

National Organic Standards Board (NOSB)
Certification, Accreditation, & Compliance Subcommittee (CACS)
Consistency in Organic Seed Use Discussion Document
Fall 2026

Introduction

The Certification, Accreditation, & Compliance Subcommittee (CACS) seeks to identify strategies for increasing the amount and variety of organic seed that is commercially available and used in organic production, as well as reducing barriers to achieving that progress. It is clear that these tools and barriers vary significantly across the organic sector.

Background

The Organic Foods Production Act (OFPA) and National Organic Program (NOP) regulations require use of organic seed unless it is not commercially available (7 U.S.C. 6508; 7 CFR 205.204) (see Appendix B for relevant text). Together, this rule and exception recognize that organic seed availability may lag behind the potential for organic crop production and allow continued crop innovation and experimentation on organic farms.

In August 2005 and November 2008, the NOSB made recommendations on implementation of the commercial availability requirement, and in 2013, the NOP issued Guidance 5029, which outlines procedures for verifying compliance with the commercial availability requirement. Guidance 5029 recognizes that the NOSB “emphasized that utilizing organic seed is a fundamental part of supporting a healthy, viable organic seed industry” (Guidance 5029, section 3). The Guidance “describes practices for certified operations to demonstrate their proactive efforts to procure all organic seeds, annual seedlings, and planting stock in support of their organic system plan (OSP)” (Guidance 5029, section 1).

It was expected that after some years after OFPA’s adoption, most seed used in organic production would be organic. Instead, organic seed use has stagnated.

2018-2019

The NOSB made additional recommendations for rulemaking and strengthening Guidance 5029 in 2018 and 2019, respectively. The 2018 recommendation proposed adding language to 7 CFR 205.204 requiring improvement in searching, sourcing, and use of organic seed/planting stock every year, with the goal of using only organic seed and planting stock. It also proposed changes to guidance on screening for genetic engineering contamination, use of trials, documentation of desired characteristics, more robust commercial availability searches, and buyer-sourced seed. The 2019 recommendation included additional changes to guidance to address the granularity of the commercial availability search, criteria for buyer-selected seed and planting stock, and what could prompt a noncompliance. The 2018 and 2019 recommendations were summarized in Appendix B to the Fall 2024 Discussion Document. These recommendations have not been implemented by the NOP.

2024

In Fall 2024, the NOSB sought public input on a number of questions, to guide next steps in its work to improve consistency in organic seed use. Questions addressed whether there is ongoing support for the 2018 and 2019 recommendations, factors that influence organic seed use, access to information and research, and comparisons to other regulatory schemes.

Commenters unanimously supported moving ahead with the 2018 recommendation. Comments were mixed on the 2019 recommendation, with some supporting and others noting that circumstances have changed and more work is needed.

Commenters noted that the heaviest burdens of commercial availability searches tend to fall on smaller, diversified operations, and that those also tend to be the operations with the highest organic seed use. It was noted that the current regulation does not have strong enough teeth to make meaningful enforcement worthwhile.

Overall, comments indicated that organic seed is often available to those who actively seek it out, and benefits to using seed adapted to organic cropping systems, but that use is lower than it could be. Commenters noted that stricter limits on nonorganic seed use could expand organic options because having a guaranteed market could cause more seed suppliers to offer organic seed. Commenters flagged that high levels of nonorganic seed use is a consumer confidence risk, because consumers expect that organic crops are grown from organic seed. There are also ongoing concerns about drift and contamination from genetically engineered crops and how to identify seed produced using newer technologies that may be excluded methods. However, significant financial and planning barriers limit expanded use of organic seed.

Some commenters provided specific information about crops that do or do not have organic seed options readily available:

Available: cabbage; head lettuce; corn (but buyers of food grade corn recommend conventional untreated seed)

Maybe available: soybean (not there currently but could be); corn, soybeans, wheat, oats, alfalfa, barley, and clovers (conflicting)

Unavailable: specialty varieties, including radicchio; alfalfa; carrots; spinach; wheat (economic challenges); food grade, white, and blue corn; pasture-grass species, including brome grass and timothy; clovers; sorghum; sudangrass; certain cover crops; dry edible beans; chickpeas; oil-sunflower; open-pollinated grain and pulse; cotton

Commenters also noted that lack of dedicated organic seed storage capacity is a challenge. There was also a strong interest in more organic seed research, transparency on seed availability (i.e., a database), and training and education for inspectors and certifiers. Commenters requested creation of a seed working group.

