

UNITED STATES DEPARTMENT OF AGRICULTURE  
AGRICULTURAL MARKETING SERVICE  
BEFORE THE ADMINISTRATOR

In re:	)	
William Brett,	)	
Dbas William Brett Farms	)	
	)	<b>Administrator's Decision</b>
Adrian, Georgia	)	<b>APL-024-20</b>
	)	

This Decision responds to appeals (APL-024-20) of two Notices of Noncompliance and Proposed Suspension under the National Organic Program issued to William Brett, dba William Brett Farms (William) of Adrian, Georgia by Americert International (AI). The operation has been deemed not in compliance with the Organic Foods Production Act of 1990 (Act)<sup>1</sup> and the U.S. Department of Agriculture (USDA) organic regulations.<sup>2</sup>

**BACKGROUND**

The Act authorizes the Secretary to accredit agents to certify crop, livestock, wild crop, and/or handling operations to the USDA organic regulations (7 C.F.R. Part 205). Certifying agents also initiate compliance actions to enforce program requirements, as described in section 205.662, Noncompliance procedure for certified operations. Persons subject to the Act who believe they are adversely affected by a noncompliance decision of a certifying agent may appeal such decision to the USDA Agricultural Marketing Service (AMS) pursuant to § 205.680

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<sup>1</sup> 7 U.S.C. 6501-6522

<sup>2</sup> 7 C.F.R. Part 205

Adverse Action Appeals Process – General, and § 205.681, Appeals of the USDA organic regulations.

### **FINDINGS OF FACT**

1. On August 22, 2017, William was certified organic for crops by AI.
2. On January 14, 2020, AI issued a Notice of Noncompliance and Proposed Suspension to William for numerous noncompliances found during the prior on-site inspection.
3. On January 15, 2020, William filed an Appeal.
4. On March 24, 2020, AI issued a Formal Request for Information to William.
5. On April 11, 2020, AI issued a Notice of Noncompliance and Proposed Suspension.
6. On April 13, 2020, William filed an Appeal.

### **DISCUSSION**

The USDA organic regulations at 7 C.F.R. §205.103, Recordkeeping by certified operations, state that, “(a) A certified operation must maintain records concerning the production, harvesting, and handling of agricultural products that are or that are intended to be sold, labeled, or represented as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s)).” Further, “(b) Such records must: ... (2) Fully disclose all activities and transactions of the certified operation in sufficient detail as to be readily understood and audited; (3) Be maintained for not less than 5 years beyond their creation; and (4) Be sufficient to demonstrate compliance with the Act and the regulations in this part. (c) The certified operation must make such records available for inspection and copying during normal business hours by ... the certifying agent.”

The organic regulations at §205.201, Organic production and handling system plan, state that, “(a) The producer or handler of a production or handling operation...intending to sell, label, or represent agricultural products as “100 percent organic,” “organic,” or “made with organic (specified ingredients or food group(s))” must develop an organic production or handling system plan that is agreed to by the producer or handler and an accredited certifying agent...An organic production or handling system plan must include: (1) A description of practices and procedures to be performed and maintained, including the frequency with which they will be performed; ... (3) A description of the monitoring practices and procedures to be performed and maintained, including the frequency with which they will be performed, to verify that the plan is effectively implemented; (4) A description of the recordkeeping system implemented to comply with the requirements established in §205.103; ... and (6) Additional information deemed necessary by the certifying agent to evaluate compliance with the regulations.”

The organic regulations at §205.202, Land requirements, state that, “Any field or farm parcel from which harvested crops are intended to be sold, labeled, or represented as “organic,” must:...(c) Have distinct, defined boundaries and buffer zones such as runoff diversions to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land that is not under organic management.”

Additionally, the regulations at §205.601, Synthetic substances allowed for use in organic crop production, state that, “...(i) As plant disease control...(2)...copper-based materials must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides...”

The organic regulations at §205.400, General requirements for certification, state that, “A person seeking to receive or maintain organic certification under the regulations in this part must: (a) Comply with the Act and applicable organic production and handling regulations in this part;

(b) Establish, implement, and update annually an organic production or handling system plan that is submitted to an accredited certifying agent as provided for in §205.200; (c) Permit on-site inspections with complete access to the production or handling operation, including noncertified production and handling areas, structures, and offices by the certifying agent as provided for in §205.403; (d) Maintain all records applicable to the organic operation for not less than 5 years beyond their creation and allow...the certifying agent access to such records during normal business hours for review and copying to determine compliance with the Act and the regulations in this part...”

