and commercial processing into products to the list of exemptions allowed under the kiwifruit import regulation. For the purposes of this section, *commercial processing into products* means that the kiwifruit is physically altered in form or chemical composition through freezing, canning, dehydrating, pulping, juicing, or heating of the product. The act of slicing, dicing, or peeling shall not be considered commercial processing into products.

This rule also makes minor modifications to the section titles of some fruit crop import regulations. In the past, the Department issued separate, annual import regulations that

were sequentially numbered. However, the import regulations are now issued on a continuing basis and are amended only as necessary. The section number for each import regulation remains the same and, thus, the numerical designations at the end of the titles are no longer needed. Also, to be consistent with Federal Register guidelines, the titles are changed by removing the capitalization of some words. These changes have no material effect on the import regulations.

The following vegetable crop import regulations are covered under 7 CFR part 980.

#### Potatoes

The import grade regulation for potatoes (7 CFR 980.1) is based on marketing orders in effect for potatoes grown in five different potato production areas in Idaho and Oregon (MO 945), Washington (MO 946), Oregon-California (MO 947), Colorado (MO 948), and the Southeastern United States (MO 953). Under one or more of these orders, any person may handle potatoes exempt from established grade, size, quality, and maturity requirements, provided that such potatoes are used for (1) Processing, (2) livestock feed, (3) charity or relief, (4) certified seed, (5) export, or (6) limited quantity shipments ranging from 500 to 1,000 pounds, depending on the individual order. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation. The Department has determined that fresh use food service product, such as fresh use potato salad, is not processing. Potatoes made into canned product, such as canned potato salad, would be considered processing and thus, can be imported as exempt. Prior to issuance of the interim final rule, the potato import regulation provided exemptions only for certified seed and minimum quantity shipments of 500 pounds. This rule finalizes the addition of year-round exemptions, subject to certain safeguard provisions, for potatoes used for: (1) canning, freezing, or other processing, (2) livestock feed, and (3) charity or relief. The safeguard provisions are specified in § 980.501.

#### Onions

The import grade regulation for onions (7 CFR 980.117) is based on marketing orders in effect for onions grown in two different onion production areas in Idaho and Oregon (MO 958), and Texas (MO 959). Under one or both of these orders, any person may handle

onions exempt from established grade, size, quality, and maturity requirements, provided that such onions are used for (1) processing, (2) livestock feed, (3) charity and relief, (4) plantings, or (5) limited quantity shipments ranging from 110 to 2,000 pounds, depending on the individual marketing order. Pearl onions not exceeding a maximum size may be imported exempt from all but size requirements. Inspection is required to determine that such onions do not exceed maximum size requirements. Processing includes canning, freezing, dehydration, extraction (juice) and pickling in brine. Processing does not include fresh chop, fresh cut, convenience food or other pre-packaged salad operations. Prior to issuance of the interim final rule, the onion import regulation provided exemptions for processed onions (dehydrated, canned, frozen and pickled in brine), green onions, onion sets (plantings), braided red onions, and for minimum quantity shipments of 110 pounds. This rule finalizes the addition of year-round exemptions, subject to certain safeguard provisions, for onions used for livestock feed, charity or relief, processing, and pearl onions. Marketing Order 958 exempts pearl onions which are smaller sized onions produced using specific cultural practices and are not larger than 1¾ inches in diameter. Because of the maximum size limitation, pearl onions imported exempt pursuant to these regulations must be inspected against the 1¾ inch diameter maximum size requirement prior to being released by the Customs Service. For clarity and consistency, this finalization also adds the size limit of pearl onions to the definition in paragraph (h), and other types of exempt onions to the definition for processing in paragraph (i). The safeguard provisions are specified in § 980.501.

