



Instruction Temporary Variances

1. Purpose and Scope

This instruction describes the policies and procedures used by the U.S. Department of Agriculture (USDA) Agricultural Marketing Service (AMS) to establish or deny a request for a temporary variance from the USDA organic regulations.

2. Background

A certifying agent (certifier) or State Organic Program (SOP) may request a temporary variance from the production and handling requirements at 7 C.F.R. §§ 205.203 - 205.207, 205.236 - 205.240, and 205.270 - 205.272.

3. Policy

Pursuant to 7 C.F.R. § 205.290, a certifier or SOP may recommend that a temporary variance from the USDA organic regulations be established. A certified operation may submit a request for a temporary variance to their certifier or SOP. Recommendations must include a written justification for the temporary variance based on the appropriate reason(s) listed in 7 C.F.R. § 205.290(a)(1) - (3); the scope, duration, and any restrictions for the temporary variance; and documentation or records supporting the recommendation.

The Administrator may establish a temporary variance from the requirements in §§ 205.203 - 205.207, 205.236 - 205.240, and 205.270 - 205.272 of the regulations for the following reasons:

- a. Natural disasters declared by the Secretary;
- b. Damage caused by drought, wind, flood, excessive moisture, hail, tornado, earthquake, fire, or other business interruption; and
- c. Practices used for the purpose of conducting research or trials of techniques, varieties, or ingredients used in organic production or handling.

A temporary variance may not be granted for:

- a. Any practice, material or procedure prohibited under § 205.105;
- b. Feeding non-organic feed to organic livestock; or
- c. Any USDA organic regulation not included in §§ 205.203 - 205.207, 205.236 - 205.240, or 205.270 - 205.272.

Temporary variances shall be granted for a specified period of time, subject to extension as the Administrator deems necessary.



4. Procedure

4.1 Certified Operations

A certified operation submitting a request for a temporary variance to their certifier or SOP must:

- a. Submit the request in writing, and include supporting documentation justifying the need for the temporary variance; and
- b. Maintain records on any procedures or practices impacted by the temporary variance, if it were granted.

4.2 Certifiers and SOPs

A certifier or SOPs must:

- a. Accept requests for temporary variances from certified operations and review requests to determine whether they are based on one or more of the reasons listed in 7 C.F.R. § 205.290(a), and whether the supporting documentation provided by the operation justifies the need for the requested temporary variance.
- b. Submit recommendations for establishing temporary variances in writing to AMS. The recommendation should include supporting documentation justifying the need for the temporary variance, along with the scope, duration, and any restrictions for the temporary variance. If submitting a recommendation as a result of a temporary variance request received from a certified operation, the submission should include:
 - i. The written request and supporting documentation submitted by the operation; and
 - ii. A recommendation to either grant or deny the temporary variance requested by the operation, along with the reasons why. The certifier or SOP may provide additional documentation to support their recommendation.
- c. Inform each production and handling operation it certifies, to which the temporary variance applies, upon notification by AMS, that a temporary variance has been established.

4.3 AMS

Once a recommendation to grant or deny a temporary variance is received, the AMS National Organic Program (NOP) will:

- a. Within five business days of receipt, review the temporary variance recommendation for completeness to determine whether there is adequate information to evaluate the temporary variance recommendation.
- b. Contact the certifier, SOP, or certified operation(s) that are affected by the temporary variance to obtain additional information, if needed.
- c. Within ten business days of receipt, evaluate the recommendation against allowed reasons for temporary variances as described in 7 C.F.R. § 205.290.
- d. Forward a recommendation to the AMS Administrator for decision to either grant or deny the temporary variance.



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- i. If the AMS Administrator grants the temporary variance, AMS NOP will issue a Notice of Temporary Variance Approval describing the scope, restrictions, and duration of the temporary variance. Determining factors for duration of a temporary variance will include expected recovery times from natural disasters or business interruption, or the duration of the research project.
 - ii. If the AMS Administrator denies the temporary variance, AMS NOP will issue a Notice of Denial of Temporary Variance, which will include the reason(s) for denying the temporary variance.
- e. Notify the certifier of the AMS Administrator's decision.

AMS will publish the decision to grant or deny the temporary variance on its Web site.

5. Records

AMS will maintain records of all temporary variance recommendations.

6. References

USDA Organic Regulations ([7 C.F.R. Part 205](#))

7 C.F.R. § 205.203 Soil fertility and crop nutrient management practice standard.

7 C.F.R. § 205.204 Seeds and planting stock practice standard.

7 C.F.R. § 205.205 Crop rotation practice standard.

7 C.F.R. § 205.206 Crop pest, weed, and disease management practice standard.

7 C.F.R. § 205.207 Wild-crop harvesting practice standard.

7 C.F.R. § 205.236 Origin of livestock.

7 C.F.R. § 205.237 Livestock feed.

7 C.F.R. § 205.238 Livestock health care practice standard.

7 C.F.R. § 205.239 Livestock living conditions.

7 C.F.R. § 205.240 Pasture practice standard.

7 C.F.R. § 205.270 Organic handling requirements.

7 C.F.R. § 205.271 Facility pest management practice standard.

7 C.F.R. § 205.272 Commingling and contact with prohibited substance prevention practice standard.

7 C.F.R. § 205.290 Temporary Variances.