The organic regulations at §205.406, Continuation of certification, state that, “(a) To continue certification, a certified operation must annually pay the certification fees and submit the following information, as applicable, to the certifying agent:...(4) Other information as deemed necessary by the certifying agent to determine compliance with the Act and the regulations in this part.”

AI issued a Notice of Noncompliance and Proposed Suspension to William after an inspection on November 13, 2019 revealed numerous noncompliances. AI issued a second Notice of Noncompliance and Proposed Suspension after William failed to fully respond to a subsequent Formal Request for Information. AI contends the noncompliances cited in the two notices constitute violations of various provisions of the organic regulations, and therefore, demonstrate an inability to comply with the regulations.

William stated in its Appeals that it provided all required and requested records at or subsequent to the inspection and submitted all records/information requested by AI’s formal request; corrected all errors on trip/haul tickets; and that it didn’t deny access to its facilities or records during the inspection. William also stated it would begin soil testing to monitor copper

usage accumulation in February 2020 and would plant sunflowers in the Spring of 2020 as a buffer for the identified field.

William has been certified organic since August 22, 2017, for crops, including corn, soybeans, onions, yellow peas, wheat, and broccoli, in fields totaling approximately [REDACTED] acres (Exhibit 1). The farm has only organic production. Also, the April 11, 2020 Notice of Noncompliance and Proposed Suspension was issued during the pendency of the Appeal of the January 14, 2020 Notice of Noncompliance and Proposed Suspension. The violations alleged in the second notice include additional incidences of the recordkeeping violations noted in the first notice. Therefore, it was determined that both notices and the Appeals thereto would be handled together.

A review of the voluminous amount of documentation substantiates that William violated several provisions of the organic regulations. As stated in the January 14, 2020 Notice of Noncompliance and Proposed Suspension, the prior onsite inspection conducted November 13, 2019 revealed that William's input usage records didn't consistently record the date of application for certain inputs, specifically feather meal and copper, thereby failing to document all activities in sufficient detail as to be readily understood and audited. William stated that it subsequently provided the application dates; however, though AI states it has no record of receiving the information, and the complete input usage records were to be available at the inspection. Records created and/or submitted after the fact don't satisfy the recordkeeping requirements of the organic regulations, and therefore, William violated the regulations at 7 C.F.R. §205.103.

An additional recordkeeping violation was found during an unannounced inspection on November 8, 2019 at a handler of crops sourced from William, which revealed receipt tickets

listing William as the source of 22 loads of corn identified some fields, which didn't match with William's certified fields. Further, at the subsequent inspection of William's operation on November 13, 2019, none of the tickets obtained from the handler were provided by William, despite the inspector's request for all tickets and harvest records and William's statement that all such records were submitted to the inspector. William couldn't explain the absence of, or provide their own copies of, harvest records related to the deliveries. William explained the discrepancy regarding farm/field identification by telling the inspector that perhaps the truck drivers wrote down the wrong farm/field names; and stating in the Appeal that there was a miscommunication with the drivers. However, engaging in harvesting activities and delivering crops to a handler, for which tickets were created, and not maintaining those tickets constitutes a failure to maintain documentation of all transactions and activities in sufficient detail so as to be readily understood and audited as required in the recordkeeping regulations; and also prevented AI from successfully completing a mass balance audit. It is also William's responsibility to ensure that correct information is entered onto all documentation of said transactions and activities. The subsequent submission of corrected tickets as claimed by William, but denied by AI, doesn't negate that William didn't have accurate records available at the inspection.

William further violated the recordkeeping regulations, as well as the regulations at 7 C.F.R. §205.400 by failing to provide access during the inspection to the silos where harvested crops are stored so that the inspector could visually verify the contents. AI contends that William's failure to provide access to the crop storage area prevented the comparison of the contents of the silos to William's records, and therefore, an accurate audit of crops harvested couldn't be completed. William states that its insurance carrier prohibits anyone but William from climbing to the top of the silos, and therefore, William climbed to the top and took pictures

for the inspector, provided the measurements of the silos, and opened the bottom doors. However, while acknowledging William's actions, AI found the pictures taken by William weren't sufficient as they couldn't accurately reveal the contents of the dark unlit silos and therefore, those harvested crops also couldn't be included in the mass balance audit. William hasn't substantiated its claim that the inspector was not allowed to climb the silos due to insurance restrictions. Therefore, not allowing AI to do so is a failure to allow access to a part of the operation and constitutes a violation of the regulations at 7 C.F.R. §205.400.

