



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

**Direct Marketing Ad Hoc Committee
Program Proposal**

**Requirements and Design v 0.2
Direct Marketing Program
Inspection Services**

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PROJECT BACKGROUND

This paper is designed to provide the reader with a foundational knowledge of the historical development of the Direct Marketing Program; the original intent of the Article; evolutionary modifications to Direct Marketing, and; regulatory challenges. Additionally, the Department seeks the establishment of a representational broad based ad hoc committee to identify opportunities, consistent with the California Agricultural Vision, to improve food access and promote regional markets within an appropriate regulatory framework; resolve conflicts between certain practices and existing statutes and regulations, and; develop a solution to the serious enforcement gaps surrounding Certified Farmers Markets. Well publicized fraudulent activities being conducted by a minority of participants has seriously eroded consumer confidence as well as producer confidence in an equitable market place. Without an effective and appropriate correction, the existing network and value of CFMs will likely lose their “branded value added” market share.

PROGRAM BACKGROUND

The Standardization Program is responsible for enforcing laws and regulations establishing minimum state standards for fruits and vegetables. It is accomplished by supervising county agricultural commissioners who carry out enforcement at the local level. In 1915, the Legislature began to establish in statute minimum standards for fresh fruits, nuts, and vegetables by governing such factors as weight compliance, packaging, labeling, ripeness, color, and maturity. The California Department of Food and Agriculture’s (CDFA’s) Standardization Program was first financed through the General Fund, but these costs were shifted entirely to the industry in the wake of the fiscal crisis of the early 1990s.

CDFA’s Direct Marketing Program provides opportunities for California farmers to market their products directly to consumers with Standardization Program exemptions for minimum size, labeling, standard pack, and container requirements. The Direct Marketing Program is intended to provide a viable channel for farmers to market their agricultural products directly to the consumer, thereby providing a significant source of revenue for participating farmers. These exemptions were originally promulgated in the California Code of Regulations in March 1977. Since its inception, there have been several attempts to establish appropriate regulatory control and provide adequate funding for the Direct Marketing Program. Prior to 2008, the Direct Marketing Program specifically prohibited buying and reselling practices and authorized California producers to sell their agricultural products directly to the consumer without disrupting the normal flow of commercial wholesaling.

LEGISLATIVE TIMELINE

The Direct Marketing Program was originally funded with revenue appropriated from the Standardization Program. According to a 1996 Assembly Committee on Agriculture analysis, “...in late 1994, with CDFA encouragement, the certified farmers’ market industry established an Industry Integrity Taskforce to review possible abuses at certified farmers’ markets that may

have occurred from CDFA's inability to provide enforcement and oversight due to budget cuts. The taskforce consisted of producers, market managers, agricultural commissioners, and industry affiliates." **The following pages suggest that CDFA and the direct marketing industry are continuing to struggle with many of the same issues more than 15 years later.** These attempts have largely failed and placed CDFA in the precarious position of administering an increasingly popular program without adequate funding.

Assembly Bill (AB) 2340 (Cannella, Ch. 606, Stats. of 1996) represented the culmination of the Industry Integrity Taskforce's efforts. AB 2340 provided for the establishment of the Certified Farmers' Market (CFM) Advisory Committee and inspection and certification of CFMs and certified producers. This bill included January 1, 2000 sunset provisions for civil penalties and violations of direct marketing provisions.

AB 593 (Strom-Martin, Ch. 833, Stats. of 1999) codified numerous regulatory authorizations for producers to sell their fresh fruits, nuts, and vegetables directly to the public. This bill continued the authorization for CFMs and created requirements for rules and procedures in order to operate such markets. This bill permanently established the CFM Advisory Committee with specified authority and authorized the Secretary and county agricultural commissioners to deny a market or producer certificate, as specified. In addition, this bill established a fee cap of sixty cents (\$0.60), to be collected and paid to CDFA and authorized the imposition of civil penalties with a January 1, 2005 sunset for both provisions.