Commenters were mixed on whether handlers that drive or require certain seed use should have a role in the commercial availability assessment. Commenters raised concerns about the feasibility of enforcement, as well as the unlikelihood that requiring more information from handlers about seed would result in meaningful changes in organic seed use. On the other hand, commenters raised concerns about the burdens on farmers when handlers are actually making the seed use decisions and farmers have limited power to select different seed.

The Board discussed potential impacts of changes to the commercial availability requirements on farmers and how to get more farmer input. The Board also discussed quality concerns and the specificity of need and performance linked to certain varieties.

2025

In a Fall/Winter 2025 discussion document, the NOSB identified barriers to organic seed production and potential approaches to lowering these barriers and again sought public input.

Commenters noted that the organic seed sector is at a tipping point - if organic seed use doesn't continue to grow with the organic market, it may cease to be available. There are general challenges with the complexity and variability of the market, lack of updates to the regulations and guidance on organic seed use, and the lack of reliable data on organic seed need and use that could provide market signals to the seed sector. It was noted that when the exception to allow nonorganic hops was removed from the National List at 205.606, the organic supply materialized; the same could happen for seed.

Specific organic seed production barriers identified in comments included pest pressure, weed management, and isolation distances needed. Commenters asked if organic crop producers could also become organic seed producers.

Commenters suggested requiring more documentation and transparency from certifiers around what is being planted. There was also support for more robust commercial availability searches, including requiring trials or use of other varieties, and requiring year-over-year improvement/increase in organic seed use.

Commenters supported guidance to address the situation where a grower does not have control over what seed is selected for a particular buyer.

2026

At the Spring 2026 Board meeting, an expert panel discussed seed. The panelists highlighted the significant time that it takes to bring a new product to market, and the challenges in getting noticed by farmers. Testing networks used to exist to trial crops like corn, but those have disappeared, so the trial burden falls to farmers. Panelists also noted that conventionally bred varieties may not meet the unique needs of organic growers. On the other hand, there may be performance benefits from using organic seed bred for organic farming systems; without those performance improvements, farmers may feel like

they're paying more without a clear return. However, it's hard to tell if a seed is organically bred versus conventionally bred and then propagated organically.

The Board discussed the opportunities and challenges with a continuous improvement framework for organic seed and ways that handlers/buyers could play a role and share the burdens. There is a need to send a firm regulatory signal to advance market rewards for organic breeding, as well as a need for more transparency and information available to growers.

Relevant areas in the Regulation or OFPA

Organic producers are generally required to use organically grown seeds (7 U.S.C. 6508(a); 7 CFR 205.204). Nonorganically produced, untreated seeds may only be used "when an equivalent organically produced variety is not commercially available" (7 CFR 205.204(a)(1)). "Commercially available" is defined as "The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan" (7 CFR 205.2). The price of seed cannot be a consideration for determination of commercial availability (Guidance 5029, 4.1.2.b).

NOP Guidance 5029 section 4.1.2 states that for the purposes of the commercial availability exception, an "equivalent variety" is a variety of the same "type" (e.g., head lettuce types versus leaf lettuce types) or has similar agronomic or marketing characteristics needed to meet site specific requirements for an operation. These characteristics may include, but are not limited to: number of days until harvest; color, flavor, moisture, chemical, or nutrient profiles of the variety of the harvested crop; vigor or yield of harvested crop; regional adaptation, disease and pest resistance, or the plant's utility in a crop rotation.

Discussion

It was clear from feedback the NOSB received from stakeholders in Fall 2024 and Fall 2025 that the availability and use of organic seed varies significantly, based on crop, location, and operation-specific factors. Further, ongoing concerns about fair competition, continued innovation, and meeting consumer demand factor into producer decisions. Although financial factors are not a permitted justification for sourcing nonorganic seed (Guidance 5029, section 4.1.2.b), cost does appear to have a significant influence on organic seed use (or lack thereof) - both for seed purchasing decisions and for seed producers deciding whether to produce organic seed. When there is no guarantee that producers will purchase organic seed that is available, seed producers see significant risk in increasing production.

