

Attachment

5.) NLGMA Draft Version 2

DEFINITIONS

§ 970.1 Act.

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

§ 970.2 Audit verification.

Audit verification means the physical visit to the farm and/or facility when it is in operation by an Inspection Service audit team to verify and document that good agricultural, handling, and manufacturing practices are adhered to throughout the growing, harvesting, packing operation and transportation as defined in § 970.9, and § 970.10. This verification shall take the form of an official audit conducted by the Inspection Service, § 970.14. An audit verification is a snapshot in time based on documentation reviewed, persons interviewed and operations observed, and is intended to represent the past and ongoing activities of the auditee.

§ 970.3 Broker.

Broker means an individual or entity that coordinates the sale and transport of fresh leafy green vegetable retail or foodservice buyers without taking ownership of the product.

§ 970.4 Critical limit.

Critical limit means a maximum and/or minimum value established as part of a process control to which a biological, chemical, or a physical parameter must be controlled to prevent or minimize the occurrence of a food safety hazard to an acceptable level.

§ 970.5 Crop year.

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

§ 970.6 Foodservice distributor.

Foodservice distributor means an individual or entity that provides leafy green vegetables to restaurants, cafeterias, industrial caterers, hospitals and nursing homes.

§ 970.7 Fresh-cut.

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

§ 970.8 Fresh-cut, packaged leafy green product.

Fresh-cut, packaged leafy green product means any leafy green vegetable defined under § 970.15 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).

§ 970.9 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 current U.S. Food and Drug Administration (FDA) “Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables” guidance document and the current Association of Food and Drug Officials (AFDO) model codes for food safety at the farm and packinghouse, or any other revised or modified versions thereof, or any other FDA document approved as a replacement thereof and as approved by the Secretary.

§ 970.10 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 or any other FDA regulation approved as a replacement or supplement thereof as approved by the Secretary.

§ 970.11 Handle.

Handle means to receive, acquire, sell, process, ship, distribute, or import leafy green vegetables, including both raw agricultural commodities and fresh cut, packaged products: *Provided*, that handle does not include brokering, retail or foodservice sales of leafy green vegetables.

§ 970.12 Handler.

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

§ 970.13 Importer.

Importer means a handler who imports leafy green vegetables that are produced or handled outside of the production area.

§ 970.14 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.

§ 970.15 Leafy green vegetables.

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

§ 970.16 Manufacture.

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

§ 970.17 Manufacturer.

Manufacturer means any person who manufactures: *Provided*, that, this definition does not include a retailer, a foodservice distributor, or a broker, except to the extent that such a person is otherwise engaged in handling.

§ 970.18 Packaged.

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

§ 970.19 Person.

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

§ 970.20 Producer.

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

§ 970.21 Process.

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

§ 970.22 Process control.

Process control means an auditable step within a production, harvest, handling, manufacturing, or transportation process at which control can be applied and is essential to prevent or minimize a food safety hazard to an acceptable level.

§ 970.23 Production area.

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

§ 970.24 Retailer.

Retailer means an individual or entity that sells leafy green vegetables direct to the consumer: *Provided*, that retailer does not include direct sales from a producer to a consumer.

§ 970.25 Secretary.

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

§ 970.26 Signatory.

Signatory means a handler who is party to this agreement.

§ 970.27 USDA.

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

§ 970.28 Zone.

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

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

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

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

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

(e) *Zone 5* shall include the states of 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.

PURPOSE

§ 970.35 Purpose

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

LEAFY GREEN VEGETABLE ADMINISTRATIVE COMMITTEE

§ 970.40 Establishment and membership.

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

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

- (1) Four handlers and two producers from Zone 1;
- (2) Three handlers and one producer from Zone 2;
- (3) Two handlers and one producer from Zone 3;
- (4) Two handlers and one producer from Zone 4;
- (5) Two handlers and one producer from Zone 5;
- (6) One retail representative from the production area;
- (7) One foodservice representative from the production area;
- (8) One public member from the production area; and,
- (9) One importer from the production area.

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

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

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

§ 970.41 Eligibility.

(a) Each producer or handler member of the Committee and their alternate member shall be, at the time of his or her selection and throughout his or her term of office, a producer or a handler, or an officer or employee of a producer or handler in the zone for which selected.