AB 1726 (Committee on Agriculture, Ch. 444, Stats. of 2004) created a late charge for failure to pay the required CFM fees and extended the sunset for both the CDFA fee and civil penalty authorities until January 1, 2007. AB 2676 (Committee on Agriculture, Ch. 440, Stats. of 2006) extended provisions requiring every operator of a CFM to remit a fee to CDFA equal to the number of certified producer certificates and other agricultural producers participating on each market day. In addition, this bill extended authority for civil penalties for failure to comply with the rules and regulations covering CFMs. Both of the previously mentioned provisions will sunset on January 1, 2012, unless legislation is reenacted in 2011.

The enactment of AB 2168 (Jones) (Ch. 447, Stats. of 2008) significantly changed the Direct Marketing Program. Specifically, AB 2168 expanded the Direct Marketing Program to allow some Community Supported Agriculture (CSAs) organizations, field retail stands, farm stands, and other private organizations, entities, and individuals to take advantage of these minimum size, labeling, standard pack, and container exemptions. **AB 2168 fundamentally altered the Direct Marketing Program by statutorily authorizing the buying and reselling of agricultural products, thereby removing the direct connection between the consumer and producer as well as creating inequities at the expense of the producer.** For example, a producer may use the direct marketing exemptions when selling their product at either a CFM or at or near the point of production. However, a person or entity may now purchase product from a producer and transport and sell that same product at any location in the state.

Senate Bill (SB) 513 (Canella, 2011) extended the sunset dates for the CFM fee authority and for violations and enforcement authority for two years. Typically, sunsets are extended for five years; however, in response to well publicized media reports documenting fraudulent activities, the extension date was reduced in an effort to cause the industry to expedite discussions on how to better enforce the Direct Marketing Program’s standards and statutes.

TYPES OF DIRECT MARKETING

There are several forms of direct marketing, each presenting significant challenges for enforcement. CFMs are by far the most prevalent form of direct marketing. The Direct Marketing Program provides opportunities for approximately 3,350 certified producers to sell their certifiable agricultural products directly to the public at over 700 CFMs throughout California. Since 1977, the number of CFMs and certified producers has increased exponentially.

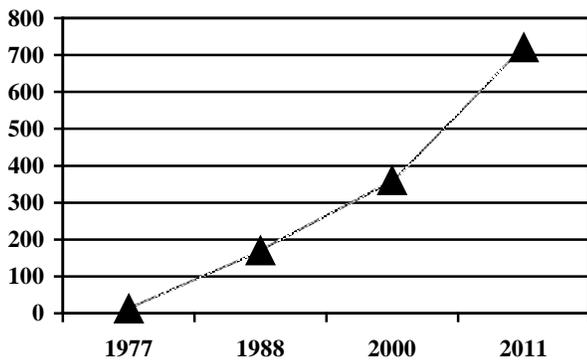


Figure 1. This chart highlights the exponential growth of CFMs from 1977–2011. In 1977, there were approximately 12 CFMs in the State of California. In 1988, there were approximately 170. In 2000, there were approximately 360 CFMs. In 2011, there are over 700 CFMs operating in the State of California.

Since the 1990s, the popularity of CSAs has increased significantly. However, there is no reliable data in regard to the number of CSAs operating in California. A review of www.localharvest.com (one of the most prominent online CSA resources in the United States) indicates that approximately 271 CSAs currently operate in California. Due to a lack of definition in the Food and Agricultural Code, significant opportunity for confusion or deception exists. According to the United States Department of Agriculture’s National Agricultural Library, *CSAs are defined as a community of individuals who pledge support to a farm operation so that the farmland becomes, either legally or spiritually, the community’s farm, with growers and consumers providing mutual support and sharing the risks and benefits of food production.* Several entities refer to themselves as CSAs while not meeting the previously referenced definition. For example, there are entities which purchase agricultural products at certified farmers’ markets, farm stands, field retail stands, the point of production, and wholesale markets and subsequently sell a “subscription” to the public. A clear definition of CSAs would enhance consumer confidence and ensure appropriate oversight.

