

Attachment

4.) NLGMA Draft Version 1

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

1 Part 970 – MARKETING AGREEMENT REGULATING LEAFY GREEN
2 VEGETABLES

3
4 DEFINITIONS

5
6 **§ 970.1 Act.**

7 *Act* means Public Act No. 10, 73^d Congress (May 12, 1933), as amended and as re-
8 enacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended
9 (48 Stat. 31, as amended; 7 U.S.C. 601 *et seq.*).

10
11 **§ 970.2 Audit verification.**

12 *Audit verification* means the physical visit to the farm and/or facility when it is in
13 operation by an inspection/audit team to validate, verify and witness that good agricultural,
14 handling, and manufacturing practices are adhered to throughout the growing, harvesting,
15 packing operation and transportation as defined in § 970.8 , and § 970.9. This verification
16 shall take the form of an official audit conducted by the Inspection Service, § 970.12. An
17 audit verification is a snapshot in time based on documentation reviewed, persons
18 interviewed and operations observed, and is intended to represent the past and ongoing
19 activities of the auditee.

20
21 **§ 970.3 Control point.**

22 *Control point, or CP*, means an auditable step within a handling, manufacturing, or
23 transportation process at which control can be applied and is essential to prevent or
24 minimize a food safety hazard to an acceptable level. *Control point* is synonymous with
25 “touch point” and additionally means any occasion when leafy greens are handled by a
26 worker or contact an equipment-food contact surface and represents a potential opportunity
27 for cross-contamination.

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29 **§ 970.4 Critical limit.**

30 *Critical limit* means a maximum and/or minimum value to which a biological,
31 chemical, or a physical parameter must be controlled at a CP to prevent or minimize the
32 occurrence of a food safety hazard to an acceptable level.

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34 **§ 970.5 Crop year.**

35 *Crop year* is synonymous with *fiscal year* and means the 12-month period beginning
36 with April 1 of any year and ending with March 31 of the following year.

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38 **§ 970.6 Fresh-cut.**

39 *Fresh-cut* means fresh vegetables that have been minimally altered from their natural
40 form by peeling, slicing, chopping, shredding, coring, or trimming, with or without washing
41 prior to being packaged for use by the consumer, foodservice industry, or a retail
42 establishment. Fresh-cut products do not require additional preparation, processing, or
43 cooking before human consumption.

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§ 970.7 Fresh-cut, packaged leafy green product.

Fresh-cut, packaged leafy green product means any leafy green vegetable defined under § 970.13 that is fresh-cut and packaged for human consumption. This definition excludes from regulation all whole or cut non-leafy green vegetables or non-produce ingredients commingled with fresh-cut leafy green vegetables in packaged products (e.g. salad kits which may contain carrots, meat, cheese, and/or dressings).

§ 970.8 Good agricultural and handling practices.

Good agricultural practices (GAP) and good handling practices (GHP) refer to general practices to reduce microbial food safety hazards as outlined in the U.S. Food and Drug Administration (FDA) “Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables” guidance document and the Association of Food and Drug Officials (AFDO) model codes for food safety at the farm and packinghouse, or any other versions thereof as approved by the Secretary.

§ 970.9 Good manufacturing practices.

Good manufacturing practices (GMP) means any FDA regulations (21 CFR 110) that describe the methods, equipment, facilities, and controls required for producing processed food, including fresh-leafy green vegetable products and the FDA guidance document “Guide to Minimize Microbial Food Safety Hazards of Fresh-cut Fruits and Vegetables,” or any other version thereof as approved by the Secretary.

§ 970.10 Handle.

Handle means to receive, acquire, sell, process, ship, distribute, or import leafy green vegetables in their natural form, including both raw agricultural commodities and fresh cut, packaged products; *Provided*, that handle does not include the act of brokering the purchase or sale of leafy green vegetables whether for the purpose of manufacturing fresh-cut leafy green packaged products or not. This definition does not include retail sales or the act of selling by a retailer or foodservice distributor or outlet.

§ 970.11 Handler.

Handler means any person who handles; *Provided*, that, this definition does not include a retailer, a foodservice distributor or outlet, or a fresh produce broker, except to the extent that such a person is otherwise engaged in handling.

§ 970.12 Inspection service.

Inspection service means the Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, its designees, or any other entity approved by USDA to inspect/audit on its behalf.

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

84 **§ 970.13 Leafy greens.**

85 *Leafy greens* means the fresh mature and immature leafy portions of any of the
86 following: arugula, cabbage (red, green and savoy), chard, cilantro, endive), escarole, kale,
87 lettuce (iceberg, leaf, butterhead and romaine), parsley, raddichio, spinachspring mix (baby
88 leaf items including, but not limited to, cress, dandelion, endigia, mache, mizuna, tat soi,
89 winter purslane) or any other leafy green vegetable recommended by the Committee and
90 approved by the Secretary. The Committee may also recommend, subject to the approval of
91 the Secretary, the removal of any leafy green vegetable from this definition.