(b) All handler members and their alternates must be signatories.

(c) The retail, foodservice, and public members and their alternate members may not be engaged in the production or handling of leafy green vegetables. The retail and foodservice members and alternates shall be, at the time of their selection and throughout their term of office, an owner, officer or employee for the seat selected.

§ 970.42 Term of office.

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

§ 970.43 Nominations.

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

(a) *Initial members.* Nominations for each of the initial producer and handler members and alternate members of the Committee shall be conducted by the Secretary by means of meetings of producer and handler representatives, by mail, or by any other form of electronically verifiable communication. Once selected and appointed by the Secretary, the producer and handler members shall nominate the retail, foodservice, importer and public members and alternate members, subject to final selection and appointment by the Secretary.

(b) *Successor members.* Subsequent to the nomination and selection of the initial committee members and alternate members, nomination and selection of committee members and alternate members shall be pursuant to procedures recommended by the Committee and approved by the Secretary: *Provided*, that such procedures include the following:

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

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

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

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

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

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

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

(d) *Failure to nominate.* If nominations are not made within the time and manner specified in this part, the Secretary may, without regard to nominations, select the Committee members and alternate members on the basis of the representation provided for in § 970.40.

(e) *Vacancies.* To fill a vacancy on the Committee occasioned by the failure of any person selected as member or alternate member to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member, a successor for the

unexpired term of such member or alternate member shall be nominated and selected in the manner specified in paragraphs (b) and (c) of this section. If the names of nominees to fill any such vacancy are not made available to the Secretary within a reasonable time after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations on the basis of representation provided for in § 970.40.

§ 970.44 Alternate members.

An alternate for a member shall act in the place and stead of such member during the member's absence, or in the event of the member's removal, resignation, disqualification or death, until a successor for such member's unexpired term has been selected and has qualified. In the event both a member and his/her alternate are unable to attend a meeting, the member or the Committee members of that group and zone present may designate any other alternate to serve in such member's place and stead.

§ 970.45 Technical Review Board.

A Technical Review Board is hereby established for the purpose of assisting the Committee in developing audit metrics in § 970.67 and any other function that the Committee may recommend and the Secretary approve. The Technical Review Board shall consist of 13 members as follows: 1 representative from each zone who is elected by the Committee producer and handler members from the corresponding zone; 1 produce food safety expert from a land grant university within each zone elected by the producer and handler members from the corresponding zone; 1 representative from USDA Natural Resources Conservation Service (NRCS) appointed by the Secretary; 1 representative of the US Environmental Protection Agency (EPA) designated by the Administrator, and 2 representatives from FDA designated by the Commissioner. The Technical Review Board may appoint subcommittees as necessary to facilitate input and review from regions throughout the production area. Subcommittees may consist of producers, handlers, and other interested parties as deemed appropriate by the Technical Review Board.

§ 970.46 Market Review Board.

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

§ 970.47 Compensation and expenses.

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

§ 970.48 Procedure.

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

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

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

(d) The Committee may vote by telephone or other means of communication and any votes so cast shall be confirmed promptly in writing: *Provided*, that if an assembled meeting is held, all votes shall be cast in person. A videoconference shall be considered an assembled meeting and all votes shall be considered as cast in person.

§ 970.49 Powers.

The Committee shall have the following powers:

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

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

(c) To adopt, with the approval of the Secretary after notice and comment, audit metrics to administer the terms and provisions in §§ 970.9, 970.10, 970.66, and 970.67;

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

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

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

§ 970.50 Duties.

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

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

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

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

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

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

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

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

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

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

EXPENSES AND ASSESSMENTS

§ 970.55 Expenses.

The Committee is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by it during each crop year for the maintenance and functioning of the Committee, including the payment of audit and inspection fees, and for such other purposes as the Secretary may, pursuant to the provisions of this part, determine to be appropriate. Such expenses shall be paid from assessments received pursuant to § 970.56 and other funds available to the Committee.

§ 970.56 Assessments.