#### Tomatoes

The import grade regulation for tomatoes (7 CFR 980.212) is based on the marketing order in effect for tomatoes grown in Florida (MO 966). Under that order, any person may handle tomatoes exempt from established grade, size, and maturity requirements, provided that such tomatoes are used for (1) processing, (2) charity, (3) relief, (4) export, (5) experimental purposes, (6) pear shaped (elongated), cherry, green house or hydroponic tomatoes, or (7) limited quantity shipments of 50 pounds per day. Prior to issuance of the interim final rule, the tomato import regulation provided exemptions for experimental purposes, shipments of 60 pounds, and pear shaped, cherry, hydroponic, and

greenhouse tomatoes. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for tomatoes used for processing (canning and pickling), charity and relief. The safeguard provisions are specified in § 980.501.

The following specialty crop import regulations are covered under 7 CFR part 999.

#### Dates

The import regulation for dates (7 CFR 999.1) is based on the marketing order in effect for dates produced or packed in Riverside County, California (MO 987). Under that order, any person may handle dates exempt from established grade requirements, if such dates are donated to "needy persons, prisoners, or Native Americans on reservations." Prior to issuance of the interim final rule, the date import regulation provided exemptions for: (1) processing (preparing and preserving dates into confection, coating to alter color, chopping, slicing or other processing which alters the form), (2) denatured dates unfit for human consumption, and (3) minimum quantity shipments which in the aggregate do not exceed 70 pounds. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for dates donated to charity, prisoners, and Native Americans on reservations. The safeguard provisions are specified in § 999.500.

#### Walnuts

The import grade regulation for walnuts (7 CFR 999.100) is based on the marketing order in effect for walnuts grown in California (MO 984). Under that order, any person may handle walnuts exempt from established grade and size requirements, if such walnuts are: (1) Green (immature), (2) used by charitable institutions, relief agencies or government agencies for school lunch programs, or diverted for animal feed, or oil manufacture, or other noncompetitive outlets. Prior to issuance of the interim final rule, the walnut import regulation provided exemptions from grade and size requirements for minimum quantity shipments of 60 pounds shelled or 115 pounds inshell. This rule finalizes the addition of exemptions, subject to certain safeguard provisions, for green walnuts, and walnuts for charity, relief, school lunch programs, animal feed or oil. The safeguard provisions are specified in § 999.500.

#### Raisins

Exemptions for raisin imports specified under current import



regulations for raisins (7 CFR part 999.300) are consistent with exemptions under the raisin marketing order and are not affected by this final rule.

#### Filberts

Exemptions for filbert imports specified under current import regulations for filberts (7 CFR part 999.400) are consistent with exemptions under the filbert/hazelnut marketing order and are not affected by this final rule.

#### Dried Prunes

Exemptions for dried prune imports specified under current import regulations for prunes (7 CFR part 999.200) are consistent with exemptions under the dried prune marketing order and are not affected by this final rule.

The respective marketing order committees have developed methods to monitor the marketing of the domestically produced exempt commodities from handlers to points of final disposition. Safeguard procedures in the form of reporting requirements and committee management oversight ensure that domestically produced commodities are used in the intended exempt outlets.

Safeguards in domestic marketing orders include two different procedures. A "certificate of privilege" is issued by a committee upon application by a handler. The handler notifies the appropriate marketing order committee of the handler's intent to ship that commodity to a processor, livestock feeder, charity, or other exempted outlet. A "special purpose shipment report" is forwarded by a handler to the receiver. The receiver sends the form to the responsible committee, providing information about the shipment necessary to determine compliance.

Because of the ease with which imported commodities can enter fresh market channels of trade, this rule modifies and finalizes a process to monitor exempt, imported commodities from the port of entry to the point of final disposition.

To provide consistency and ease the reporting burden on importers that deal in several commodities, this rule finalizes a single set of safeguard procedures and a standardized form that can be used for imported avocados, grapefruit, limes, oranges, olives, table grapes, kiwifruit, potatoes, onions, tomatoes, dates and walnuts. The procedure is added in §§ 944.350, 980.501 and 999.500, and is referenced in individual commodity import regulations.

