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**National Leafy Greens Marketing Agreement Testimony  
For the Yuma Public Hearing October 14-15, 2009**

My name is Shelly Tunis. I am an attorney and I represent Yuma Fresh Vegetable Association (YFVA). The Association has been in existence for over 61 years and it is comprised of growers and shippers of fresh vegetables and melons, and related agricultural businesses. Our members grow both conventional and organic leafy green products. Yuma Fresh Vegetable Association supports the proposed National Leafy Greens Marketing Agreement at 7 CFR Part 970 set forth in the *Federal Register* at Volume 74, Number 170, on Thursday, September 3, 2009.

**Yuma Vegetable Production**

Yuma agriculturalists take pride in providing fresh fruit and vegetables to the people of the United States. According to the US Census, there are over 105 million households in the US. During the winter months, Yuma farmers produce enough iceberg lettuce for each of the 105 million US households to consume about 5 heads of iceberg lettuce, 3 heads of Romaine lettuce, 1 head of leaf lettuce, and 1 bunch of broccoli. In addition, Yuma farmers produce spinach, spring mix, cabbage and approximately 30 other vegetables and melons. In fact, during the winter months, anywhere in the United States and parts of Canada, if you eat a salad containing iceberg lettuce, more likely than not, the iceberg lettuce you eat will have been grown in Yuma. Arizonans take pride in our innovative Yuma agricultural community who supplies fresh fruit and vegetables to people in the United States and Canada as well as to people in Asian and European countries.

**Arizona Leafy Greens Marketing Agreement**

After the California E. coli O157:H7 outbreak in spinach in 2006, members of the Arizona leafy greens industry decided in the spring of 2007 that they wanted to proactively address food safety concerns and implement an Arizona Leafy Greens Marketing Agreement. YFVA worked closely with the staff of the Arizona Department of Agriculture, the Office of the Arizona Attorney General and Western Growers representatives to develop and implement the Arizona Leafy Greens Marketing Agreement. By September of 2007, shippers began signing the Arizona Marketing Agreement and the Marketing Committee was operating by early November. According to the Arizona Leafy Greens Marketing Committee, signers of the Marketing Agreement produce 96 percent of the annual \$1 billion Arizona-grown leafy green products. Arizona shippers, farmers and contractors, are beginning their third season operating under the Arizona Leafy Greens Marketing Agreement.

Our YFVA members have told me that initially in 2007, there was a learning curve relating to the food safety standards and complying with the leafy green metrics, but now it is easier to make decisions when they plan for their seasons. Farmers, who work with multiple shippers, appreciate the uniformity of standards and the level playing field between companies that operate in Arizona and California. Some of our members who operate in states other than Arizona and California would like to see those states function under the same set of leafy green standards as Arizona and California. However, our members also recognize that any leafy greens marketing agreement must accommodate regional differences. YFVA members appreciate that § 970.67 (d) of the draft NLGMA relating to Audit metrics, permits audit metrics to be developed to accommodate differences in production and handling in different regions of the country.

Our YFVA members also believe that their experiences with the Arizona Leafy Greens Marketing Agreement during the past two years could be beneficial as USDA continues the process of implementing a National Marketing Agreement. The Arizona Leafy Greens Marketing Committee has kept per carton assessments low while providing for audits, administration, food safety research, outreach sessions and developing training materials for workers who handle leafy greens. This season's assessment is set at \$.0025 per carton or equivalent. This year, the Arizona Leafy Greens Marketing Committee, in conjunction with the Arizona Department of Agriculture Citrus, Fruit and Vegetable Standardization program, is in the process of training four inspectors who will be certified by USDA to perform food safety audits. Our members believe it is beneficial to have auditors familiar with Arizona conditions performing leafy green audits. YFVA members are encouraged that § 970.14 entitled Inspection Service of the draft NLGMA allows entities approved by USDA, such as the Arizona Department of Agriculture, to perform audits on behalf of USDA.