Field retail stands are producer owned and operated premises located at or near the point of production (nearest county paved road) established in accordance with local ordinances and

land use codes. Farm stands are defined as field retail stands that sell or offer for sale California agricultural products grown or produced by the producer and also sell or offer for sale nonpotentially hazardous prepackaged food products from an approved source or bottled water or soft drinks. Currently, no quantitative data regarding the number of field retail stands exists. However, anecdotal evidence from public comments received suggests that farm stands and field retail stands are an important source of revenue for small farmers.

Other forms of direct marketing include community gardens, individuals or entities selling directly to institutions, and restaurants selling directly to the public. Community gardens are commonly defined as public or institutional gardens where individuals have access to plots of land on which they can grow agricultural products. Some community gardens require adherence to basic rules, have self-governance policies, and participatory fees.

RECENT DEVELOPMENTS

In the fall of 2010, news reports highlighted instances of cheating at CFMs, including vendors selling fraudulently labeled products and reselling fruits and vegetables straight from wholesale markets. Evidence suggests that instances of cheating at CFMs are widespread, which may significantly impact the economic viability of CFMs if the public ultimately loses confidence in the Direct Marketing/CFM Program. In response to these media reports, CDFA held four listening sessions designed to solicit input for improving the Direct Marketing Program. These listening sessions were held from October 27, 2010 until November 8, 2010 in Sacramento, Santa Monica, Fresno, and Berkeley. The demographics of each listening session varied significantly, with some sessions composed primarily of producers while others were composed primarily of market managers and consumers. There were only three common themes echoed throughout the sessions. Specifically, that CDFA, county agricultural commissioners, and market managers should enhance enforcement, communication, and education. Accordingly, many of the participants argued that the CDFA CFM fee of sixty cents (\$.60) for each certified producer certificate on each market day does not provide adequate funding for enforcement at CFMs throughout the state.

Upon conclusion of the listening sessions, CDFA formed a CFM Technical Planning Committee for the purpose of reviewing various functions of the Direct Marketing Program (e.g., registration, enforcement, and administration) and evaluating current processes and procedures. The CFM Technical Planning Committee consisted of producers, CFM managers, agricultural commissioners, and industry affiliates. The CFM Technical Planning Committee identified mechanisms to prevent possible abuses at CFMs that may be occurring due to CDFA's inability to provide adequate enforcement and oversight on its nominal annual budget of approximately \$221,000.

The CFM Technical Planning Committee recommended statutory changes to alleviate discrepancies in how current inspection and enforcement provisions are applied from county to county and to provide uniform funding mechanisms at both the state and local level. Additional statutory changes were deemed necessary to enhance compliance at CFMs by

creating three CDFA Special Investigator positions to assist in cross-jurisdictional enforcement activities, creating a significant funding source for counties to utilize for complaint investigations, allowing the state to train and certify all CFM managers on an annual basis, provide training of county personnel, and develop and share educational material. In addition, the CFM Technical Planning Committee recommended that full cost recovery for county inspections should be legislatively mandated in an appropriate section of the Food and Agricultural Code. On March 10, 2011, the CFM Technical Planning Committee presented its recommendations to the CFM Advisory Committee, which endorsed the recommendation by an 11 to 3 vote. In addition, the CFM Advisory Committee expressed support for a CDFA CFM fee that shall not exceed four dollars (\$4.00) for each certified producer certificate on each market day. These recommendations did not materialize during the 2011 legislative session due to a lack of significant industry support.

ISSUES

The role of direct marketing has changed considerably since it was originally established in 1977. Accordingly, the line between directly marketing products grown by a producer and buying and reselling products has been rendered indistinguishable due to statutory changes. The changing role and definition of direct marketing has created significant challenges for enforcement. A sampling of the enforcement challenges and issues related to direct marketing are outlined below.

