

### 1. PROPOSED MEMORANDUM OF UNDERSTANDING (MOU)

The LGMA proposes that the FDA partner with industry organizations like the California Leafy Green Products Handler Marketing Agreement (CA LGMA) and the Arizona Leafy Greens Marketing Agreements (AZ LGMA) to verify compliance with FSMA's new Produce Rules. Organizations like these provide government oversight of food safety practices in several US industries and states, and we recommend that FDA sign Memoranda of Understanding (MOUs) with said organizations, provided they can demonstrate the ability to verify compliance with all applicable FSMA requirements.

- Since its establishment in 2007, the LGMA has verified, through government audits, that leafy greens handlers and growers are implementing a set of accepted food safety practices that are designed to minimize the risk of microbial contamination of leafy greens
- Most of what is included in the proposed Produce Rule is already required under the LGMA programs
- Precedent exists for FDA to work with industry groups through an MOU process
- Working through existing food safety programs will allow FDA to ensure compliance without raising costs for consumers

### 2. KALE AS EXEMPTED ITEM

The LGMA recommends that kale be removed from the list of raw agricultural products exempted from the requirements of the Food Safety Modernization Act; the LGMA also recommends that the list of products exempted from the proposed rules be maintained in guidance documents, rather than included as an exhaustive list in the regulation itself.

- The FDA, drawing on data included in the National Health and Nutrition Examination Survey (NHANES) has concluded that kale is a product that is rarely consumed raw, and therefore exempt from FSMA rules.
- Recent years have seen a rapid and dramatic increase in consumption of kale for fresh use (as in, for example, bagged salads).
- From 2007 through 2012, the volume of Kale handled by the largest LGMA members has increased 369%.



### 3. HARVEST DEFINITIONS

FDA should clarify definitions to ensure that practices routinely undertaken in the field during harvest - including coring, bagging and placing product in shipping containers or boxes - be covered under the requirements of the produce rule.

- The original language of Section 201(gg) of the FD&C Act (21 U.S.C. 321 (gg) defines processed food to mean “any food other than raw agricultural commodities and includes raw agricultural commodities that have been subject to processing, such as canning, cooking, freezing, dehydration or milling.”
- In the proposed Produce Rule the FDA includes a much broader definition of processed or manufactured product, including washing, trimming of outer leaves,...cooling, packaging,...stickering/labeling,...cutting/coring/chopping/slicing, etc.
- Considering common harvest activities to be “manufacturing” could bring all fields under the jurisdiction of the preventive practices rule, rather than the produce rule, requiring registration and treating harvest operations as “facilities.”

Since all practices included in traditional harvest activities are subject to food safety practices under the LGMA, and will be under FSMA, the proposed changes in definitions will create costly, unnecessary and difficult documentation burdens for growers

### 4. WATER TESTING REQUIREMENTS

The LGMA recommends that the requirement that untreated surface water be tested every seven days be amended to require testing of these water sources on a schedule consistent with local conditions or identified risks.

- CPS research based on thousands of water tests in California showed that less than 1% of all tests done showed generic e coli levels that exceeded LGMA standards.
- Review of hundreds of LGMA foods safety audits showed that less than 1% of audits indicated any compliance issues with required levels.
- Based on these facts, we believe the proposed requirement that surface waters be tested every seven days is excessive and will create unnecessary costs for growers without significantly contributing to a safer foods supply.

### 5. TRAINING AND EDUCATION

The LGMA recommends that FDA provide a means for industry-specific training programs like LGMA Tech to attain recognition for equivalency with the training curriculum being developed by the Produce Safety Alliance (PSA).supply.

- Like the FDA, the LGMA recognizes that effective training for all workers involved in the production, harvesting, packing, storing and transporting of produce is a critical step in ensuring safety of the food supply.
- Food safety training for the leafy greens industry is a priority and its importance is reflected in the LGMA’s training and education program
- Commodity-specific training programs can reflect the basic curriculum being developed through the Produce Safety Alliance (PSA)