



Policy Memorandum

To: Stakeholders and Interested Parties

From: Jennifer Tucker, Deputy Administrator

Subject: Impact of Fumigation and Irradiation Requirements on Organic Imports

Date: July 31, 2018

This memo is directed at USDA accredited certifiers and importers of organic products, including certified organic handlers and other operations that are excluded from certification (e.g., brokers), as a reminder of the impact of phytosanitary requirements on organic products. In cooperation with the USDA Animal and Plant Health Inspection Service (APHIS) and other federal agencies, the Agricultural Marketing Service (AMS) enforces the USDA organic regulations for domestic and imported organic agricultural products through the National Organic Program (NOP). APHIS sets requirements for the treatment of imports which could carry exotic pests or diseases. This memo outlines the impact of APHIS regulations on the eligibility of products for import into the United States and further sale as organic.

Certifiers and importers are reminded that fumigation with a prohibited substance renders products ineligible for future sale as organic in the United States – and all known fumigants are prohibited for use under the USDA organic regulations. Irradiation also renders a product ineligible for sale, labeling, or representation as organic in the U.S.

APHIS' Role

Animal and Plant Health Inspection Service (APHIS), Plant Protection and Quarantine (PPQ) safeguards U.S. agriculture and natural resources against the entry, establishment, and spread of economically and environmentally significant pests into and within the United States, and facilitates the safe trade of agricultural products within the U.S. Pursuant to the statutory authority of the Plant Protection Act, 7 U.S.C. 7001 *et seq.*, APHIS prohibits commodities with phytosanitary risk from entering the U.S., regardless of conventional or organic production. AMS continues to work collaboratively with APHIS PPQ to ensure that organic certifiers are aware of APHIS entry requirements and to ensure that certificates are issued only for those plant and plant products that are allowed entry into the United States in accordance with APHIS regulations.



APHIS Import Requirements

APHIS establishes import requirements for live plants and plant products, such as fruits, vegetables, soil, and seeds, because they could introduce exotic pests and diseases not known to occur in the United States. Certain commodities require treatment as a mandatory condition of entry into the United States. Other shipments of regulated agricultural commodities are inspected for compliance with APHIS regulations by U.S. Customs and Border Protection Agriculture Specialists (CBPAS) at U.S. ports of entry. When a CBPAS intercepts a pest during an agricultural inspection, he or she submits the finding to APHIS for identification and a risk determination. If APHIS determines that the pest poses a threat to the United States, APHIS may require the shipment to be treated, re-exported, or destroyed. APHIS establishes treatment requirements for commodities infested with pests.

Fumigation and Irradiation Notification Process

Prior to treating any product due to a pest detection, CBP will notify the responsible parties about the status of the shipment and provide mitigation options, including re-exporting, treating or destroying the shipment. If the responsible party elects to treat the shipment, treatment may involve fumigation with substances such as methyl bromide or ionizing radiation, both of which are prohibited for use in the handling of organic agricultural products. These treatments affect the organic status of imported agricultural products, when:

1. the product is fumigated using a prohibited substance and *that product comes into contact with the fumigating agent*,¹ or
2. the product, in any instance, undergoes treatment using ionizing radiation.

In both cases, imported food products may not be sold, labeled or represented as having been organically produced or handled. The sale or labeling of treated products as organically produced or handled may result in compliance actions against certified operations, as well as monetary civil penalties for knowing violations by any person. Treatments are documented by APHIS and CBP through phytosanitary certificates, fumigation records, and/or Emergency Action Notifications.

NOP has received notifications for fumigated fruits, vegetables, grains, and oilseeds that may have been declared or labeled as organic and imported from various countries. These include products fumigated as a condition of entry. U.S. importers and brokers are reminded that they are responsible for ensuring that the products they import are free of potentially harmful pests and that they comply with all USDA organic regulations. Certifiers and importers should obtain documentary evidence, such as phytosanitary certificates, to ensure that organic integrity was maintained at all border crossings and throughout a product's supply chain.

¹ For example, products whose packaging may be infested with a plant pest but are themselves fully enclosed in a sealed container at the time of fumigation would not come into contact with a fumigant.



The NOP will continue to work with APHIS and other federal partners to ensure the integrity of organic products around the world. Our efforts seek to enhance notifications to trade, improve identification of organic imports, and support increased transparency through data analysis.

References

Organic Foods Productions Act of 1990, as amended

7 U.S.C. § 6505 Compliance Requirements

(A) A person may sell or label an agricultural product as organically produced only if such product is produced and handled in accordance with this chapter; and

(B) no person may affix a label to, or provide other market information concerning, an agricultural product if such label or information implies, directly or indirectly, that such product is produced and handled using organic methods, except in accordance with this chapter.

USDA Organic Regulations (7 CFR Part 205)

7 CFR § 205.100 What has to be certified.

(c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than the amount specified in §3.91(b)(1) of this title per violation.