Although CFMs are a heavily regulated sector of the Direct Marketing Program, there is currently limited funding for enforcement. This presents several problems as consumers and participants are led to believe that CDFA is ensuring appropriate regulatory control. In reality, CDFA and county agricultural commissioners only have the funding to conduct minimal enforcement activities. Lack of funding and significant growth in the CFM industry has further exacerbated enforcement efforts and threatens to delegitimize the Direct Marketing Program. Consequently, a lack of consumer confidence in CFMs would limit opportunities for California producers to directly sell their product to the public at CFMs.

Direct marketing was not originally intended to be a business venture. As referenced previously, direct marketing was originally intended to be a marketing channel for California producers without the need for a third party (e.g., packers, handlers, etc.). Due to the obfuscated trajectory of the Direct Marketing Program, California producers are arguably at a disadvantage in comparison with individuals that buy and resell agricultural products. For example, while California certified producers are mandated to sell only the products they grow at CFMs, individuals, organizations, and entities are authorized under the Food and Agricultural Code to purchase product at a CFM or the point of production and sell the product directly to end users with exemptions for minimum size, labeling, standard pack, and container requirements. The lack of a clear definition of direct marketing has the potential to impact California certified producers as they must compete with individuals buying and reselling products. Ergo, a private business may be formed to buy product from various farms and call it a farmers' market.

There are several potential food safety issues for CSAs and other subscription based services. The mixing and reusing of containers with high-risk commodities such as tomatoes and melons increases the potential for E. coli and salmonella contamination, respectively. In addition, the mixing of produce with meat, dairy, and egg products further exacerbates food safety concerns.

In addition, CDFA may wish to define the term “locally grown” as there is currently no definition in the Food and Agricultural Code. Due to production scale diversity within California, locally grown for one operation may be defined as 30 miles from the point of production while another operation may consider locally grown to be from western United States. Defining locally grown may benefit both the consumer and producers by enabling additional purchasing and marketing opportunities, respectively.

Approaching oversight of the Direct Marketing Program from a holistic view that encompasses all of the previously identified marketing outlets could create a significantly broader base that would provide the stability to resources necessary to support industry and consumer expectations.

NEXT STEPS/DIRECT MARKETING PROGRAM REDESIGN

Building upon the work completed by the CFM Technical Planning Committee, Inspection and Compliance proposes to establish a taskforce composed of representatives from a variety of industry representatives. This taskforce would be charged with:

- Ascertain industry support for developing public-private partnerships designed to enhance access to fresh fruits and vegetable in food deserts.
- Evaluating mechanisms to appropriately fund, support, and enforce the Direct Marketing Program.
- Evaluating current Direct Marketing statutes and regulations to determine appropriate regulatory and statutory action (e.g., repealing, amending, or adding).
- Expand the availability of affordable and locally grown produce
 - Explore methods to make it easier for small/local farmers to consolidate produce in order to sell to institutions.
 - Farm to school programs.
- Determining an appropriate role for the Direct Marketing Program as a regulating entity. Accordingly, the task force would be charged with determining what level of regulatory oversight the direct marketing industry desires.

- Determining whether there is a desire to define the term “locally grown” in the Food and Agricultural Code.
- Determining whether buying and reselling is an acceptable method of direct marketing.
- Determining whether there is industry support for defining CSAs in the Food and Agricultural Code.

