Attachment
6.) Summary of Key Provisions

DRAFT National Leafy Greens Marketing Agreement
Executive Summary of Key Provisions

Definitions:

Sections 970.1 – 970.23

The Draft Marketing Agreement begins with a "Definitions" section that lists key terms utilized throughout the draft. While all terms and corresponding definitions are important, special attention should be paid to the following in the review of this Draft:

"Handle" (970.10)

This term determines who is able to become a signatory to the marketing agreement. The marketing agreement will directly regulate "handlers" (970.11) (defined as those persons who "handle") and so how 'handle" is defined becomes a foundational issue for the agreement. The drafting committee has proposed a definition that would allow a wide variety of operations to become signatories should they choose to do so. We wanted the agreement, which is voluntary, to be broadly accessible to a variety of operators within the leafy greens supply chain. Currently if you receive, acquire, sell, process, ship, distribute or import leafy greens you would be eligible to participate. You would not be eligible if you were a broker or retailer.

"Leafy greens" (970.13)

This term determines the scope of commodities that would be regulated under the marketing agreement. The list of leafy greens is modeled after the list of products currently included in the California and Arizona agreements. There has been a lot of debate about what should and should not be included in the list of products. In general the list is reflective of individual leafy green commodities that are likely to be consumed fresh either individually or as part of a salad blend. Because individuals have suggested both additions to and deletions from the list of regulated products the industry (through the Marketing Committee) has been empowered to modify this list by recommending additions or deletions for the Secretary's approval.

"Zone" (970.23)

Five (5) separate geographic "zones" have been proposed. The Zones dictate the number of seats for growers and handlers on the Marketing Committee which provides leadership for the Agreement. While the west dominates leafy green production each Zone is anchored by a major leafy greens production area and Committee seats are balanced to the degree possible based on the total production of leafy greens within that Zone.

- Zone 1 - California, Washington, Oregon, Hawaii, and Alaska.
- Zone 2 - Arizona, Montana, North Dakota, Wyoming, South Dakota, Idaho, Nevada, and Utah.
- Zone 3 - New Mexico, Colorado, Nebraska, Minnesota, Iowa, Kansas, Oklahoma, Texas, Missouri, Arkansas, and Louisiana.
- Zone 4 - Wisconsin, Michigan, Ohio, Illinois, Indiana, Kentucky, Tennessee, Mississippi, Alabama, and Georgia.
- Zone 5 - Maine, New Hampshire, Vermont, New York, Connecticut, Massachusetts, Pennsylvania, New Jersey, West Virginia, Virginia, Maryland, Delaware, Rhode Island, North Carolina, South Carolina, Florida, and the District of Columbia.

Total Production

Zone 1 = 70% ; Zone 2 = 16% ; Zone 3 = 2% ; Zone 4 = 4% ; Zone 5 = 8 % ; of national total (2007)

Purpose:

Section 970.24

This section of the draft highlights the fundamental purpose of the agreement, which is to enhance confidence in leafy greens on the part of the public, policy makers, regulatory agencies and buyers. The marketing agreement empowers the industry to establish good agricultural and handling practices and a corresponding government verification program.

Leafy Green Administrative Committee: Sections 970.251 – 970.35

These sections spell out the makeup, process powers and duties of the marketing agreement's administrative committee. The administrative committee under the oversight of the USDA is the "governing body" for the agreement. They provide the industry foundation necessary to ensure that the program is of value to and reflective of industry needs.

Establishment and Membership: Section 970.25

This section establishes the committee that will administer the national marketing agreement. The administrative committee is made up primarily of producers and handlers but also includes representation from the public, retail, foodservice and import sectors.

Producer and handler representation is apportioned by Zones.

Handlers are eligible to become signatories to the agreement and are the regulated party. They hold 13 seats out of 23 on the committee and at least 4 handlers must be manufacturers.

Producers were added to the administrative committee based on comments received in response to the 2008 USDA ANPR which indicated a high level of interest in including growers in the oversight structure for any national marketing agreement. While producers are not directly regulated or eligible to become signatories to the agreement it was felt their input was critical. As such 6 seats out of 23 have been allocated to producers. In order to ensure the producer is a grower they cannot serve on the committee if they are also engaged in handling or manufacturing.

There is one seat each for retail, foodservice, import and public representation.

Each member of the committee will have an alternate.

The Secretary has the authority upon recommendation of the committee to reconfigure the committee including to reapportion representation among zones, change the number of members, and change the ratios of members.

Nominations: Section 970.28

The Secretary of the United States Department of Agriculture will determine the initial producer and handler representatives on the marketing committee after taking recommendations from producers and handlers across the country. The initial producer and handler members will nominate representatives from retail, foodservice, import and public categories as well as alternate producer handler members. These nominations will be given to the Secretary who will appoint these positions.

The initial marketing committee will develop a process for nomination and selection of successors subject to the approval of the Secretary. This process will include nomination by handler and producer members in each zone for that zones representative on the committee.

Technical Review Board: Section 970.30

A technical review board is established to assist the committee in developing the audit metrics for the program. This includes the audit metrics for good agricultural practices (farm) good handling and good manufacturing practices (harvest, post harvest, distribution and processing). The technical review board includes representatives (industry) elected by producer and handler members from each zone, a food safety expert form a land grant university in each zone, a representative from USDA's Natural Resource Conservation Service and 2 representatives from FDA appointed by the Commissioner of HHS. This board is charged with developing and recommending the "metrics" for a national program and has the capacity to tailor metrics to meet regional differences and differences of scale of operation. The marketing committee may additionally ask the technical review board to perform other advisory functions.