Organic seed may not be commercially available when producers trial a new variety or respond to consumer demand for a specific product. Availability of an appropriate quantity can also be a barrier to purchasing organic seed, in both directions. A smaller producer may not be able to purchase a small amount of seed or entice production of organic seed. A larger producer may not be able to find enough organic seed to meet their needs.

For similar reasons, it may not be possible for an operation to add more organic seed to their operation each year - there may be advances and then setbacks as operations add or remove products from their

offerings, deal with new pest or disease pressure, and add or remove parcels from their Organic System Plan. The factors described above make it unlikely, and not necessarily expected, that all organic producers will eventually use 100% organic seed. Nonetheless, CACS believes the allowance for nonorganic seed use is a temporary, narrow exception to the requirement that organic seed must be used, and the expectation is that organic producers will make progress toward compliance over time. The commercial availability requirement anticipates that organic seed will become more and more available and more widely used, not less.

Four changes, which align with the emphasis on increasing organic seed use in previous NOSB recommendations, stand out as readily actionable and impactful under the existing regulatory framework. These changes could provide more assurance to organic seed producers that they will have reliable buyers and better engage the full organic supply chain's cooperation in advancing compliance with the organic seed requirement. These changes are described below, and Appendix A includes suggested text.

First, to determine that organic seed is not commercially available, organic producers must search for organic options. Guidance 5029 section 4.2.1.b.1 indicates that producers should maintain records of outreach to at least three suppliers as part of their search for organic seed, but it does not describe the specific documentation that should be maintained regarding the insufficiency of the form, quality, or quantity discovered in the search, such as lack of particular crop characteristics or inadequate quantity available. Without this documentation, inspectors and certifiers have limited ability to assess the rigor of the search and assess the potential for future progress and alternative search approaches. The search documentation guidance in section 4.2.1 should be updated to indicate that the specific form, quality, or quantity that could not be secured organically should be recorded.

Second, a rigorous search for organic seed may need to be ongoing and adjusted based on findings. However, Guidance 5029 section 4.2.1.b.1 is silent on the time horizon for seed searches. The Guidance should be updated to request information about what producers are doing to increase the likelihood of finding organic seed in the future (e.g., contracting ahead, requesting seed at different times of year, variety trials, shared orders with other growers).

Third, contract production, where a buyer plays an active role in driving production of a particular crop variety, has been identified as a significant challenge for organic seed use. The producer is filling a market need, but has little or no control over the variety and seed selection, and seed use is not addressed in the buyer's Organic System Plan (OSP). Guidance 5029 should be updated to clarify that where a buyer contracts for or otherwise specifically seeks a particular crop variety, the buyer's OSP should address use of organic seed and commercial availability.

Fourth, the strengthening organic enforcement (SOE) rule has improved oversight and communication throughout the supply chain, with potential benefits for the rigor of organic seed searches. Under SOE, certifying agents must exchange information that is credibly needed to determine an operation's compliance with the USDA organic regulations (7 CFR 205.501(a)(10)(ii)). For example, if an organic producer tells a certifier that the buyer determines seed use, that certifier should verify with the buyer's

certifier that a compliant commercial availability search has been completed. However, these expectations about communication between certifiers regarding compliance with the organic seed requirement are not yet reflected in Guidance 5029. Guidance 5029 should be updated to state that certifiers must exchange information as needed to verify compliance with the organic seed use and commercial availability requirements.

While these changes alone will not be adequate to dramatically or immediately increase organic seed use, they will ensure that the full organic supply chain continues to make progress toward maximizing use of organic seed in the long-term.

In addition, CACS notes that communication about organic seed breeding is needed between programs within the U.S. Department of Agriculture, including the NOP, National Institute of Food and Agriculture, and the Agricultural Research Service, . CACS does not currently support setting a sunset date for use of nonorganic seed, as has been done in the European Union, because organic growers should have the opportunity to try and transition new varieties (developed using non-excluded methods), into organic production. However, in the absence of a strong regulatory signal, more must be done to continue to develop a robust and reliable market for organic seed in the United States.