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93 **§ 970.14 Manufacture.**

94 *Manufacture* is synonymous with process and means to change fresh leafy green
95 vegetables from their natural form into fresh-cut, packaged products; *Provided*, that
96 manufacture does not apply to retailer or foodservice distributor or operator except to the
97 extent that such a person is otherwise engaged in manufacturing for non-retail purposes.

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99 **§ 970.15 Packaged.**

100 *Packaged* means a commodity or a unit of a product uniformly wrapped or sealed.

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102 **§ 970.16 Person.**

103 *Person* means an individual, partnership, corporation, association, or any other
104 business unit or legal entity.

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106 **§ 970.17 Producer.**

107 *Producer* is synonymous with grower and means any person engaged in a
108 proprietary capacity in the production of leafy green vegetables for sale or delivery to a
109 signatory of this agreement.

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111 **§ 970.18 Process.**

112 *Process* is synonymous with manufacture and means to change fresh leafy green
113 vegetables from their natural form into fresh-cut, packaged products; *Provided*, that process
114 does not apply to retailer or foodservice distributor or operator, except to the extent that such
115 a person is otherwise engaged in processing for non-retail purposes.

116

117 **§ 970.19 Production area.**

118 *Production area* means all fifty states and the District of Columbia of the United
119 States of America.

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121 **§ 970.20 Secretary.**

122 *Secretary* means the Secretary of Agriculture of the United States or any officer or
123 employee of the United States Department of Agriculture who is, or who may hereafter be,
124 authorized to act in his or her stead.

125

126 **§ 970.21 Signatory.**

127 *Signatory* means a handler or manufacturer, or any other entity who is party to this
128 agreement.

129

130 **§ 970.22 USDA.**

131 *USDA* means the United States Department of Agriculture, including any officer,
132 employee, service, program or branch of the Department of Agriculture, or any other person
133 acting as the Secretary's agent or representative in connection with any provisions of this
134 part.

135

136 **§ 970.23 Zone.**

137 *Zone* means the applicable one of the following described subdivisions of the
138 production area or such other subdivision as recommended by the Committee and approved
139 by the Secretary:

140 (a) *Zone 1* shall include the states of California, Washington, Oregon, Hawaii, and
141 Alaska.

142 (b) *Zone 2* shall include the states of Arizona, Montana, North Dakota, Wyoming,
143 South Dakota, Idaho, Nevada, and Utah.

144 (c) *Zone 3* shall include the states of New Mexico, Colorado, Nebraska, Minnesota,
145 Iowa, Kansas, Oklahoma, Texas, Missouri, Arkansas, and Louisiana.

146 (d) *Zone 4* shall include the states of Wisconsin, Michigan, Ohio, Illinois, Indiana,
147 Kentucky, Tennessee, Mississippi, Alabama, and Georgia.

148 (e) *Zone 5* shall include the states of Maine, New Hampshire, Vermont, New York,
149 Connecticut, Massachusetts, Pennsylvania, New Jersey, West Virginia, Virginia, Maryland,
150 Delaware, Rhode Island, North Carolina, South Carolina, Florida, and the District of
151 Columbia.

152

153 **PURPOSE**

154

155 **§ 970.24 Purpose**

156 The purposes of this marketing agreement are: to provide a mechanism to enable
157 leafy green handlers to organize; to ensure the quality of fresh leafy green vegetable
158 products available in the marketplace through the application of good agricultural
159 production and handling practices; to implement a uniform, auditable, science-based food
160 quality verification program; to provide for USDA validation and verification of program
161 compliance; to foster greater collaboration with local, state and federal regulators; and, to
162 improve consumer confidence in leafy greens.

163

164 **LEAFY GREEN ADMINISTRATIVE COMMITTEE**

165

166 **§ 970.25 Establishment and membership.**

167 A National Leafy Greens Administrative Committee (hereinafter referred to as
168 Committee) is hereby established to administer the terms and provisions of this agreement.

169 (a) Such Committee shall consist of twenty-three members, each of whom shall have
170 an alternate who shall have the same qualifications as the member for whom he or she is an
171 alternate. Committee membership shall be allocated as follows:

172 (1) Four handlers and two producers from Zone 1;

173 (2) Three handlers and one producer from Zone 2;

174 (3) Two handlers and one producer from Zone 3;

175 (4) Two handlers and one producer from Zone 4;

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

- 176 (5) Two handlers and one producer from Zone 5;
177 (6) One retail representative from the production area;
178 (7) One foodservice representative from the production area;
179 (8) One public member from the production area; and,
180 (9) One importer from the production area.

181 (b) A majority of the producer members of the Committee shall not otherwise be
182 engaged in the handling of leafy green vegetables or the manufacturing of fresh-cut,
183 packaged leafy green products, and two producers must be small producers as defined in the
184 rules and regulations. Furthermore, at least four handler members must be engaged in the
185 manufacturing of fresh-cut leafy green products.