William's failure to maintain various records, record deficiencies, and failure to provide access to records also, by extension, constitutes a violation of the organic regulations at 7 C.F.R. §205.201, which require an operation's organic production plan to include a description of the recordkeeping system implemented by the operation to comply with the requirements of 7 C.F.R. §205.103, Recordkeeping. The many recordkeeping noncompliances show a failure to implement a recordkeeping system.

Evidence substantiates that William also failed to maintain required and accurate records in the past. An October 19, 2018 Notice of Noncompliance stated that at the prior inspection, which was held September 18, 2018, William failed to provide access to all records to the inspector. Specifically, the inspector requested to review all harvest and sales records, but William presented only partial records, stating that the remaining records were in the home of William's representative. However, William didn't retrieve the records and stated that the inspector couldn't enter the home. Subsequently, William's representative, Taylor Brett, signed an "Acknowledgement of Recordkeeping Access Requirements under Section 205.103 of the USDA National Organic Program," which sets forth the requirements under the cited regulation. By the signing of the acknowledgment, William also agreed to retrieve records if they are in a

private home, and that failure to provide access to all requested records at all future inspections may be interpreted as a willful violation of the organic regulations and may lead to further adverse actions by AI. AI also submitted a Previous Corrective Action and Noncompliance Update Form submitted by William on September 20, 2019, stating all records related to organic production would be available at the upcoming inspection and all noted recordkeeping noncompliances were resolved.

Subsequent to issuance of the first Notice of Noncompliance and Proposed Suspension on January 14, 2020, AI sent William a Formal Request for Information with a Surveillance Questionnaire on March 24, 2020. The questionnaire asked William to identify all parcels/fields, list their acreage, whether they would continue to be managed organically, and list all crops currently planted or planned in the following 90 days, by field, acreage, date planted or planned, and estimated/actual harvest date. Additionally, the questionnaire asked if William has crop insurance on the listed crops, and to submit a copy of the application for crop insurance including information and maps for fields identified as organic in the crop insurance application. Within minutes of receiving the email, William contacted NOP to ask if it was required to answer the questionnaire. NOP told William that it must answer the questionnaire as the organic regulations require a certified operation to submit information deemed necessary by a certifying agent to determine compliance with the organic regulations (7 C.F.R. §205.406(a)(4)).

However, while William submitted the completed questionnaire to AI on April 6, 2020 along with some attachments, William didn't submit the requested documentation. Therefore, on April 11, 2020, AI issued another Notice of Noncompliance and Proposed Suspension, to which William also submitted an Appeal. AI stated that William's failure to submit the requested documentation is "part of a pattern of withholding records or failing to provide access to



records;” and evidence substantiates it constitutes another violation of the recordkeeping regulations at 7 C.F.R. §205.103, as well as the regulations at 7 C.F.R. §205.201, which require a certified operation to provide all additional information deemed necessary by a certifier to evaluate compliance with the organic regulations. It is noted that on April 11, 2020, AI also issued another Formal Request for Information or Records to William, requesting multiple records and maps regarding the 2019 and 2020 crops. William informed NOP and AI that it is attempting to get the requested information and maps from the USDA Farm Service Agency but has been unable to do so due to the Corona virus pandemic.

AI also stated in both Notices of Noncompliance and Proposed Suspension that William’s noncompliances, in particular the recordkeeping noncompliances, constitute repeat, willful violations of the organic regulations and demonstrate William’s inability to comply with the regulations. As discussed above, William previously received a Notice of Noncompliance for recordkeeping violations; and acknowledged the recordkeeping requirements and that a failure to provide all requested records in the future could be deemed a willful violation. Also, Taylor Brett, the authorized representative for William (William Brett, dba William Brett Farms) is also the representative of another organic operation, Taylor Brett, dba Brett Farms (Taylor), which also received Notices of Noncompliance and Proposed Suspension by AI on January 14, 2020 and April 11, 2020, for similar recordkeeping noncompliances, which Taylor appealed (Case APL-023-20). Taylor Brett had also signed an acknowledgment of obligations for this operation. AI also identified another grain operation previously represented by Taylor Brett which received adverse action notices for recordkeeping noncompliances. Although involvement in other operations doesn’t necessarily equate to knowledge of recordkeeping obligations as contended

by AI, William and its representative Taylor Brett's history of recordkeeping noncompliances substantiates a persistent, willful violation of the regulations.