§205.101 Exemptions and exclusions from certification.

(b) Exclusions.

(1) A handling operation or portion of a handling operation is excluded from the requirements of this part, except for the requirements for the prevention of commingling and contact with prohibited substances as set forth in §205.272 with respect to any organically produced products, if such operation or portion of the operation only sells organic agricultural products labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” that:

(i) Are packaged or otherwise enclosed in a container prior to being received or acquired by the operation; and

(ii) Remain in the same package or container and are not otherwise processed while in the control of the handling operation.



7 CFR § 205.105 Allowed and prohibited substances, methods, and ingredients in organic production and handling.

To be sold or labeled as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)),” the product must be produced and handled without the use of:

- (a) Synthetic substances and ingredients, except as provided in §205.601 or §205.603.
- ...
- (f) Ionizing radiation, as described in Food and Drug Administration regulation, 21 CFR 179.26.

§205.272 Commingling and contact with prohibited substance prevention practice standard.

(a) The handler of an organic handling operation must implement measures necessary to prevent the commingling of organic and nonorganic products and protect organic products from contact with prohibited substances.

(b) The following are prohibited for use in the handling of any organically produced agricultural product or ingredient labeled in accordance with subpart D of this part:

- (1) Packaging materials, and storage containers, or bins that contain a synthetic fungicide, preservative, or fumigant;
- (2) The use or reuse of any bag or container that has been in contact with any substance in such a manner as to compromise the organic integrity of any organically produced product or ingredient placed in those containers, unless such reusable bag or container has been thoroughly cleaned and poses no risk of contact of the organically produced product or ingredient with the substance used.

National List of Allowed and Prohibited Substances

USDA-AMS publishes “The National List of Allowed and Prohibited Substances” which identifies the synthetic substances that may be used and the nonsynthetic (natural) substances that may not be used in organic crop and livestock production. In addition, it identifies a limited number of non-organic substances that may be used in or on processed organic products.

<https://www.ams.usda.gov/rules-regulations/organic/national-list>



7 U.S.C. § 7701 Plant Protection Act

Congress finds that-

- (1) the detection, control, eradication, suppression, prevention, or retardation of the spread of plant pests or noxious weeds is necessary for the protection of the agriculture, environment, and economy of the United States;
- (2) biological control is often a desirable, low-risk means of ridding crops and other plants of plant pests and noxious weeds, and its use should be facilitated by the Department of Agriculture, other Federal agencies, and States whenever feasible;
- (3) it is the responsibility of the Secretary to facilitate exports, imports, and interstate commerce in agricultural products and other commodities that pose a risk of harboring plant pests or noxious weeds in ways that will reduce, to the extent practicable, as determined by the Secretary, the risk of dissemination of plant pests or noxious weeds.

APHIS Guidance Documents

Certifiers can determine which plants and plant products are allowed entry into the United States by reviewing various APHIS guidance documents, such as the Fruit and Vegetable Import Requirements Database, the Cut Flowers and Greenery Manual, and the Plants for Planting Manual.

Below is a link to each guidance document and a general description of the information each contains.

1. The [Fruits and Vegetables Import Requirements \(FAVIR\) database](#) allows customers to search, by commodity or country, for authorized fruits and vegetables and their requirements for importation into the United States. To search this database, select the drop down arrow at the top of the screen and select the foreign country of origin of the commodity. Click the “search” button. Once the results of your search has been retrieved, read any information in the “short description” and “instruction text” for additional awareness. Each search will contains a section that provides “a list of commodities approved from all countries”. Click on the ([OPEN CIR](#)) to see the Commodity Import Requirements (CIR) for the commodities listed in this section.
2. The [Cut Flowers and Greenery Manual](#) is used to regulate fresh, cut portions of plants when they are imported for decoration or ornamentation, and for protecting plants that are threatened with extinction due to trade in those plants or their derivatives. To search this manual, click on the “search” icon on the left of the screen and enter the name of the commodity in the search box. Hits on the search appear in the box below the search box. Click on each hit to locate pages in the Cut Flowers and Greenery Manual where this



commodity is referenced. Review each page corresponding to each hit for import guidance.

3. The [Plants for Planting Manual](#) is used for regulating imported items that are intended for propagation. To search this manual, click on the “search” icon on the left of the screen and enter the name of the commodity in the search box. Hits on the search appear in the box below the search box. Click on each hit to locate pages in the Plants for Planting Manual where this commodity is referenced. Review each page corresponding to each hit for import guidance.

Alternatively, certifiers can contact APHIS’ Permit Services Call Center for guidance and information about entry requirements by calling toll-free (877) 770-5990. Certifiers can also contact the Call Center by fax at (301) 734-5786 or by email at plantproducts.permits@aphis.usda.gov.