Market Review Board: Section 970.31

A market review board is also established to assist with dissemination, recognition and acceptance of the national program. This Board will consist primarily of representatives of retail, foodservice, consumer and land grant universities. They are appointed by the marketing committee.

Powers & Duties: Section 970.34 & 970.35

The marketing committee is the administrative body for the national agreement. It has the power to create operational rules and regulations, adopt metrics (after notice and comment), receive and investigate complaints, recommend amendments and collaborate with state entities. The marketing committee operates with oversight from USDA.

The marketing committee also has duties including the following: to act as the intermediary between the secretary and any signatory, establish subcommittees and advisory boards, adopt bylaws, keep minutes and records, investigate and compile data, appoint employees or agents and elect leaders.

Expenses and Assessments: Sections 970.36 – 970.39

These sections authorize the marketing agreement to incur appropriate expenses and establish the authority and parameters for assessments that will be levied on signatory handlers.

Assessments: Section 970.37

The marketing agreement is funded primarily through assessments levied on those handlers that are signatories to the agreement. The assessment rate is recommended by the marketing committee and fixed by the Secretary. The assessment rate may not exceed $0.05 per (24 lb) carton equivalent and must be set at the lowest rate practical to carry out the objectives of the agreement. Supplemental assessments are also authorized but the combination of supplemental and base assessments rates may not exceed the cap.

Because the definition of handler may include parties who are not the "first" handler of a product and in an effort to avoid "assessing" product more than one time downstream inspections of handlers who are not first handlers are paid on a fee for service basis.

The failure to pay assessments as prescribed by the marketing committee could result in late fees and interest also being levied.

<u>Duties and Responsibilities of Signatories</u>: Sections 970.40 – 970.47

These sections set forth the obligations of the individual signatories under the marketing agreement. The overarching requirement is that no signatory to the agreement will handle or manufacture leafy greens unless they are verified as meeting the requirements of the agreement by an official USDA audit.

Verification Audits: Section 970.41

All domestic and foreign producers who provide leafy greens to signatory handlers must undergo audits. The audits will verify that the products were produced in accordance to the GAP requirements adopted by the committee.

All signatory handlers and manufacturers are subject to audits. The audits will verify that the signatories operate under the GHP and GMP requirements adopted by the committee.

No signatory handler may receive product from a foreign handler unless that handler has also been audited and is compliant with marketing agreement requirements.

All audits are to be conducted by USDA Inspection Service.

All handlers will be audited during their production season on a regular schedule. Random unannounced audits will also be performed.

Audit Metrics: Section 970.42

GAP metrics will address water quality, soil amendments, machine harvest, hand harvest, transfer of pathogens by workers, field sanitation, cross contamination through equipment, flooding, post harvest water usage, production locations, encroachment by animals and urban settings. Other factors may be included as deemed appropriate by the committee and approved by the Secretary. The metrics are developed by the committee and its technical board and recommended to the USDA.

GHP and GMP metrics will address post harvest handling, manufacturing and distribution. GHP and GMP may address other factors as deemed appropriate by the committee and approved by the Secretary. The metrics are developed by the committee and its technical board and recommended to the USDA.

Metrics will be developed in consultation with FDA as well as any other federal or state agency that administers regulations that may be impacted by provisions of the agreement will be based on sound scientific practices and must be approved by the Secretary.

Metrics may vary to accommodate regional differences in production, handling and manufacturing environments and/or leafy green products.

Traceability: Section 970.43

Traceability at all stages is also required for products subject to the agreement. Signatories are required to be able to trace product from their suppliers to their customers. This will be verified by auditors.

Official Certification Mark: Section 970.44

An official certification mark will be established and licensed for use to signatory handlers. Rules and restrictions for the use of the mark will be established by the committee including affixing it to bills of lading and manifests. Signatories must be compliant with the agreement to utilize the mark.

Exemptions: Section 970.47

There are no specific exemptions created as part of the marketing agreement. IN an effort to provide some flexibility however, the marketing committee has been authorized to create an exemption(s) with the approval of the Secretary if they deem it necessary and the exemptions do not interfere with the objectives of the agreement.

Research and Promotion: Section 970.49

This section authorizes the committee to conduct marketing research and promotional activities to facilitate the marketplace acceptance of the agreement and products handled under the agreement. It does not allow generic promotion or leafy greens research.

Reports and Records: Sections 970.51 – 970.54

These sections spell out the reporting and recordkeeping requirements as well as the confidentiality of records furnished to the marketing agreement. They also spell out how records may be verified by the Secretary. Compliance provisions are also part of these sections.

Compliance: Section 970.54

This section requires the committee to establish policies for any non-conformity with the agreement. Signatories may lose their audit services and privilege to utilize the certified mark if they market product that has not met the requirements of the agreement or fail to maintain the appropriate records. If there is any product that is deemed a threat to public health by inspectors the USDA and FDA will be notified.

Miscellaneous: Sections 970.60 – 970.73

These sections spell out the requirements for termination and withdrawal from the agreement as well as allows for amendments to the agreement.