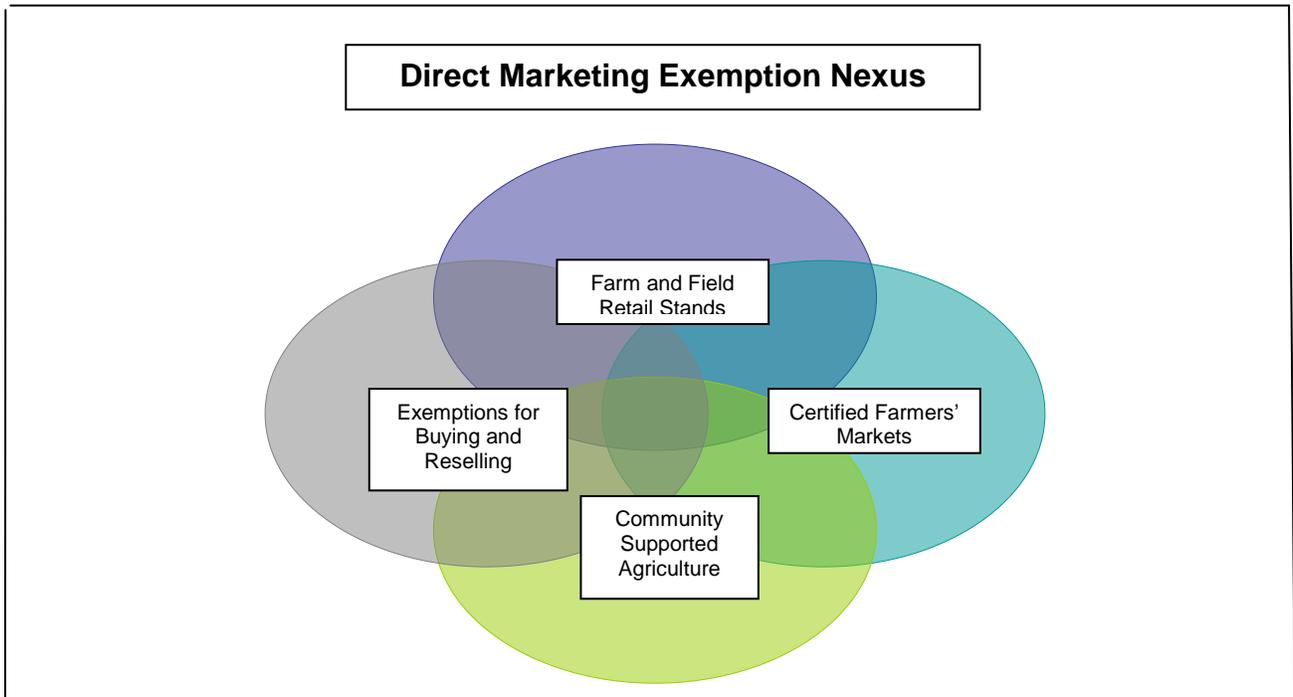


Figure 2. This diagram illustrates potential shared regulatory responsibilities within direct marketing, including exemptions for standardization.

ASSUMPTIONS AND CONSTRAINTS

1. The scope of the program may develop beyond what has been commented on in the preceding document.

Overview of Recommendations

Increasingly, the public has become focused on providing a robust local and regional food system by means of direct marketing. The Direct Marketing Ad Hoc Committee began the process of reviewing and analyzing the various business functions of the Direct Marketing Program on October 27, 2011, to meet these public and industry needs. Composed of a broad based spectrum of industry and public stakeholders, the Ad Hoc Committee is designed to create a transparent and inclusive process for the Direct Marketing Program's recalibration. Upon an initial "30,000 foot" view of the challenges and opportunities affecting California's direct marketing industry, the Ad Hoc Committee split into five subcommittees:

- Access/Food Banks/Gardens
- Certified Farmers' Market (CFM)
- Community Support Agriculture (CSA)
- Farm Stands
- Selling

These subcommittees are tasked with developing mechanisms to improve their respective subject area while also keeping a focus on improving access to safe and healthy food for all Californians and promoting a robust regional market for all California producers. Furthermore, these subcommittees have heard from various subject matter experts, including: market managers, farm stand operators, CDFA's Marketing Division, CSA operators, the California Conference of Directors of Environmental Health, certified producers, and third party accredited certifying agents, to better understand issues impacting the direct marketing industry.

Summary of Initial Recommendations

Access/Food Banks/Gardens

This subcommittee merged three of the eight identified direct marketing distribution pathways: access; food banks and gardens.

"Access" covered the general notion of enhancing or increasing access of healthy, fresh agricultural products (fruits and vegetables) to the public, especially in "food deserts" or areas where access to fresh fruits and vegetables are limited because of absence of or limited access to retail outlets that provide these products.

Because many of the strategies for improving access are incorporated into the other pathways handled by the ad hoc advisory committee and into the separate "AB 581/Food Access Advisory Group" convened by CDFA, there are no additional specific recommendations proposed under this sub-committee.