186 (c) The Secretary, upon recommendation of the Committee, may reapportion
187 members among zones, may change the number of members and alternates, and may change
188 the composition by changing the ratio of members, including their alternates. In
189 recommending any such changes, the following shall be considered:

- 190 (1) Shifts in production within zones during recent years;
191 (2) The importance of new production in its relation to existing zones;
192 (3) The equitable relationship between membership and zones;
193 (4) Economies to result in promoting efficient administration due to rezoning or
194 reapportionment of membership among the zones; and
195 (5) Other relevant factors.

196

197 **§ 970.26 Eligibility.**

198 Each producer or handler member of the Committee and alternate member shall be,
199 at the time of his or her selection and throughout his or her term of office, a producer or a
200 handler, or an officer or employee of a producer or handler in the zone for which selected.
201 The retail, foodservice, importer, and public members and alternate members may not be
202 engaged in a proprietary capacity in the production or handling of leafy green vegetables.
203 The retail, foodservice and importer members and alternates shall be, at the time of their
204 selection and throughout their term of office, an owner, officer or employee for the seat
205 selected.

206

207 **§ 970.27 Term of office.**

208 Members and alternate members of the Committee shall serve for terms of two (2)
209 years beginning on April 1 and ending on March 31. Each member and alternate member
210 shall continue to serve until a successor is selected and has qualified. Members shall not
211 serve more than three (3) consecutive two-year terms of office or for a total of six (6)
212 consecutive years.

213

214 **§ 970.28 Nominations.**

215 Nomination of Committee members and alternates shall follow the procedure set
216 forth in this section or as may be changed as recommended by the Committee and approved
217 by the Secretary.

218 (a) *Initial members.* Nominations for each of the initial producer and handler
219 members and alternate members of the Committee shall be conducted by the Secretary by
220 means of meetings of producer and handler representatives, by mail, or by any other form of
221 electronically verifiable communication. Once selected and appointed by the Secretary, the

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

222 producer and handler members shall nominate the retail, foodservice, importer and public
223 members and alternate members, subject to final selection and appointment by the Secretary.

224 (b) *Successor members.* Subsequent to the nomination and selection of the initial
225 committee members and alternate members, nomination and selection of committee
226 members and alternate members shall be pursuant to procedures established by the
227 Committee with approval of the Secretary: *Provided*, that such procedures include the
228 following:

229 (1) Only persons eligible to serve on the Committee shall be eligible to nominate and
230 vote for committee members and alternate members;

231 (2) Committee producer and handler members and alternate members shall be
232 nominated by zone;

233 (3) Each producer or handler shall have but one vote, and may vote in only one zone
234 in which he or she is a producer or handler;

235 (4) All producer and handler member and alternate member nominations shall be
236 certified by the Committee to the Secretary prior to the beginning of each two-year term of
237 office, together with all necessary data and other information deemed by the Committee to
238 be pertinent or requested by the Secretary. From these nominations, the Secretary shall
239 select the producer and handler members and alternate members of the Committee; and

240 (5) The producer and handler members of the Committee shall nominate the retail,
241 foodservice, importer and public members and alternate members.

242 (6) The Committee shall prescribe such additional qualifications, administrative
243 rules and procedures for selection and voting for each candidate as it deems necessary and as
244 the Secretary approves.

245 (c) *Acceptance.* Each person to be selected by the Secretary as a member or as an
246 alternate member of the Committee shall, prior to such selection, qualify by advising the
247 Secretary that if selected, such person agrees to serve in the position for which that
248 nomination has been made.

249 (d) *Failure to nominate.* If nominations are not made within the time and manner
250 specified in this part, the Secretary may, without regard to nominations, select the
251 Committee members and alternate members on the basis of the representation provided for
252 in § 970.25.

253 (e) *Vacancies.* To fill a vacancy on the Committee occasioned by the failure of any
254 person selected as member or alternate member to qualify, or in the event of the death,
255 removal, resignation, or disqualification of any member or alternate member, a successor for
256 the unexpired term of such member or alternate member shall be nominated and selected in
257 the manner specified in paragraphs (b) and (c) of this section. If the names of nominees to
258 fill any such vacancy are not made available to the Secretary within a reasonable time after
259 such vacancy occurs, the Secretary may fill such vacancy without regard to nominations on
260 the basis of representation provided for in § 970.25.

261
262 **§ 970.29 Alternate members.**

263 An alternate for a member shall act in the place and stead of such member during the
264 member's absence, or in the event of the member's removal, resignation, disqualification or
265 death, until a successor for such member's unexpired term has been selected and has
266 qualified. In the event both a member and his/her alternate are unable to attend a meeting,

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

267 the member or the Committee members of that group and zone present may designate any
268 other alternate to serve in such member's place and stead.

269

270 **§ 970.30 Technical Review Board.**

271 A Technical Review Board is hereby established for the purpose of assisting the
272 Committee in developing audit metrics in § 970.42 and any other function that the
273 Committee may recommend and the Secretary approve. The Technical Review Board shall
274 consist of 13 non-voting members as follows: 1 representative from each zone who is
275 elected by the producer and handler members from the corresponding zone; 1 produce food
276 safety expert from a land grant university within each zone elected by the producer and
277 handler members from the corresponding zone; 1 representative from USDA Natural
278 Resources Conservation Service (NRCS) appointed by the Secretary; and 2 representatives
279 from FDA designated by the Commissioner. The Technical Review Board may appoint
280 subcommittees as necessary to facilitate input and review from regions throughout the
281 production area. Subcommittees may consist of producers, handlers, and other interested
282 parties as deemed appropriate by the Technical Review Board.