Exemption forms may be obtained from the Marketing Order

Administration Branch, USDA, AMS, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456 (telephone (202)-720-4607, fax (202)-720-5698).

The exempt form must be mailed within two days of importation and two days of receipt at an exempt outlet. Original copies of the FV-6 must be submitted. Information required on the Importer's Exempt Commodity Form includes: (1) the commodity and the variety (if known) being imported, (2) the date and place of inspection if used to enter failing product or culls as exempt, (include a copy of the inspection certificate), (3) identifying marks or numbers on the containers, (4) identifying numbers on the railroad car, truck or other transportation vehicle transporting product to the receiver, (5) the name and address of the importer, (6) the place and date of entry, (7) the quantity imported (in pounds), (8) the name and address of the intended receiver (processor, feeder, charity, or other exempt receiver), (9) intended use of the exempt commodity, (10) the U.S. Customs Service entry number and harmonized tariff code number, and (11) such other information as may be necessary to ensure compliance with this regulation.

The reporting burden on both importers and receiving entities is minimal and consistent with safeguard procedures imposed on the handling of domestically-produced exempt commodities. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information and collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581-0167.

This rule finalizes increases in the reporting burden on approximately 448 importers of avocados, grapefruit, limes, oranges, olives, table grapes, and kiwifruit and 534 importers of potatoes, onions, tomatoes, dates and walnuts who complete the exemption form. The estimated time for importers to complete the form is 10 minutes. The estimated time for receivers to sign the certification is 5 minutes.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

This final rule reflects the Department's appraisal of the need to

relax the import requirements, with modification as hereinafter set forth, to comply with the terms of NAFTA and to effectuate the declared policy of the Act.

#### List of Subjects

##### 7 CFR Part 944

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

##### 7 CFR Part 980

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

##### 7 CFR Part 999

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

Accordingly, the two interim final rules amending 7 CFR parts 944, 980 and 999 which were published at 58 FR 69182 and 69186 on December 30, 1993, are adopted as a final rule with the following changes:

#### PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

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

2. In § 944.31, paragraphs (f) and (g) are revised to read as follows:

##### § 944.31 Avocado import maturity regulation.

\* \* \* \* \*

(f) Any lot or portion thereof which fails to meet the import requirements, and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products; prior to or after reconditioning may be exported or disposed of under the supervision of the Federal or Federal-State Inspection Service with the costs of certifying the disposal of such lot borne by the importer.

(g) The maturity requirements of this section shall not be applicable to avocados imported for consumption by charitable institutions, distribution by relief agencies, seed, or commercial processing into products, but such avocados shall be subject to the safeguard provisions contained in § 944.350.

##### § 944.209 [Amended]

3. In § 944.209, the last sentence in paragraph (c), the word "handled" is removed and the word "imported" is added in its place.



4. In § 944.312, paragraphs (c) and (h) are revised to read as follows:

**§ 944.312 Orange import regulation.**

\* \* \* \* \*

(c) The term *importation* means release from custody of the United States Customs Service. The term *processing* means the manufacture of any orange product which has been converted into sectioned fruit or into fresh juice, or preserved by any commercial process, including canning, freezing, dehydrating, drying, and the addition of chemical substances, or by fermentation.

\* \* \* \* \*

(h) The grade, size, quality, and maturity requirements of this section shall not be applicable to oranges imported for consumption by charitable institutions, distribution by relief agencies, or processing into products, but shall be subject to the safeguard provisions contained in § 944.350, *Provided that*: oranges, imported as exempt under this regulation, cannot be shipped to processors who have facilities, equipment, or outlets to repack or sell fruit in fresh form.