“*Food Banks*” include the well-established local, regional, and statewide organizations that assist Californians in accessing food assistance and nutrition programs and in distributing fresh produce. The focus of the group is to identify obstacles to expanded food bank services and recommend ways to overcome those obstacles.

Two of the core functions of the California Association of Food Banks (CAFB) include “Farm to Family” , the direct distribution of healthier food to people in need, and “CalFresh Outreach”, which increases the affordability of healthier foods by assisting applicants with the CalFresh process.

“*Gardens*” included culinary gardens, school gardens, community gardens/victory gardens and other small-scale plots used for growing herbs, vegetables and fruit. Numerous local agencies have started to formalize an approval process to allow these gardens to grow and use on-site, donate or sell the produce. Key considerations for the sub-committee included scale of operation, consumption or use of product on-site vs. offsite; use of product by garden “members/participants vs. general public; and level of appropriate state and/or local regulatory oversight.

Issue(s)

1. Approved Source definition
2. Establish a method to get food into areas which lack or have limited access
3. BMPs/GAPs
4. Registration process

Existing Statute

California Health and Safety Code §113735 defines approved source as “a food source [that complies with all applicable laws]....or a producer, manufacturer, distributor, or food facility that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health.

Proposed Model and Statute

Access:

Recommend that this be incorporated into the other direct marketing pathways and the AB 581/Food Access Advisory Group considerations.

Some initial discussion of the committee included:

The intent of Agriculture Vision 2030

1. **Improve Access to Safe, Healthy Food for All Californians**
2. **Promote Robust Regional Markets for All California Producers**

Follow up talking points included:

- How does the committee collaborate to accomplish a common goal?
- Promote CA product
- Review the intent of the regulations (is it practical)
- Scalability (small to large scale operations – can the same regulations apply to both)
- Balancing – realizing that allowing one thing leads to an effect on another
- Approved source and regional markets
- Facility challenges (processing)
- Models for low income areas
- Potential risk that we create a system too strict that we limit food access

Note: To be discussed in further detail at the 3/27/12 meeting and include recommendations and considerations from the subcommittee's proposals.

Food Banks:

1. Explore ways to facilitate and expedite food bank milk distribution. Recognizing the need to the commodity and health controls, CDFA and USDA should be charged with reviewing current recordkeeping processes to determine whether it can be safely reformed to cut costs and time for milk distribution by non-profit food banks.
2. Evaluate whether CDFA standardization requirements hinder the distribution of donated and purchased products by food banks.
3. Assess feasibility of food banks acquiring foods subject to disposal orders at ports of entry. This would only apply to foods that are not subject to any safety or pest quarantines.

Gardens:

Generally, the sub-committee recommends that these gardens should be encouraged; that local and state agencies should collaborate in increasing public awareness of the benefits and potential health risks of these operations and in limited cases, some form of trace-back and requirement of adherence to BMPs/GAPs.

1. CDFA, CDPH and local health and EH agencies should collaborate in the development of web-based information on best management practices/good agricultural practices for the production, distribution and consumption of herbs, fruits and vegetables grown in these gardens.
2. Community (excluding school gardens) in which only herbs, vegetables or fruit is grown (no livestock) and consumption by the producers and direct family of producers should be exempt from CalCode, but subject to any other applicable laws or regulations governing zoning, land use or agricultural practices such as pesticide use and registration.

3. School gardens and community gardens where product is donated to or shared with consumers that are not producing the products or culinary gardens for consumption by customers ON SITE of restaurant shall be required to be self-registered with the appropriate local agency (County Department of Environmental Health or County Agricultural Commissioner, as determined by the local government). See examples of garden self registration and verification of adherence to BMPs/GAPs in Attachment A -1.

ISSUES TO BE RESOLVED INCLUDE:

- Details of BMP/GAPs
- Where is distinction between “small farm” and gardens? Maybe zoning restriction.
- How will self-registration be done?
- Would produce raised in a home yard or garden NOT be allowed to be sold to the general public?