### **Draft National Leafy Greens Marketing Agreement**

YFVA members appreciate efforts of coordination between the national and the Arizona leafy greens marketing agreements, but our members are weary of possible duplication by the leafy greens marketing agreements. We believe good communication among all parties is essential to coordinate the execution of the National Leafy Greens Marketing Agreement and to avoid unnecessary efforts and duplication with the Arizona Leafy Greens Marketing Agreement. Furthermore, YFVA wholeheartedly endorses the comments presented by Arizona Assistant Attorney General and Arizona Leafy Greens Marketing Committee Counsel, Casey Cullings. YFVA presents four additional specific comments relating to the draft National Leafy Greens Marketing Agreement.

**1. § 970.43 Nominations.** Paragraph (b) (3) states that each producer and handler shall have only one vote even though the producer or handler operates in more than one zone; yet, the paragraph does not indicate in what zone the handler or producer may vote. We suggest that the paragraph (b) (3) is revised to state:

(3) Each producer and handler shall have only one vote and each shall designate the zone in which he or she shall vote.

**2. § 970.44 Alternate members and § 970.48 Procedure.** The second sentence of § 970.44 and the subsection at § 970.48 (b) are redundant and potentially conflicting since the wording is slightly different. We suggest you remove the second sentence of § 970.44 and maintain § 970.48 (b) as stated. § 970.44 would be revised to state:

An alternate for a member shall act in the place of each 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.

**3. § 970.75 Research and promotion.** This section allows for marketing and promotion research, but the section does not permit food safety research. The Arizona Leafy Greens Marketing Committee has granted considerable money to fund food safety research projects and for a number of years, Arizona producers and shippers have likewise funded food safety research. YFVA believes the National Leafy Greens Marketing Committee should have the discretion to fund food safety research along with marketing research. YFVA members believe that including a discretionary provision allowing food safety research would be in the best interests of the NLGMA and leafy greens producers and handlers. We suggest revising § 970.75 to state:

- (a) The Committee, with the approval of the Secretary, may fund:
  - (1) 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 products handled by signatories;
  - (2) Food safety research projects, including relationships between pathogenic microorganisms and environmental and/or biological agents, reducing risks of cross contamination in the food supply chain from the field to the table, and training personnel who handle products.
- (b) The expenses of such projects shall be budgeted and paid from funds collected pursuant to § 970.56.

**4. § 970.95 Amendments and § 970.98 Withdrawal.** Since the agreement is in essence a contract between the signatories and the USDA, the signatories should have the opportunity to withdraw from the agreement if the provisions are altered and the signatories do not agree with the alterations. Under the Arizona Leafy Greens Marketing Agreement at Article XIII, Section C., all signatories must agree to an amendment for the amendment to become effective. While this provision has presented difficulties in obtaining changes to the Arizona Marketing Agreement, a limited time to withdraw after the adoption of an amendment would accomplish the same goal. Our suggested revision to § 970.98 Withdrawal incorporates language submitted by Arizona Assistant Attorney General Casey Cullings. The revised § 970.98 would state:

- (a) A signatory may withdraw from this agreement by:
  - (1) Filing a written request for withdrawal for the subsequent crop year with the Committee at least 30 days prior to the start of the subsequent crop year;

- (2) Filing a written notice with the Committee stating that the signatory ceases to be a handler of leafy green vegetables or products;
- (3) Filing a written request for withdrawal with the Committee no more than 15 days after the adoption of an amendment to the agreement.
- (b) A signatory's withdrawal does not relieve the signatory of the obligation to pay assessments or charges due.
- (c) A signatory that withdraws shall not use the official certification mark.

In conclusion, the members of the Yuma Fresh Vegetable Association support the National Leafy Greens Marketing Agreement and YFVA members are prepared to lend their expertise to further develop and implement the National Marketing Agreement. As this process advances, our YFVA members look forward to communicating and coordinating with USDA personnel and the proponents of the National Leafy Greens Marketing Agreement. Thank you for the opportunity to testify here today.