Summary

Based on multiple rounds of public comment, as well as NOSB recommendations from 2018 and 2019, CACS recommends updates to Guidance 5029 to address gaps in detail, timeframe, and supply chain in current commercial availability searches. These updates will ensure certifiers have specific information to inform compliance review and advance continuous improvement in organic seed sourcing.

Questions for Stakeholders

1. Are there any other updates to Guidance 5029 that the NOSB should consider at this stage?
2. For producers: How have you increased organic seed use? How can you document this progress?
3. For handlers: How have you supported producers that use organic seed? If you source seed for your producers, how have you increased seed use? How can you document this?
4. How could increased organic seed use be measured or tracked?
5. How does licensing of varieties limit availability of or access to organic seed?
6. Are there crops/product categories and/or regions where organic seed use and/or availability is increasing? Why?

Subcommittee Vote

Motion to accept the discussion document on Consistency in Organic Seed Use

Motion by: Allison Johnson

Seconded by: Cat McCluskey

Yes: 4 No: 0 Abstain: 0 Recuse: 0 Absent: 0

Appendix A - Full Text of Guidance 5029 w/ Proposed Line Edits noted in red

Guidance Seeds, Annual Seedlings, and Planting Stock in Organic Crop Production

1. Purpose

This guidance describes practices for certified operations to demonstrate their proactive efforts to procure all organic seeds, annual seedlings, and planting stock in support of their organic system plan (OSP). This guidance clarifies “equivalent variety” and also describes the form, quality, or quantity criteria that need to be met before seeds or planting stock can be categorized as commercially unavailable as organic. Further, this guidance outlines considerations regarding the inputs and substances routinely used during crop production.

2. Scope

This guidance applies to all National Organic Program (NOP) certifying agents, certified and exempt organic crop producers, and suppliers of seeds, annual seedlings, and planting stock.

3. Background

The USDA organic regulations at 7 CFR § 205.204 require that organic producers use organic seeds, annual seedlings, and planting stock. The regulations allow producers to utilize non-organic seeds and planting stock when equivalent organic varieties are not commercially available.

In August 2005 and November 2008, the National Organic Standards Board (NOSB) provided recommendations that outlined specific concepts and procedures for determining commercial availability of organic seeds and planting stock. These recommendations also identified the responsibilities of the NOP, certifying agents, and operations for promoting and sourcing organic seeds and planting stock and emphasized that utilizing organic seed is a fundamental part of supporting a healthy, viable organic seed industry. Considerable public comment at NOSB meetings has supported these goals. This guidance represents NOP’s current thinking on this topic.

4. Policy

Producers should develop and follow procedures for procuring organic seeds, annual seedlings, and planting stock and maintain adequate records as evidence of these practices in their organic system plan (OSP). Producers must also provide clear documentation regarding the inputs and materials used during crop production (as required at § 205.201(a)(2)). Certifying agents must assess procedures and documentation of certified production and handling operations as they source seeds, annual seedlings, and planting stock on an annual basis. Each of these concepts is described in more detail below.

4.1 Sourcing of Seeds, Annual Seedlings, and Planting Stock

- 4.1.1 Certified operations must use organic seed, annual seedlings, and planting stock in accordance with the requirements at § 205.204.
- 4.1.2 Certified operations may use non-organic seed and planting stock only if equivalent organically produced varieties of organic seeds and planting stock are not commercially available.
 - a. Commercial availability is defined at § 205.2 and refers to the ability to obtain a production input, in this case seed or planting stock, in an appropriate form, quality, or quantity to fulfill an essential function in organic production. For the purposes of this exception, an “equivalent variety” is a variety of the same “type” (e.g. head lettuce types versus leaf lettuce types) or has similar agronomic or marketing characteristics needed to meet site specific requirements for an operation. These characteristics may include, but are not limited to: number of days until harvest; color, flavor, moisture, chemical, or nutrient profiles of the variety of the harvested crop; vigor or yield of harvested crop; regional adaptation, disease and pest resistance, or the plant’s utility in a crop rotation.
 - b. Price cannot be a consideration for determination of commercial availability.
- 4.1.3 The following considerations could be acceptable to justify use of non-organic seeds and planting stock as not commercially available. These considerations must be described by the operation in their organic system plan (OSP), pursuant to § 205.201(a)(2), and approved by the certifying agent.
 - a. Form Considerations: Examples of forms may include, but are not limited to, treated or non-treated seeds or planting stock, use of pelleted seed, or use of bare root nursery stock or container plants.
 - b. Quality Considerations: Examples may include, but are not limited to, germination rate of the seed; presence of weed seeds in the seed mix; shelf life and stability of the seeds; and disease and pest resistance.
 - c. Quantity Considerations: Producers may provide evidence that quantities are not available in sufficiently large or small amounts given the scale of the operation.
- 4.1.4 For certified operations producing edible sprouts, there is no exception to the requirement to use organic seed, as stated at § 205.204(a)(1).
- 4.1.5 Certified operations may use non-organic annual seedlings to produce an organic crop only when a temporary variance has been granted by the AMS Administrator in accordance with §