Certified Farmers’ Market

The CFM subcommittee has determined that the current model should be kept in place as the primary structure for CFMs. The CFM subcommittee has been exploring options to improve and extend the scope of the Direct Marketing Program. These areas include enhancing county enforcement uniformity, examining regulations that are unnecessary or burdensome to industry, and reviewing potential regulations to streamline certification and enforcement.

Issue(s):

1. County Inspections – verification, frequency, timing, target, efficiency, uniformity of enforcement
2. Increase the onus for representation on the grower, strong enforcement mechanism in statute (fraud prosecution).
3. Redefine definitions: i.e. CP – Recognized producer, CA Direct Marketing Food System, use of the term “certified,” Direct Marketing definition, nursery stock and cut flowers
4. Improve CPC application
Cooperation and mechanism for the Ag departments to work better together
Tool of the CPC: consistency and accuracy of document, more questions, use of technology, improve application, improve market application
5. Get rid of some regulations i.e. 2nd cert, employee/family member, load list and others
6. Selling proximity to existing CFM
7. Explore industry driven compliance models
8. County funding, demonstrate that this is a cost recovery program to perform inspections. – work plan requirement with counties
9. \$5,000.00 maximum fine for violation of direct marketing statutes and/or regulations
10. Bridge the gap with the community (bring reality to Ag Vision 2030)
11. Fees need to be based for enforcement on usage, producer sliding scale, surcharge for the farmer
12. Exemption of standard container for all people participating in direct marketing system

13. Food safety – future
14. Current advisory committee restructure - open seats for all direct marketing types
15. Marketing (communication, promotion, education); what does the consumer expect

Existing Statute

- Declares that direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable costs.
- Establishes that it is the intent of the state to promote the consumption of California-grown produce and to promote access to California produced agricultural products.
- Provides regulatory authority and oversight on quality and maturity of produce.
- Establishes, that it is unlawful for any person operating under Direct Marketing/CFM Program provisions to commit certain acts related to the conduct of CFMs.
- Provides that in lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or CFM certificates, the CDFA Secretary or the county commissioner may levy a civil penalty against a person who violates these provisions or any regulation implemented pursuant to these provisions.
- Establishes industry and consumer participation through the Certified Farmers' Market Advisory Committee on regulatory and legislative matters.
- Mandates every operator of a CFM to remit to CDFA, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by CDFA upon the receipt of a budget recommendation from the Certified Farmers' Market Advisory Committee. The fee shall not exceed sixty cents (\$0.60) for each certified producer certificate and other agricultural producers participating on each market day. A CFM may directly recover all or part of the fee from market participants.
- Provides that any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to CDFA a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the CDFA and not to exceed the maximum amount permitted by law.
- Establishes, in part, that a certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from the date of issue. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at

least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees.

- Specifies, in part, that a certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural commissioner in each county shall perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county shall perform at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees.
- Provides, in part, that renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter.
- Mandates that all fees collected equal to the number of certified producer certificates shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fee shall be used, upon appropriation by the Legislature, by CDFA, to carry out the following functions:
 - The coordination of the advisory committee.
 - The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.
 - The adoption of regulations to carry out the Direct Marketing/CFM Program.
 - Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.
 - The review of rules or procedures established by a CFM and the issuance of advisory opinions and provision of informal hearings.
 - The maintenance of a current statewide listing of CFMs with schedules of operations and locations.
 - The maintenance of a current statewide listing of certified producers.
 - The dissemination of information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.

- Other actions, including the maintenance of special fund reserves that are recommended by the advisory committee and approved by CDFA.

Proposed Models and Statutes

CERTIFIED FARMERS' MARKETS

PROPOSAL #1, addresses Issues 2, 3, 4, 5, 6, 9, 14

Brief Summary of Draft Legislation Proposals

Preface:

The saving of California family farms and farmland by providing a wide range of viable direct marketing opportunities and direct marketing methods is the major underlying premise upon which these proposed changes are based. They are not based upon improving or solidifying the present competitive market positions of existing market operators.