(a) Each first handler shall pay to the Committee such handler's pro rata share of the Committee's expenses authorized by the Secretary for each crop year. The payment of assessments for the maintenance and functioning of the Committee, as described in § 970.55, Expenses, may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(b) Based upon recommendation of the Committee, or other available data, the Secretary shall fix a base rate of assessment for all leafy green vegetables or products that first handlers shall pay during each crop year. The Committee may also recommend and the Secretary may approve supplemental assessments, but no combination of assessment and supplemental assessments may exceed the cap established in § 970.56(d).

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

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

(e) Any assessment not paid by a handler within a period of time prescribed by the Committee may be subject to an interest or late payment charge, or both. The period of time, rate of interest and late payment charge shall be as recommended by the Committee and

approved by the Secretary. Subsequent to such approval, all assessments not paid within the prescribed period of time shall be subject to an interest or late payment charge or both.

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

§ 970.57 Accounting.

(a) If, at the end of a crop year, the assessments collected are in excess of expenses incurred, the Committee, with the approval of the Secretary, may carry over such excess into subsequent crop years as an operating monetary reserve, except that funds already in such reserve shall not exceed approximately two (2) fiscal periods' budgeted expenses, or such lower limits as the Committee, with the approval of the Secretary, may establish. Funds in such reserve shall be available for use by the Committee for expenses authorized pursuant to § 970.55 and to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, each handler entitled to a proportionate refund shall be credited with such refund against the operations of the following crop year, or be paid such refund.

(b) Upon termination of this part, any refunds not required to defray the necessary expenses of liquidation shall be used, to the extent practicable, to fulfill any obligations under § 970.75, Research and promotion.

970.58 Contributions.

The committee may accept voluntary contributions but these shall only be used to pay expenses incurred pursuant to § 970.75, Research and promotion. Furthermore, such contributions shall be free from any encumbrances by the donor and the committee shall retain complete control of their use.

DUTIES AND RESPONSIBILITIES OF SIGNATORIES

§ 970.65 Signatory parties.

No signatory to this agreement shall handle leafy green vegetables for human consumption unless such are verified as meeting the provisions of this part. This verification shall take the form of an official audit conducted by the inspection service.

§ 970.66 Verification audits.

(a) *GAP audits.*

(1) Signatory handlers shall ensure that any leafy green vegetables handled by their operation have been subject to GAP validation and verification audits. Such audits shall verify that such product was produced under auditable conditions that meet production and harvest requirements as outlined in the GAPs (§ 970.9) and as further defined in any applicable audit metrics provided for under § 970.67.

(2) No signatory handlers subject to the provisions of this agreement shall receive leafy green vegetables produced in foreign countries that have not been subject to GAP validation and verification audits by USDA licensed inspectors. Such audits shall verify that such product was produced under auditable conditions that meet production and harvest requirements as outlined

in the GAPs (§ 970.9) and as further defined in any applicable audit metrics provided for under § 970.67.

(b) *GHP or GMP audits.*

(1) All signatory handlers shall be subject to audit verifications. Such audits shall verify that such signatories operate under auditable conditions that meet requirements outlined in the GHPs or GMPs, (§ 970.9 and § 970.10) and as further defined in any applicable audit metrics provided for under § 970.67.

(2) No signatory handlers subject to the provisions of this agreement shall receive leafy green vegetables from handlers in foreign countries that have not been subject to GHP, GMP validation and verification audits by Inspection Service or the FDA. Such audits shall verify that such product was produced under auditable conditions that meet production and harvest requirements as outlined in the GAPs (§ 970.9) and as further defined in any applicable audit metrics provided for under § 970.67.

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

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

§ 970.67 Audit metrics.

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

(a) *GAP audit metrics.* GAP audit metrics shall include verification related but not limited to: water quality, soil amendments, machine harvest, hand harvest (including direct contact with soil during harvest), transfer of human pathogens by field workers, field sanitation, equipment-facilitated cross contamination, flooding, water usage to prevent dehydration, and production location concerns, including climatic conditions and environment, and encroachment by animals of significant risk and urban settings, or any other factors defined under §970.9, or as recommended by the Committee and approved by the Secretary.

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

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

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

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

iv. Any other factors defined under § 970.9 and § 970.10, or as recommended by the Committee and approved by the Secretary.