\* \* \* \* \*

5. Section 944.350 is revised to read as follows:

**§ 944.350 Safeguard procedures for avocados, grapefruit, kiwifruit, limes, olives, oranges, and table grapes exempt from grade, size, quality, and maturity requirements.**

(a) Each person who imports:

(1) Avocados, grapefruit, kiwifruit, limes, olives, and oranges for consumption by charitable institutions or distribution by relief agencies;

(2) Avocados, grapefruit, kiwifruit, limes, oranges, and table grapes for processing;

(3) Olives for processing into oil;

(4) Grapefruit for animal feed; or

(5) Avocados for seed shall obtain an "Importer's Exempt Commodity Form" (FV-6 form) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed "Importer's Exempt Commodity Form" to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA with a postmark no later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, subsequently imported as

exempt under this provision shall be reported on an "Importer's Exempt Commodity Form" and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise destroyed. In such cases, a second "Importer's Exempt Commodity Form" must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV-6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone (202)-720-4607. FV-6 forms submitted by fax must be followed by a mailed, original copy of the FV-6 form. Fax transmissions may be sent to the MOAB at (202) 720-5698.

6. In § 944.401, paragraph (c) is revised to read as follows:

**§ 944.401 Olive import regulation.**

\* \* \* \* \*

(c) The Processed Products Branch, Fruit and Vegetable Division, 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 Processed Products Branch, Fruit and Vegetable Division, 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). Application for inspection of canned ripe olives shall be made not less than 10 days prior to the time when the olives will be imported. Since inspectors are not located in the immediate vicinity of some of the small ports of entry, importers of canned ripe olives shall make arrangements for inspection through the following office at least 10 days prior to the time when the olives will be imported: Processed Products Branch, USDA, AMS, F&V Division, P.O. Box 96456, Room 0726-S, Washington, DC 20090-6456, telephone (202) 720-5021, fax (202) 690-1527. Application for inspection of processed bulk olives shall be made not less than 3 days prior to use in the production of canned ripe olives. Such application shall be made through one of the following offices: Regional Director, Eastern Regional Office, 800 Roosevelt Road, Building A, suite 380 Glen Ellyn, IL 60137, telephone (708) 790-6937/8/9, fax (708) 469-5162; or Regional Director, Western Regional Office, 2202 Monterey Street, suite 102-C, Fresno, CA 93721, telephone (209) 487-5891, fax (209) 487-5900.

\* \* \* \* \*

7. In § 944.550, paragraph (d) is revised to read as follows:

**§ 944.550 Kiwifruit import regulation.**

\* \* \* \* \*

(d) Any lot or portion thereof which fails to meet the import requirements and is not being imported for purposes of consumption by charitable institutions, distribution by relief agencies, or commercial processing into products may be reconditioned or exported. Any failed lot which is not reconditioned or exported shall be disposed of under supervision of the Federal or Federal-State Inspection Service with the costs of certifying the

disposal of said lot borne by the importer.

\* \* \* \* \*

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

1. The authority citation for 7 CFR part 980 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 980.1, paragraph (i) is revised to read as follows:

### **§ 980.1 Import regulations; Irish potatoes.**

\* \* \* \* \*

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not be applicable to potatoes imported for canning, freezing, other processing, livestock feed, charity, or relief, but such potatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning, freezing, dehydration, chips, shoestrings, starch and flour. Processing does not include potatoes that are only peeled, or cooled, sliced, diced, or treated to prevent oxidation, or made into fresh potato salad.

3. In § 980.117, paragraph (i) is revised to read as follows:

### **§ 980.117 Import regulations; onions.**

\* \* \* \* \*

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not be applicable to onions imported for processing, livestock feed, charity, or relief, and pearl onions not larger than 1¾ inches in diameter, onion sets (plantings), braided red onions, and minimum quantity shipments of 110 pounds, but such onions shall be subject to the safeguard provisions in § 980.501. Processing includes canning, freezing, dehydration, extraction (juice) and pickling in brine. Processing does not include fresh chop, fresh cut, convenience food or other pre-packaged salad operations. Pearl onions must be inspected for size prior to entry into the United States.

