

SECTION 8E REGULATIONS AND THE TOMATO SUSPENSION AGREEMENT – FAQs

What is the Tomato Suspension Agreement (the Agreement)?

It is an agreement between the United States Department of Commerce (USDOC) and signatory producers/exporters of fresh tomatoes grown in Mexico. The first suspension agreement on fresh tomatoes from Mexico became effective on November 1, 1996. USDOC and the Mexican signatory growers entered into new agreements in 2002 and 2008, and the most recent agreement was entered into and became effective on March 4, 2013.

Has the Agreement changed the U.S. Department of Agriculture's (USDA) Section 8e import requirements for tomatoes?

No, the Agreement has not changed the Section 8e import requirements for tomatoes. The Agreement is separate and apart from Section 8e. While USDA's **Importer's Exempt Commodity Form (FV-6)** must be filed for certain tomatoes for processing under the Agreement (explained in more detail below), this does not affect the import requirements for tomatoes under Section 8e.

What tomatoes are regulated under Section 8e and the Agreement?

Under Section 8e, all tomatoes imported from October 10 through June 15 (**except** pear-shaped, cherry, hydroponic, and greenhouse tomatoes; tomatoes used in noncommercial outlets for experimental purposes; and tomatoes imported in quantities not exceeding 60 pounds) must meet minimum grade and size requirements in accordance with § 980.212 (7 CFR 980). Tomatoes for charity, relief, or processing are exempt from these requirements.

Under the Agreement, all fresh or chilled tomatoes grown in Mexico, **except** tomatoes for processing, are covered.

How is "processing" defined under Section 8e and the Agreement?

Under Section 8e, processing includes preserving by any commercial process, including canning, pickling, dehydrating, drying, and the addition of chemical substances, or converting any tomato product into juice. All processing must result in a product that does not require refrigeration until opened.

Under the Agreement, processing includes preserving by any commercial process, such as canning, dehydrating, drying, or the addition of chemical substances, or converting the tomato product into juices, sauces, or purees. Fresh tomatoes imported for cutting up (not further processing), such as tomatoes used in the preparation of fresh salsa or salad bars, are covered by the Agreement.

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What are the required procedures and forms if tomatoes are going to be used for processing under Section 8e and the Agreement?

Under Section 8e, an importer must electronically complete an **Importer's Exempt Commodity Form (FV-6)**¹ to U.S. Customs and Border Protection (CBP) at the port where the customs entry is filed. The receiver of the exempted tomatoes must then certify the FV-6 ***within two (2) days of receipt*** of the exempted tomatoes. See [Filing a FV-6 Certificate in CEMS](#) for more information on electronic filing.

Under the Agreement, tomatoes for processing are not subject to the Agreement but must be sold directly to a processor (i.e., the first purchaser in the United States must be an actual processor). Tomatoes may **not** be sold to a processor **after** their initial arrival in the United States. **Appendix F** of the Agreement contains procedures that Agreement signatories must follow to sell tomatoes for processing that are subject to the Agreement. One of the following two forms must be presented to CBP at the time of crossing at the port of entry into the United States:

- 1) For tomatoes covered under Federal Marketing Order 966, an **Importer's Exempt Commodity Form (FV-6)**¹ is required; or
- 2) For tomatoes *not* covered under Federal Marketing Order 966 (e.g., Roma tomatoes, grape tomatoes, greenhouse tomatoes, and any tomatoes that are imported during the part of the year that Federal Marketing Order 966 handling regulations are not in effect), a **2013 Suspension Agreement – Tomatoes for Processing Exemption Form**² is required.

¹If you need assistance with the Importer's Exempt Commodity form (FV-6), contact USDA's Marketing Order and Agreement Division at (202) 690-0464 or (202) 720-6467.

²[Click to open the 2013 Suspension Agreement – Tomatoes for Processing Exemption Form](#)

How are greenhouse tomatoes handled under Section 8e versus the Agreement?

For Section 8e, greenhouse tomatoes are exempt from requirements. USDA's Marketing Order and Agreement Division (MOAD) relies on the Harmonized Tariff Schedule (HTS) code filed with CBP as well as other entry documentation when determining whether a shipment of tomatoes is subject to Section 8e inspection requirements. Importers must continue to file appropriate HTS codes for tomatoes. Because currently there is no HTS code for hydroponic tomatoes, importers must provide other entry documentation showing that the imported tomatoes were hydroponic. A link to HTS codes for tomatoes may be found at the end of this list of FAQs.

Under the Agreement, all fresh tomatoes (***except*** tomatoes for processing) are covered. The Agreement does not use the term "greenhouse"; instead, the terms "controlled environment," "adapted environment," and "open field" are defined and used in the Agreement. These terms are specific to the Agreement and are not related to the requirements for imported tomatoes under Section 8e.

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Is additional information available about the Agreement, Federal Marketing Order 966, and/or Section 8e import regulations for tomatoes?

The links below will take you to websites that contain additional information:

- [USDOC, Tomato Suspension Agreement](#)
- USDA, MOAD:
 - [Federal Marketing Order 966 \(7 CFR 966\)](#)
 - Section 8e Import Regulations for Tomatoes:
 - [Summary of regulations](#)
 - [Detailed regulations \(7 CFR 980.212\) and safeguard procedures \(7 CFR 980.501\)](#)
- [USITC, Harmonized Tariff Schedule Codes](#)