283

284 **§ 970.31 Market Review Board.**

285 A Market Review Board is hereby established for the purpose of providing advice to
286 the Committee on retail, food service, and consumer issues that should be addressed to
287 maximize the market acceptance and recognition of the program. The Market Review Board
288 shall be appointed by the Committee and shall consist of 9 non-voting members as follows:
289 2 representatives of retail grocers; 2 representatives from food service companies; 3
290 consumers, and 2 representatives from land grant universities with expertise in fresh
291 vegetable marketing, economics, or consumer acceptance. The Committee may additionally
292 appoint representatives from consumer, retail, or foodservice organizations.

293

294 **§ 970.32 Compensation and expenses.**

295 All committee members, alternate members, and subcommittee members shall serve
296 without compensation, but shall be reimbursed for necessary and reasonable expenses
297 incurred in the performance of their duties under this part.

298

299 **§ 970.33 Procedure.**

300 (a) A majority of all the members of the Committee shall constitute a quorum:
301 *Provided*, that each zone shall be represented by at least one member or his or her alternate
302 at any meeting of the full Committee. Committee action shall require the concurrence of a
303 majority of the members present at a meeting except that acceptance of Good Agricultural,
304 Handling and Manufacturing Practices; assessment rates and termination of the agreement
305 must be approved by a 2/3 majority of the Committee.

306 (b) In the event that a member of the Committee and alternate are unable to attend
307 the meeting, the Committee may designate any other alternate from the same zone or group
308 (handler, producer, etc) who is present at the meeting to serve in the member's place.

309 (c) The Committee shall give to the Secretary the same notice of each meeting that is
310 given to the members of the Committee.

311 (d) The Committee may vote by telephone or other means of communication and any
312 votes so cast shall be confirmed promptly in writing: *Provided*, that if an assembled meeting

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

313 is held, all votes shall be cast in person. A videoconference shall be considered an
314 assembled meeting and all votes shall be considered as cast in person.

315
316 **§ 970.34 Powers.**

317 The Committee shall have the following powers:

318 (a) To administer the agreement in accordance with its terms and provisions;

319 (b) To make such rules and regulations, with the approval of the Secretary, as may
320 be necessary to effectuate the terms and provisions of the agreement;

321 (c) To adopt, with the approval of the Secretary after notice and comment, audit
322 metrics to administer the terms and provisions in §§ 970.8, 970.9, 970.41, and 970.42;

323 (d) To collaborate with existing state boards, commissions and agreements through
324 memorandum of understanding to affect the purposes of the agreement;

325 (e) To receive, investigate, and report to the Secretary complaints of violation of the
326 provisions of the agreement; and,

327 (f) To recommend to the Secretary amendments to the agreement.

328
329 **§ 970.35 Duties.**

330 The Committee shall have, among others, the following duties:

331 (a) To act as intermediary between the Secretary and any signatory with respect to
332 the operations of the agreement;

333 (b) To select from among its members a chairperson and such other officers as may
334 be necessary, and to define the duties of such officers;

335 (c) To establish subcommittees and advisory boards to aid the Committee in the
336 performance of its duties under the agreement;

337 (d) To adopt such bylaws for the conduct of its business as it may deem advisable;

338 (e) To keep minutes, books, and records which clearly reflect all the acts and
339 transactions of the Committee and subcommittees, and these shall be subject to examination
340 by the Secretary at any time;

341 (f) To appoint such employees or agents as it may deem necessary, and to determine
342 the compensation and define the duties of each;

343 (g) To cause its financial statements to be audited by a certified public accountant at
344 least once each crop year and at such other times as the Committee may deem necessary or
345 as the Secretary may request. Such audit shall include an examination of the receipt of
346 assessments and the disbursement of all funds. The Committee shall provide the Secretary
347 with a copy of all audits and shall make copies of such audits, after the removal of any
348 confidential individual or handler information that may be contained in them, available for
349 examination at the offices of the Committee;

350 (h) To investigate the production, handling and marketing of leafy green vegetables
351 and to assemble data in connection therewith; and,

352 (i) To furnish such available information as may be deemed pertinent or as
353 requested by the Secretary.

354

355 EXPENSES AND ASSESSMENTS

356

357 **§ 970.36 Expenses.**

358 The Committee is authorized to incur such expenses as the Secretary finds are
359 reasonable and likely to be incurred by it during each crop year for the maintenance and
360 functioning of the Committee and for such other purposes as the Secretary may, pursuant to
361 the provisions of this part, determine to be appropriate. Such expenses shall be paid from
362 assessments received pursuant to § 970.37 and other funds available to the Committee.