4. In § 980.212, paragraph (i) is revised to read as follows:

### **§ 980.212 Import regulations; tomatoes.**

\* \* \* \* \*

(i) *Exemptions.* The grade, size, quality and maturity requirements of this section shall not apply to tomatoes for charity, relief, canning or pickling, but such tomatoes shall be subject to the safeguard provisions contained in § 980.501. Processing includes canning and pickling.

5. Section 980.501 is revised to read as follows:

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

(a) Each person who imports:  
(1) Potatoes, onions or tomatoes for consumption by charitable institutions or distribution by relief agencies;

(2) Potatoes, onions, or tomatoes for processing;

(3) Potatoes or onions for livestock feed; or

(4) Pearl onions, shall obtain an "Importer's Exempt Commodity Form" (FV–6) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed "Importer's Exempt Commodity Form" to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA with a postmark no later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, subsequently imported as exempt under this provision shall be reported on an "Importer's Exempt Commodity Form" and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, returned to the country of origin, or otherwise disposed of. In such cases, a second "Importer's Exempt Commodity Form" must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV–6 forms and other correspondence regarding entry of 8e commodities must be mailed to the

Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523–S, Washington, D.C. 20090–6456, telephone (202) 720–4607. FV–6 forms submitted by fax must be followed by a mailed, original copy of the FV–6. Fax transmissions may be sent to the MOAB at (202) 720–5698.

## **PART 999—SPECIALTY CROPS; IMPORT REGULATIONS**

1. The authority citation for 7 CFR part 999 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 999.500 is revised to read as follows:

### **§ 999.500 Safeguard procedures for walnuts and certain dates exempt from grade, size, quality, and maturity requirements.**

(a) Each person who imports:

(1) Dates which are donated to needy persons, prisoners or Native Americans on reservations; or

(2) Walnuts which are: green walnuts (so immature that they cannot be used for drying and sale as dried walnuts); walnuts used in non-competitive outlets such as use by charitable institutions, relief agencies, governmental agencies for school lunch programs, and diversion to animal feed or oil manufacture shall obtain an "Importer's Exempt Commodity Form" (FV–6) from the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, and shall show the completed "Importer's Exempt Commodity Form" to the U.S. Customs Service Regional Director or District Director, as applicable, at the port at which the customs entry is filed. One copy shall be mailed to the Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, with a postmark not later than two days after the date of importation and a third copy shall accompany the lot to the exempt outlet specified on the form. Any lot offered for inspection and, all or a portion thereof, imported as exempt under this provision shall be reported on an "Importer's Exempt Commodity Form" and such form, accompanied by a copy of the applicable inspection certificate, shall be mailed to the Marketing Order Administration Branch.

(b) Each person who receives an exempt commodity for the purposes specified in paragraph (a) of this section shall also receive a copy of the same numbered Importer's Exempt Commodity Form filed by the importer or customs broker and shall certify, by completing and signing Section II of the form and mailing the form to the

Marketing Order Administration Branch within two days of receipt of the exempt lot, that such lot has been received and will be utilized in the exempt outlet.

(c) It is the responsibility of the importer to notify the Marketing Order Administration Branch of any lot of exempt commodity rejected by a receiver, shipped to an alternative exempt receiver, exported, or otherwise disposed of. In such cases, a second "Importer's Exempt Commodity Form" must be filed by the importer providing sufficient information to determine ultimate disposition of the exempt lot and such disposition shall be so certified by the final receiver.

(d) All FV-6 forms and other correspondence regarding entry of 8e commodities must be mailed to the Marketing Order Administration Branch, USDA, AMS, P.O. Box 96456, room 2523-S, Washington, D.C. 20090-6456, telephone (202) 720-4607. FV-6 forms submitted by fax must be followed by a mailed, original copy of the FV-6. Fax transmissions may be sent to the MOAB at (202) 720-5698.

Dated: February 23, 1996.