In addition to the recordkeeping violations, evidence substantiates that William violated the organic regulations as to land requirements, as AI contends, by failing to maintain an adequate buffer zone or physical barrier for the southeast section of the Wimberly 3165 field which abuts a conventional cotton field. The regulations at 7 CFR §205.202 require that any organic field/parcel must have distinct, defined boundaries and buffer zones to prevent the unintended application of a prohibited substance to the crop or contact with a prohibited substance applied to adjoining land which is not organically managed. Although William discussed creating a buffer of sunflowers, it hasn't done so yet as it hasn't formalized a plan for a buffer zone but states it will plant sunflowers in Spring 2020. However, stating that it will plant the buffer in Spring 2020 is an acknowledgment that it hasn't done so, and hence constitutes a violation of the regulations regarding buffer zones. Although AI identified this as a noncompliance rather than part of the grounds for a suspension, it demonstrates another incident of not complying with the organic regulations.

Further, as AI contends, William violated the organic regulations at 7 C.F.R. §205.601 by failing to conduct regular soil tests to determine if copper used for disease control is accumulating in the soil. The regulations, while allowing the use of synthetic copper for disease control, also require that such material must be used in a manner that minimizes accumulation in the soil. Although William stated in 2019 that it would conduct soil testing, the November 13, 2019 inspection found that it hadn't done so yet. William stated in the Appeal that testing would be done in February 2020. However, this is, in effect, an admission that testing wasn't done, thus constituting a violation of the organic regulations.

Lastly, AI states in the January 14, 2020 adverse action notice that William must pay the cited contractual noncompliance penalties pursuant to a fee schedule approved by NOP and that failure to pay such fees when imposed is a violation of the NOP standards. However, while NOP accepted AI's fee schedule, NOP doesn't explicitly approve such fee schedules and will not intervene or rule in a contractual matter between William and AI.

In conclusion, the evidence substantiates that William violated the organic regulations at 7 C.F.R. §205.103, Recordkeeping; 7 C.F.R. §205.201, Organic production and handling system plan; 7 C.F.R. §205.202, Land requirements; 7 C.F.R. §205.400, General requirements for certification; and 7 C.F.R. §205.601, Synthetic substances allowed for use in organic crop production. Specifically, William failed to maintain numerous required records and make those records available to AI at inspection; failed to fully disclose all activities and transactions in sufficient detail so as to be readily understood and audited, and be sufficient to demonstrate compliance with the organic regulations; failed to provide AI full access during an inspection; failed to follow the approved OSP; failed to maintain an adequate buffer zone for a field next to conventional production; and failed to conduct soil tests on the accumulation of an allowed synthetic substance.

Further, William's noncompliances, particularly in recordkeeping, are systemic and represent repeated, willful noncompliance with the organic regulations. AI issued two combined Notices of Noncompliance and Proposed Suspension, both citing to numerous recordkeeping noncompliances. The organic regulations at §205.662(c) provide that, "When correction of a noncompliance is not possible, the notification of noncompliance and the proposed suspension or revocation of certification may be combined in one notification." Section 205.662(d) provides for issuance of a notice of proposed suspension if a certifier has reason to believe that a certified

operation has willfully violated the Act or regulations. Based on the totality of the evidence, including the fact that these many recordkeeping noncompliances occurred despite prior adverse action by AI, and William's acknowledgement of recordkeeping obligations, AI had reason to believe that William willfully violated the Act and the regulations. Therefore, AI was justified in issuing combined Notices of Noncompliance and Proposed Suspension.

### **CONCLUSION**

The USDA organic regulations assure consumers that products with the USDA organic seal meet consistent, uniform standards. Key to these standards is that products with the USDA organic seal are produced and handled in accordance with the organic regulations. However, William has been unable to comply with the organic regulations at 7 CFR §205.103; 7 C.F.R. §205.201; 7 C.F.R. §205.202; 7 C.F.R. §205.400; and 7 C.F.R. §205.601. The noncompliances, particularly in recordkeeping, are systemic and represent a repeated, willful noncompliance with the organic regulations. Therefore, William may not remain certified organic at this time.

### **DECISION**

The Appeals are denied and AI's two Notices of Noncompliance and Proposed Suspension are affirmed. William's organic certification is suspended. However, pursuant to 7 C.F.R. 205.662(f)(1), William may request reinstatement of its certification at any time with any certifying agent. The request must be accompanied by evidence demonstrating correction of each noncompliance and corrective actions taken to comply with and remain in compliance with the Act and the organic regulations. Additionally, attached to this formal Administrator's

Decision denying William's Appeals is a Request for Hearing form. William has thirty (30) days to request an administrative hearing before an Administrative Law Judge.

Done at Washington, D.C., on this \_\_\_\_\_  
day of \_\_\_\_\_, 2020.

**BRUCE  
SUMMERS**

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Bruce Summers  
Administrator  
Agricultural Marketing Service