363

364 **§ 970.37 Assessments.**

365 (a) Each signatory handler shall pay to the Committee such handler's pro rata share
366 of the Committee's expenses authorized by the Secretary for each crop year. The payment
367 of assessments for the maintenance and functioning of the Committee may be required under
368 this part throughout the period it is in effect irrespective of whether particular provisions
369 thereof are suspended or become inoperative.

370 (b) Based upon recommendation of the Committee, or other available data, the
371 Secretary shall fix a base rate of assessment for all leafy green vegetables or products that
372 first handlers shall pay during each crop year. The Committee may also recommend and the
373 Secretary may approve supplemental assessments, but no combination of assessment and
374 supplemental assessments may exceed the cap established in § 970.37(d).

375 (c) Any signatories who are not first handlers shall pay inspection service fees based
376 on time and travel as approved by the Committee.

377 (d) Based on the recommendation of the Committee or other available data, the
378 Secretary may change or modify the base rate classification defined in this section. The
379 assessment shall be set at the lowest rate practical to carry out the objectives of the
380 agreement. At no time shall the assessment rate exceed \$0.05 per 24 pound carton or
381 equivalent.

382 (e) Any assessment not paid by a handler within a period of time prescribed by the
383 Committee may be subject to an interest or late payment charge, or both. The period of
384 time, rate of interest and late payment charge shall be as recommended by the Committee
385 and approved by the Secretary. Subsequent to such approval, all assessments not paid
386 within the prescribed period of time shall be subject to an interest or late payment charge or
387 both.

388 (f) In order to provide funds for the administration of this part, the Committee may
389 accept advance payments of assessments, which shall be credited toward assessments levied
390 against such handler during the crop year. The Committee may also borrow money for such
391 purposes when assessment and reserve funds are not sufficient to cover them.

392

393 **§ 970.38 Accounting.**

394 (a) If, at the end of a crop year, the assessments collected are in excess of expenses
395 incurred, the Committee, with the approval of the Secretary, may carry over such excess into
396 subsequent crop years as an operating monetary reserve, except that funds already in such
397 reserve shall not exceed approximately two (2) fiscal periods' budgeted expenses, or such
398 lower limits as the Committee, with the approval of the Secretary, may establish. Funds in
399 such reserve shall be available for use by the Committee for expenses authorized pursuant to

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

400 § 970.36 and to cover necessary expenses of liquidation in the event of termination of this
401 part. If any such excess is not retained in a reserve, each handler entitled to a proportionate
402 refund shall be credited with such refund against the operations of the following crop year,
403 or be paid such refund upon demand.

404 (b) Upon termination of this part, any refunds not required to defray the necessary
405 expenses of liquidation shall be used, to the extent practicable, to fulfill any obligations
406 under § 970.49, Research and promotion.

407

408 **970.39 Contributions.**

409 The committee may accept voluntary contributions but these shall only be used to
410 pay expenses incurred pursuant to 970.49, Research and promotion. Furthermore, such
411 contributions shall be free from any encumbrances by the donor and the committee shall
412 retain complete control of their use.

413

414 **DUTIES AND RESPONSIBILITIES OF SIGNATORIES**

415

416 **§ 970.40 Signatory parties.**

417 No signatory to this agreement shall handle leafy green vegetables, or manufacture
418 fresh-cut packaged leafy green products, for human consumption unless such are verified as
419 meeting the provisions of this part. This verification shall take the form of an official audit
420 conducted by the inspection service.

421

422 **§ 970.41 Verification audits.**

423 (a) *GAP audits.*

424 (1) All producers who produce leafy green vegetables and who provide leafy green
425 vegetables to signatory handlers subject to the provisions of this agreement shall undergo
426 GAP validation and verification audits. Such audits shall verify that such product was
427 produced under auditable conditions that meet production and harvest requirements as
428 outlined in the GAPs (§ 970.8) and as further defined in any applicable audit metrics
429 provided for under § 970.42.

430 (2) No signatory handlers subject to the provisions of this agreement shall receive
431 leafy green vegetables produced in foreign countries that have not been subject to GAP
432 validation and verification audits by USDA licensed inspectors. Such audits shall verify that
433 such product was produced under auditable conditions that meet production and harvest
434 requirements as outlined in the GAPs (§ 970.8) and as further defined in any applicable
435 audit metrics provided for under § 970.42.

436 (b) *GHP or GMP audits.*

437 (1) All signatory handlers, manufacturers, or other post-production and harvest
438 operations shall be subject to audit verifications. Such audits shall verify that such
439 signatories operate under auditable conditions that meet requirements at CPs outlined in the
440 GHPs or GMPs, (§ 970.8 and § 970.9) and as further defined in any applicable audit
441 metrics provided for under § 970.42.

442 (2) No signatory handlers subject to the provisions of this agreement shall receive
443 leafy green vegetables from handlers in foreign countries that have not been subject to GHP,
444 GMP validation and verification audits by FDA or USDA licensed inspectors. Such audits
445 shall verify that such product was produced under auditable conditions that meet production

DRAFT DOCUMENT FOR DISCUSSION

Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

446 and harvest requirements at CPs as outlined in the GAPs (§ 970.8) and as further defined in
447 any applicable audit metrics provided for under § 970.42.