Sharon Bomer Lauritsen,  
*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 96-7192 Filed 3-25-96; 8:45 am]

BILLING CODE 3410-02-P

## 7 CFR Part 1280

[No. LS-96-002]

### Sheep Promotion, Research, and Information Program

**AGENCY:** Agricultural Marketing Service; USDA.

**ACTION:** Notice of Referendum Results

**SUMMARY:** The Agricultural Marketing Service (AMS) is announcing that sheep producers, sheep feeders, and importers of sheep and sheep products voting in a national referendum on February 6, 1996, have approved the Sheep and Wool Promotion, Research, Education, and Information Order (Order).

**FOR FURTHER INFORMATION CONTACT:**

Ralph L. Tapp, Chief, Marketing Programs Branch, Livestock and Seed Division, AMS, USDA, Room 2606-S; P.O. Box 96456; Washington, D.C. 20090-6456.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Sheep Promotion, Research, and Information Act of 1994, 7 U.S.C. 7101 *et seq.* (Act), the Department of Agriculture conducted a referendum on February 6, 1996, among eligible sheep producers, sheep feeders, and importers of sheep and sheep products to

determine if an Order would become effective.

Of the 19,801 valid ballots cast, 10,707 (54.1 percent) favored and 9,094 (45.9 percent) opposed the implementation of the Order. Additionally, of those persons who cast valid ballots in the referendum, those who favored the Order account for 40 percent of the total production voted, and those opposed account for 60 percent of the total production voted. The Order could have been approved by either a majority of the producers, feeders, and importers voting in the referendum or by those voting in the referendum who accounted for at least two-thirds of the production represented.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible producers, feeders, and importers who voted absentee or in person in the February 6, 1996, national referendum voted to implement the Order. As a result, a promotion, research, education, and information program will be funded by a mandatory assessment on domestic sheep producers, lamb feeders, and exporters of live sheep and greasy wool of 1 cent per pound on live sheep sold and 2 cents per pound on greasy wool sold. Importers will be assessed (1) 1 cent per pound on live sheep; (2) the equivalent of 1 cent per pound of live sheep for sheep products; and (3) 2 cents per pound of degreased wool or the equivalent of degreased wool for wool and wool products. Imported raw wool will be exempt from assessments. Each person who processes or causes to be processed sheep or sheep products of that person's own production and markets the processed products, will be assessed the equivalent of 1 cent per pound of live sheep sold or 2 cents per pound of greasy wool sold. All assessments may be adjusted in accordance with applicable provisions of the Act. The date when assessments will begin will be announced at a later date.

Dated: March 20, 1996.

Lon Hatamiya,  
*Administrator.*

[FR Doc. 96-7191 Filed 3-25-96; 8:45 am]

BILLING CODE 3410-02-P

## DEPARTMENT OF JUSTICE

### Immigration and Naturalization Service

#### 8 CFR Parts 103, 204, 205 and 216

[INS No. 1705-95]

RIN 1115-AE04

#### Petition to Classify Alien as Immediate Relative of a United States Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Spouses and Children

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Interim rule with request for comments.

**SUMMARY:** This interim rule amends the Immigration and Naturalization Service ("the Service") regulations to allow a spouse or child to seek immigrant classification if he or she has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse or parent. It also permits a spouse to seek classification if his or her child has been battered by, or subjected to extreme cruelty committed by, the citizen or lawful permanent resident spouse. A qualified spouse or child who is living in the United States but is not a permanent resident may use the procedures established by this rule to self-petition for immigrant classification. The self-petition may be filed without the abuser's knowledge or consent, and may include the children of a self-petitioning spouse. A person who is granted immigrant classification under this provision may become eligible for lawful permanent resident status. A lawful permanent resident of the United States has legal permission to live and work in this country, and may later qualify for U.S. citizenship through naturalization.

**DATES:** This interim rule is effective March 26, 1996. Written comments must be received on or before May 28, 1996.

**ADDRESSES:** Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., Room 5307, Washington, DC 20536, Attn: Public Comment Clerk. To ensure proper handling, please reference the INS number 1705-95 on your correspondence. Comments are available for public inspection at this location by calling (202) 514-3048 to arrange an appointment.