205.290(a)(2) due to an extreme weather event or business disruption beyond the control of the producer (§ 205.204(a)(3)).¹

- 4.1.6 Use of non-organic planting stock to produce organic crops is subject to commercial availability as per § 205.204(a)(1). If planting stock is from a non-organic source and is used to produce perennial crops, then that *planting stock* may be sold, labeled or represented as organic planting stock after 12 months of organic management (§ 205.204(a)(4)).

4.2 Recordkeeping for Organic Producers & Handlers

4.2.1 The following records should be maintained by organic producers:

- a. A list of all seed and planting stock, indicating any non-organic seeds or stock used, and the justification for their use including lack of equivalent variety, form, quality or quantity considerations. Records describing on-farm trials of organic seed and planting stock can be used to demonstrate lack of equivalent varieties for site specific conditions.
- b. The search and procurement methods used to source organic seed and planting stock varieties, including:
 1. Evidence of efforts made to source organic seed, including documentation of contact with three or more seed or planting stock sources to ascertain the availability of equivalent organic seed or planting stock, **and the specific form, quality, or quantity consideration(s) with each source**. Sources should include companies that offer organic seeds and planting stock.
 2. Records may include, but are not limited to: letters, faxes, email correspondence, and phone logs from seed suppliers and companies; seed catalogs; searches of organic seed databases; receipts; receiving documents, invoices, and inventory control documents.
- c. **For any producer whose list includes non-organic seed or planting stock, a plan for increasing use of organic seed and planting stock in the future. Strategies in plans may include, but are not limited to, advance contracting for organic seed, earlier seed searches, and new variety trials.**

4.2.2. **The following records should be maintained by organic handlers that contract directly with a producer for specific organic products and influence or decide which specific seed is used:**

¹ Please see procedures for requesting a temporary variance in the NOP *Program Handbook: Guidance and Instructions for Accredited Certifying Agents and Certified Operation*, NOP 2606 – *Processing Requests for Temporary Variances*.

- a. A list of any specific product(s) sourced, for which an equivalent organic seed or planting stock is not commercially available.
- b. The search and procurement methods used to attempt to source the product(s) grown from organic seed and planting stock varieties and comparison to potentially equivalent varieties that can be grown from organic seed or planting stock.

4.2.3. Failure to demonstrate thorough and complete commercial availability searches over time may result in additional source searches being required or additional steps taken.

4.3 Inputs Used for Treatment of Seeds or Planting Stock

4.3.1 Substances used in the treatment of seed and planting stock need to be described in the OSP. Allowed treatments include:

- a. Peracetic acid is specifically allowed for use in disinfecting seed per § 205.601(a)(6).
- b. Hydrogen chloride is specifically allowed for delinting cotton seed for planting per § 205.601(n).
- c. Chlorine materials may be used per § 205.601(a)(2). Use of chlorine products in handling of seeds on-farm can be considered a production use that is not in direct contact with the crop, provided the treatment is followed by immediate rinsing with potable water that does not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act.²
- d. Other synthetic substances listed for appropriate uses in § 205.601 (e.g. for pest or disease control, or as a soil or plant amendment).
- e. Nonsynthetic substances that are not prohibited are allowed as seed or planting stock treatments.