448 (c) All audits shall be conducted by the Inspection Service or the FDA, and certified
449 as to meeting the regulations of this part.

450 (d) Audits shall be conducted on a regular schedule that ensures every handler is
451 audited during their corresponding production season. In addition, random unannounced
452 audits of handlers and associated producers will also be performed during the production
453 season in each zone.

454

455 **§ 970.42 Audit metrics.**

456 Audit metrics shall be recommended by the Committee to USDA for approval
457 after consultation with the Technical Review Board.

458 (a) *GAP audit metrics.* GAP audit metrics shall include verification related but not
459 limited to: water quality, soil amendments, machine harvest, hand harvest (including direct
460 contact with soil during harvest), transfer of human pathogens by field workers, field
461 sanitation, equipment-facilitated cross contamination, flooding, water usage to prevent
462 dehydration, and production location concerns, including climatic conditions and
463 environment, and encroachment by animals of significant risk and urban settings, or any
464 other factors defined under §970.8, or as recommended by the Committee and approved by
465 the Secretary.

466 (b) *GHP or GMP audit metrics.* Such audit metrics shall include verification of CPs
467 related but not limited to:

468 i. *Post-harvest handling process:* cooling, water, reuse of field containers, bulk-bin
469 modified atmosphere process, condition and sanitation of transportation vehicles, and
470 employee hygiene.

471 ii. *Handling and manufacturing process:* wash water, wash system capacity, bulk-
472 bin modified atmosphere process, condition and sanitation of transportation vehicles, and
473 employee hygiene, labeling of Raw Agricultural Commodity (RAC) versus ready-to-eat
474 (RTE) products, and finished product packaging.

475 iii. *Distribution handling process:* condition and sanitation of transportation
476 vehicles, condition and sanitation of distribution/cooler facilities, and temperature
477 measurement of product.

478 iv. Any other factors defined under § 970.8 and § 970.9, or as recommended by the
479 Committee and approved by the Secretary.

480 (c) Critical limits for each of the CP quality factors identified in the audit metrics
481 shall be prescribed by USDA in consultation with FDA and any other federal or state
482 regulatory body administering regulations impacted by the provisions of this agreement;
483 shall incorporate Committee recommendations with regard to industry production, harvest
484 and handling technologies; shall be based on sound scientific practices; and shall be
485 approved by the Secretary.

486 (d) Audit metrics may be developed and recommended to accommodate differences
487 in production, handling, and manufacturing environments of different regions within the
488 production area and different leafy green vegetable products.

489

490 **§ 970.43 Traceability.**

491 (a) The traceability of leafy green products subject to the terms of this agreement
492 shall be established at all stages of production, processing, and distribution.

493 (b) Signatory handlers of leafy green vegetables and manufacturers of fresh-cut,
494 packaged leafy green products shall have the ability to track their products from their
495 supplier(s) to their customer(s). To this end, signatory handlers shall have in place systems
496 and procedures which allow for this information to be made available for verification by the
497 Inspection Service.

498 (c) Documents necessary for verification shall be maintained for two years.

499

500 **§ 970.44 Official certification mark.**

501 (a) USDA will obtain and grant to the Committee the use of a U.S. registered
502 certification mark that will be the agreement's official mark (mark). This mark will be
503 licensed to signatories who certify and verify that their leafy green vegetables have been
504 grown, packed, shipped, or handled, in accordance with this part and any other federal
505 trademark registration requirements.

506 (b) The Committee may license signatories to affix the official certification mark to
507 bills of lading or manifests, subject to the verification, suspension, revocation requirements,
508 or any other such uses recommended by the Committee and approved by the Secretary to
509 carry out the purposes of this Agreement. A signatory's compliance with the regulations
510 under this Agreement is a condition precedent and subsequent to the signatory's entitlement
511 to use the mark.

512

513 **§ 970.45 Administrative review.**

514 Any signatory denied the use of the official certification mark may request an
515 administrative review if it is believed that a material fact of the original verification audit
516 was misinterpreted. Administrative reviews would be conducted in accordance with the
517 USDA audit verification procedures for any audit program in effect under this agreement.
518 Any financially interested person may request an administrative review if it is believed that
519 the original audit verification is in error. The person requesting the review would pay the
520 cost of the review. The review results shall be issued to the person making the request.

521

522 **§ 970.46 Modification or suspension of regulations.**

523 (a) In the event that the Committee, at any time, finds that the provisions contained
524 under this part should be modified or suspended, it shall by vote of a concurring majority of
525 its members, so recommend to the Secretary.

526 (b) Whenever the Secretary finds from the recommendations and information
527 submitted by the Committee or from other available information, that the provisions of this
528 part should be modified, suspended, or terminated in order to effectuate the declared policy
529 of the Act, the Secretary shall modify or suspend such provisions. If the Secretary finds that
530 a regulation obstructs or does not tend to effectuate the declared policy of the Act, the
531 Secretary shall suspend or terminate such regulation.