(c) Critical limits for process controls for each of the quality factors identified in the audit metrics shall be prescribed by USDA in consultation with FDA and any other federal or state

regulatory body administering regulations impacted by the provisions of this agreement; shall incorporate Committee recommendations with regard to industry production, harvest and handling technologies; shall be based on sound scientific practices; and shall be approved by the Secretary.

(d) Audit metrics may be developed and recommended to accommodate differences in production and handling environments of different regions and different leafy green vegetable products.

(e) The committee may, at any time, recommend changes to the audit metrics after consultation with the Technical Review Board for approval by the Secretary.

(e) The Committee shall recommend, to the Secretary, for approval, a schedule for review of audit metrics such that audit metrics are reviewed a minimum of once every three years to ensure that they continually reflect the best industry practices, scientific information and industry knowledge.

§ 970.68 Traceability.

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

(b) Signatory handlers shall have the ability to track their products from their supplier(s) to their customer(s). To this end, signatory handlers shall have in place systems and procedures which allow for this information to be made available for verification by the Inspection Service.

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

§ 970.69 Official certification mark.

(a) USDA will obtain and grant to the Committee the use of a U.S. registered certification mark that will be the agreement's official mark (mark). This mark will be licensed to signatories who comply with the terms of this agreement. Signatories shall use the mark in accordance with this section and shall use the mark consistent with the mark registration.

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

§ 970.70 Administrative review.

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

§ 970.71 Modification or suspension of regulations.

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

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

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

§ 970.72 Exemptions.

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

RESEARCH AND PROMOTION

§ 970.75 Research and promotion.

The Committee, with the approval of the Secretary, may establish or provide for the establishment of marketing research, and development projects, and/or promotional activities, including paid advertising, designed to assist, improve, or promote the efficient adoption, implementation, and marketplace acceptance of the agreement and of leafy green vegetables or products handled by signatory members. The expenses of such projects shall be budgeted and paid from funds collected pursuant to § 970.56.

REPORTS AND RECORDS

§ 970.80 Reports and recordkeeping.

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

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

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

§ 970.81 Confidential information.

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

§ 970.82 Verification of reports.

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

§ 970.83 Compliance.

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

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

(1) Produces or acquires leafy green vegetables or products without an inspection service verification audit, pursuant to § 970.9 and § 970.10.

(2) Fails to obtain audit verification on the production, handling or manufacturing of leafy green vegetable or products, pursuant to § 970.66, and ships such vegetables or products for human consumption;

(3) Ships or places into the current of commerce leafy green vegetables or products that fail to meet requirements under this agreement, pursuant to § 970.66 and § 970.67, for human consumption;

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

(5) Fails to maintain and provide access to records, pursuant to § 970.80; or

(6) Otherwise violates any provision of this part.

(b) Any lot or portion thereof leafy green vegetables which is deemed an immediate threat to public health by Inspection Service staff during the course of a verification audit shall be reported by USDA to FDA

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

MISCELLANEOUS

§ 970.85 Effective time.

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

§ 970.86 Rights of the Secretary.

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

§ 970.87 Personal liability.

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

§ 970.88 Separability.

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

§ 970.89 Derogation.

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

§ 970.90 Duration of immunities.

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

§970.91 Agents.

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

§ 970.92 Suspension or termination.

(a) The Secretary may at any time terminate the provisions of this part.

(b) The Secretary shall terminate or suspend the operations of any or all of the provisions of this part whenever it is found that such provisions do not tend to effectuate the declared policy of the Act.

(c) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease.

§ 970.93 Proceedings upon termination.

Upon the termination of this part, the members of the Committee then functioning shall continue as joint trustees, for the purpose of liquidating the affairs of the Committee. Action by such trustees shall require the concurrence of a majority of said trustees. Such trustees shall continue in such capacity until discharged by the Secretary, and shall account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Committee and the joint trustees, to such persons as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all the funds, properties, and claims vested in the Committee or the joint trustees, pursuant to this part. Any person to whom funds, property, or claims have been transferred or delivered by the Committee or the joint trustees, pursuant to this section, shall be subject to the same obligations imposed upon the members of said Committee and upon said joint trustees.

§ 970.94 Effect of termination or amendment.

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

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

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

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

§ 970.95 Amendments.

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

§ 970.96 Counterparts.

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

§ 970.97 Additional parties.

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

§ 970.98 Withdrawal.

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

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

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