4.3.2 Examples of types of treatments that should be reviewed by the certifying agent:

- a. Pesticides, including fungicides, herbicides and insecticides: All pesticides used as seed treatments must be compliant for organic production, including inert and active ingredients. Botanical or biological preparations cannot be genetically modified per prohibition for excluded methods as defined by § 205.105(e) and § 205.2.
- b. Pelleting: A clay coating applied to seed to increase its size and modify its shape into a more uniform ball. Pelleting allows for more even and efficient direct seeding of fields or containers either by hand or mechanically with the use of seeding equipment calibrated to the specific

² Please see *NOP 5026 - The Use of Chlorine Materials in Organic Production and Handling*.

sizes and shapes of the pelleted seed. Ingredients used in pelleting must be nonsynthetic or included on the National List at § 205.601 for an appropriate use.

- c. Inoculants: Bacteria that fix nitrogen from the air and soil that are commercially prepared for use with legumes during seeding. The materials used in Rhizobium or other microbial preparations cannot be genetically modified per the prohibition of excluded methods as defined by § 205.105(e) and § 205.2.

- 4.3.3 Substances used by a seed or planting stock purveyor prior to the harvest of their non-organic seeds or non-organic planting stock for sale and use in organic production are not considered “treatment”. Substances that are used by a seed or planting stock purveyor for seed cleaning and preparation (e.g. trisodium phosphate and chlorine solutions) after they harvest their non-organic seeds for sale in organic production are also not considered “treatment”, since they do not remain on the seed when it is planted. These substances do not need to be described in the OSP by the certified operation and do not require review by the certifying agent.

4.4 Role of Certifying Agents

- 4.4.1 Certifying agents must verify the procedures that certified operations utilize to obtain and plant organic varieties suitable for their operations as part of their annual review of the OSP.
- 4.4.2 Certifying agents must review substances and inputs used to treat seeds and planting stock for compliance with the USDA organic regulations.
- 4.4.3 Certifying agents shall verify the commercial availability requirements on an annual basis, in their review of the OSP, pursuant to § 205.402(a)(1), **including, as needed, exchanging compliance-related information with other certifiers, pursuant to § 205.501(a)(10)(ii).**
- 4.4.4 Certifying agents should review an operation’s progress in obtaining organic seeds, planting stock and transplants by comparing current source information to previous years **and the plan for increasing organic sourcing.**

5. References

5.1 USDA Organic Regulations

§ 205.2 Terms defined.

Annual seedling. A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

Commercial availability. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

Excluded methods. A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

Planting stock. Any plant or plant tissue other than annual seedlings but including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

Transplant. A seedling which has been removed from its original place of production, transported, and replanted.

§ 205.204 Seeds and planting stock practice standard.

5.2 NOP Program Handbook

NOP 2606 – Processing Requests for Temporary Variances

NOP 5026 – The Use of Chlorine Materials in Organic Production and Handling

Appendix B - Relevant Statutory and Regulatory Text

Organic Foods Production Act

7 U.S.C. 6508. Prohibited crop production practices and materials

(a) Seed, seedlings and planting practices

For a farm to be certified under this chapter, producers on such farm shall not apply materials to, or engage in practices on, seeds or seedlings that are contrary to, or inconsistent with, the applicable organic certification program.

NOP Regulations

7 CFR 205.2 Terms Defined.

Commercially available. The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

7 CFR 205.204 Seeds and planting stock practice standard.

(a) The producer must use organically grown seeds, annual seedlings, and planting stock: Except, That,

(1) Nonorganically produced, untreated seeds and planting stock may be used to produce an organic crop when an equivalent organically produced variety is not commercially available: Except, That, organically produced seed must be used for the production of edible sprouts;

(2) Nonorganically produced seeds and planting stock that have been treated with a substance included on the National List of synthetic substances allowed for use in organic crop production may be used to produce an organic crop when an equivalent organically produced or untreated variety is not commercially available;

(3) Nonorganically produced annual seedlings may be used to produce an organic crop when a temporary variance has been granted in accordance with § 205.290(a)(2);

(4) Nonorganically produced planting stock to be used to produce a perennial crop may be sold, labeled, or represented as organically produced only after the planting stock has been maintained under a system of organic management for a period of no less than 1 year; and

(5) Seeds, annual seedlings, and planting stock treated with prohibited substances may be used to produce an organic crop when the application of the materials is a requirement of Federal or State phytosanitary regulations.