532 (c) The Committee, with the approval of the Secretary, may issue rules and
533 regulations implementing this part.

534

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Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

535 **§ 970.47 Exemptions.**

536 The Committee, with the approval of the Secretary, may establish such rules,
537 regulations, and safeguards that exempt from any or all requirements pursuant to this part
538 such quantities of leafy green vegetables or products as do not interfere with the objectives
539 of this part, and shall require such reports, certifications, or other conditions as are necessary
540 to ensure that such leafy green vegetables are handled or used only as authorized.

541

542 RESEARCH AND PROMOTION

543

544 **§ 970.49 Research and promotion.**

545 The Committee, with the approval of the Secretary, may establish or provide for the
546 establishment of marketing research, and development projects, and/or promotional
547 activities, including paid advertising, designed to assist, improve, or promote the efficient
548 adoption, implementation, and marketplace acceptance of the agreement and of leafy green
549 vegetables or products produced by signatory members. The expenses of such projects shall
550 be paid from funds collected pursuant to § 970.37.

551

552 REPORTS AND RECORDS

553

554 **§ 970.51 Reports and recordkeeping.**

555 (a) Each handler shall report acquisitions of all leafy green vegetables or products
556 and such other reports or information as may be necessary to enable the Committee to carry
557 out the provisions of this part.

558 (b) Each handler shall maintain records of all receipts and acquisitions of leafy green
559 vegetables or products, and all documentation relating to the verification audit reports. Such
560 records shall be maintained for at least two years after the crop year of their applicability.
561 Such recordkeeping shall be sufficient to document and substantiate the handler compliance
562 with this part.

563 (c) The Committee shall maintain copies of audit reports.

564

565 **§ 970.52 Confidential information.**

566 All reports and records furnished or submitted by handlers to the Committee which
567 include data or proprietary information constituting a trade secret, or disclosing a trade
568 position, financial condition, or business operations of the particular handlers or their
569 customers, shall be received by, and at all times kept in the custody and control of, one or
570 more employees of the Committee, who shall disclose such data and information to no
571 person except the Secretary. However, such data or information may be disclosed only with
572 the approval of the Secretary, to the Committee, when reasonably necessary to enable the
573 Committee to carry out its functions under this part.

574

575 **§ 970.53 Verification of reports.**

576 For the purpose of checking and verifying reports filed by signatories authorized
577 agents or employees of the Committee, and the Secretary shall have access to any premises
578 of any signatory at any time during reasonable business hours to verify compliance with the
579 requirements of the agreement. For the purpose of checking and verifying GAP compliance,

580 authorized agents or employees of the Committee and the Secretary shall have access to
581 producer audit verification records.

582

583 **§ 970.54 Compliance.**

584 Compliance with the provisions of this agreement will be overseen by the
585 Committee and any staff hired or appointed to undertake this responsibility. In conjunction
586 with USDA, the committee shall establish a policy for signatory handlers for non-
587 conformities identified through verification audits:

588 (a) A signatory shall be subject to withdrawal of audit services, shall lose the
589 privilege of the use of the official certification mark, and may be subject to misbranding or
590 trademark violations, if the signatory:

591 (1) Produces or acquires leafy green vegetables or products without a inspection
592 service verification audit, pursuant to § 970.8 and § 970.9.

593 (2) Fails to obtain audit verification on the production, handling or manufacturing of
594 leafy green vegetable or products, pursuant to § 970.41, and ships such vegetables or
595 products for human consumption;

596 (3) Ships or places into the current of commerce leafy green vegetables or products
597 that fail to meet requirements under this agreement, pursuant to § 970.41 and § 970.42, for
598 human consumption;

599 (4) Commingles leafy green vegetables that fail to meet the requirements of this
600 agreement with leafy green vegetables verified to meet the requirements of the agreement
601 and ships the commingled lot for human consumption;

602 (5) Fails to maintain and provide access to records, pursuant to § 970.51; or

603 (6) Otherwise violates any provision of this part.

604 (b) Any lot or portion thereof leafy green vegetables which is deemed a threat to
605 public health by inspection service staff during the course of a verification audit shall be
606 reported by USDA to FDA and the brands and name of signatory entity listed to make
607 entities in violation public.

608 (c) Failure to comply with the provisions of this agreement may also result in
609 additional remedies or penalties, such as injunctive relief, as authorized under the Act.

610

611 **MISCELLANEOUS**

612

613 **§ 970.60 Effective time.**

614 The provisions of this part, as well as any amendments, shall apply to 2010-2011 and
615 subsequent crop year leafy green vegetables and shall continue in force and effect until
616 modified, suspended, or terminated.

617

618 **§ 970.61 Rights of the Secretary.**

619 Members and alternates of the Committee, subcommittees, advisory boards, and any
620 agents, employees, or representatives thereof, shall be subject to removal or suspension by
621 the Secretary at any time. Each and every decision, determination, and other act of the
622 Committee shall be subject to the continuing right of the disapproval by the Secretary at any
623 time. Upon such disapproval, the disapproval action of the Committee shall be deemed null
624 and void.

