



May 28, 2009

Ms. Valerie Frances
Executive Director
National Organic Standards Board
National Organic Program
1400 Independence Ave, SW
Room 4004-So, Ag Stop 0268
Washington, DC 20250-0268

**Re: Voluntary Certification Programs for Retailers;
Docket No. AMS-TM-09-0014**

Dear Ms. Frances,

The purpose of this letter is to follow up on remarks presented on behalf of the Food Marketing Institute¹ (FMI) to the National Organic Standard Board (NOSB) at the May 5, 2009 meeting by providing FMI's written comments for the docket. In particular, FMI is presenting the association's views on the proposed NOSB guidance document on voluntary organic program certification for retail food stores, such as grocery stores and supermarkets.

¹ Food Marketing Institute (FMI) conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies — food retailers and wholesalers — in the United States and around the world. FMI's U.S. members operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms and independent supermarkets. Its international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members. FMI's Organics Committee evaluates FMI's activities and makes recommendations on programming and services of primary importance to natural food retailers and mainstream operators with a commitment to the natural and organic category. They encourage and support FMI's efforts in educating retailers about natural and organic products. Companies currently represented include: United Supermarkets LLC; Ukrop's Super Markets, Inc.; Thrifty Foods; Sprouts Farmers Market LLC; Wakefern Food Corporation; Food Lion LLC; The Whole Wheatery LLC; Target Corporation; Lund Food Holdings, Inc.; Publix Super Markets, Inc.; Hannaford Bros. Co.; Mustard Seed Market & Café; Wildberries Marketplace; Winn-Dixie Stores, Inc.; and New Leaf Community Markets.

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FMI members – from small independent grocers to the largest supermarkets in the United States – recognize the importance of meeting a diverse variety of consumer needs. Our members do their best to provide a safe, abundant, affordable and diverse food supply for their customers. Organic foods and products are an important part of the mix. Although not every consumer will prefer organic foods, they are important and should be readily available to all consumers, even those who might only want to purchase a few organic products or who want to be able to purchase organic food products along with the rest of their household needs.

The Organic Food Production Act and the accompanying regulations permit retailers that handle but do not process organic food products to offer organic foods to consumers without undergoing the cumbersome certification process. Nonetheless, the preamble to the organic regulations expressly recognizes that retailers may choose to be certified. Specifically:

Operations that qualify as exempt or excluded operations can voluntarily choose to be certified.²

Therefore, the issue properly before the NOSB is what type of program is appropriate to ensure that retailers that voluntarily choose to be certified can do so in a manner that is consistent with OFPA? In this context, the NOSB is seeking to address the question of whether a retailer with multiple store locations that seeks to obtain voluntary organic certification for the retail entity as a whole must have all of its stores certified or whether the retail entity can be certified based on a "multi-site" audit profile.

We respectfully suggest that, as the question has been presented, the NOSB has been given a false choice. The Board need not choose between the two options but, instead, could permit either option and could attach certain and different requirements for obtaining retail certification under both options.

In particular, the NOSB has already recognized the value of multi-state audits in the context of farm certification. Indeed, farms are entities that are required to obtain organic program certification in order to produce products that may be identified as "organic" under the statute. Accordingly, the NOSB has not determined that OFPA or the accompanying regulations prohibit the multi-site audit approach on a *per se* basis and, in fact, the NOSB recognizes that OFPA *permits* the use of multi-state audits for entities that are *required* to obtain certification. Under this logic, surely multi-site inspection may be lawfully permitted for retail stores as well. The question, then, is which types of controls are appropriate for use in a multi-site audit paradigm for a retail grocery chain. Moreover, the option of

² 65 Fed. Reg. 80548, 80552 (Dec. 21, 2000).

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permitting multi-site audits in conjunction with specific controls would not obviate the possibility of offering “every site” audits as an alternative under a different set of controls.

In determining the appropriate approach from regulatory agencies, FMI and its members support and expect governmental and quasi-governmental entities to follow certain basic standards. First, regulatory action should be applied fairly and should not be intended to advantage or disadvantage different types of business models. Second, regulatory action should be consistent. In this case, if multi-site inspection is appropriate for farms that are *required* to be certified under OFPA, consistency likewise requires that NOSB carefully consider the use of multi-site inspections for retailers who *choose* organic certification on a voluntary basis, despite the fact that the statute does not require certification of them.

Accordingly, we respectfully request that the NOSB revise its guidance to permit the use of either every site or multi-site inspection for retailers that choose to obtain organic certification on a voluntary basis. One of the NOSB’s stated goals is to increase the reach that organic products have in the marketplace. Retailers that obtain organic certification on a voluntary basis are more likely to offer a broader array of organic foods to their customers. FMI stands ready to assist in this goal.

We hope these comments state our position clearly and we look forward to working with the NOSB as it continues its deliberations on this important issue. In the interim, if we may be of assistance in any way, please do not hesitate to contact us. We look forward to our continuing collaboration.

Sincerely,



Deborah White
Senior Vice President and
Chief Legal Officer

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