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Revised on 6/8/2009 7:45:00 AM - Created on 10/3/2008 4:32 PM -

626 **§ 970.62 Personal liability.**

627 No member or alternate member of the Committee, and no employee or agent of the
628 Committee, shall be held personally responsible, either individually or jointly with others, in
629 any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of
630 commission or omission, as such member, alternate, employee, or agent, except for acts of
631 dishonesty, willful misconduct, or gross negligence.
632

633 **§ 970.63 Separability.**

634 If any provision of this part is declared invalid or the applicability thereof to any
635 person, circumstance, or thing is held invalid, the validity of the remainder of this part or the
636 applicability thereof to any other person, circumstance, or thing shall not be affected
637 thereby.
638

639 **§ 970.64 Derogation.**

640 Nothing contained in this part is, or shall be construed to be, in derogation or in
641 modification of the rights of the Secretary or of the United States (a) to exercise any powers
642 granted by the Act or otherwise, or (b) in accordance with such powers, to act in the
643 premises whenever such action is deemed advisable.
644

645 **§ 970.65. Duration of immunities.**

646 The benefits, privileges, and immunities conferred upon any person by virtue of this
647 part shall cease upon its termination, except with respect to acts done under and during the
648 existence of this part.
649

650 **§970.66 Agents.**

651 The Secretary may, by designation in writing, name any officer or employee of the
652 United States, or name any agency or division in the USDA, to act as the Secretary's agent
653 or representative in connection with any of the provisions of this part.
654

655 **§ 970.67 Suspension or termination.**

- 656 (a) The Secretary may at any time terminate the provisions of this part.
657 (b) The Secretary shall terminate or suspend the operations of any or all of the
658 provisions of this part whenever it is found that such provisions do not tend to effectuate the
659 declared policy of the Act.
660 (c) The provisions of this part shall, in any event, terminate whenever the provisions
661 of the Act authorizing them cease.
662

663 **§ 970.68 Proceedings upon termination.**

664 Upon the termination of this part, the members of the Committee then functioning
665 shall continue as joint trustees, for the purpose of liquidating the affairs of the Committee.
666 Action by such trustees shall require the concurrence of a majority of said trustees. Such
667 trustees shall continue in such capacity until discharged by the Secretary, and shall account
668 for all receipts and disbursements and deliver all property on hand, together with all books
669 and records of the Committee and the joint trustees, to such persons as the Secretary may
670 direct; and shall upon the request of the Secretary, execute such assignments or other
671 instruments necessary or appropriate to vest in such person full title and right to all the

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672 funds, properties, and claims vested in the Committee or the joint trustees, pursuant to this
673 part. Any person to whom funds, property, or claims have been transferred or delivered by
674 the Committee or the joint trustees, pursuant to this section, shall be subject to the same
675 obligations imposed upon the members of said Committee and upon said joint trustees.
676

677 **§ 970.69 Effect of termination or amendment.**

678 Unless otherwise expressly provided by the Secretary, the termination of this part or
679 any regulation issued pursuant thereto, or the issuance of any amendment to either thereof,
680 shall not:

681 (a) Affect or waive any right, duty, obligation, or liability which shall have arisen or
682 which may thereafter arise, in connection with any provisions of this part or any regulation
683 issued thereunder;

684 (b) Release or extinguish any violation of this part or any regulation issued; or

685 (c) Affect or impair any rights or remedies of the Secretary, or of any other persons,
686 with respect to such violation.
687

688 **§ 970.70 Amendments.**

689 Amendments to this part may be proposed from time to time by the Committee, or
690 by any interested person affected by its provisions, including the Secretary.
691

692 **§ 970.71 Counterparts.**

693 This agreement may be executed in multiple counterparts and, when one counterpart
694 is signed by the Secretary, all such counterparts shall constitute, when taken together, one
695 and the same instrument as if all signatures were contained in one original.
696

697 **§ 970.72 Additional parties.**

698 After the effective date of the agreement, any non-signatory handler may become a
699 party hereto if a counterpart is executed by him or her and delivered to the Secretary. This
700 agreement shall take effect as to such new contracting party at the time such counterpart is
701 delivered to the Secretary. The obligations, benefits, privileges, and immunities conferred
702 by this agreement shall then be effective as to such new contracting party.
703

704 **§ 970.73 Withdrawal.**

705 Release from this agreement may be obtained, provided that a signatory handler is
706 not in violation of the provisions of this agreement and has fulfilled all of his or her
707 obligations, including payment of any assessments or charges levied pursuant to this
708 agreement, under any of the following conditions:

709 (a) A signatory handler may file with the Committee a written request for
710 withdrawal at the close of a crop year, effective for the succeeding crop year.

711 (b) Immediate withdrawal may be effectuated when a signatory handler ceases to be
712 a handler of leafy green vegetables or products and gives notice thereof to the Committee in
713 writing.