The second major underlying premise is to remove the onus that is on the State, counties and farmers markets of warranting or certifying that a grower is only selling what they grow themselves, and instead place the responsibility of such representation squarely on the grower selling to the public. Enforcement is to be concentrated on overt false and misleading representations made by the grower, rather than paper documentations and representations. Assessments on the industry are earmarked for investigations of such conduct, and penalties are concentrated and designed to be a deterrent to such conduct.

The third major underlying premise is that the marketing advantages of having standard pack and grading standards have diminished dramatically in recent periods of time. Exemption from the documentation and process burdens imposed should therefore be expanded to enable the grower to invent and innovate ways to market their production directly to the public, thereby improving their relative economic viability.

The fourth major underlying premise is that public concerns of food safety and traceability of food sources have emerged. Although the food borne illness impact of products from a small farm production sold intrastate might be minor, a system of source identification signage and labeling along with record keeping ensuring traceability would seem to be reasonably necessary. The alternative of complying with GAP audits designed for large farms that sell in an aggregated or interstate market system does not.

The fifth and perhaps final premise is that the State should not be interjected into the private disputes, rule making or contractual affairs between growers and market outlets. There is civil code and case law, and a legal system already in place to deal with such matters.

Proposals:

1. Add a new Section 890 that establishes under the Food and Agricultural Code a prohibition and penalty section for intentionally false, deceptive or misleading market of Agricultural products similar to that of Section 17500 of the Business and Professions Code. Section addresses specifically misrepresentations concerning geographical area of production, the identity of producers of an agricultural product, and the manner and methods of production of an agricultural product. Active enforcement of the section on all segments of the food marketing, not just direct marketing, is the reason it is placed in the general provisions of the code rather than in a specific portion.

Actions under this section may be initiated by the Secretary or by any agricultural commissioner on behalf of the secretary. Funds generated from penalties would be specifically earmarked for actions under this section, and for contracting with agricultural commissioners for aid in such actions.

In addition or in lieu, punitive action may also be taken against any applicable license, permit or registration of the accused.

2. Amend F&AC Section 43100 to reference the new Section 890 as a consequence to an intentional false and misrepresented use of the "California Grown". This is to broaden the application of the section.

3. Repeal present 47020 (dealing with CPC issuance) and enact a new 47020 that establishes a Direct Marketing Producer registration, documentation and inspection verification system. This would require all producers who wish to sell their agricultural products directly to the public to register and be assigned a permanent number for their farm. Additional cropping and production document information is also required to be filed with the State.

All registration fees are paid to the State, such fees to be used in part for the creating and maintaining of an online registration and producer data filing system, and for production site verification inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for such site inspection. (State can contract with Counties for help in this regard).

In addition, accurate sales record keeping is required. This record keeping is to provide a means for food illness outbreak traceability assistance. This coupled with the registration, will serve to satisfy the applicable "approved source" condition of the Health and Safety Code.

4. Essentially repeal the present 47004 and enact a substantially new section 47004. Language involving the department in disputes between vendors and markets is removed. Language pertaining to the rulemaking of CFM operators is rewritten to clearly define nonprofit or other qualified operators (non-government operators) to be private entities whose rule making powers are abridged only by the condition that they be uniformly applied and in a nondiscriminatory manner. Certified farmers' markets are defined as geographic locations

where two organizational categories of markets may operate: California Producers-Only Markets and Direct Marketing Producer Association or Cooperative Farmers' Markets.

California Producers-Only Markets have restrictions as to who can sell and what can be sold. There are mandates of conspicuous public signage or identifications representing the source of the agricultural products being sold by the agricultural product vendors selling within that market that are explicitly subject to the new section 890. There are restrictions concerning local government use permits that may be issued for a California Producers-Only market. This type of market is to be considered a certified farmers' market for permitting and enforcement purposes under the Health and Safety Code.

Direct Producers Association or Cooperative Markets have restrictions as to who can sell and what can be sold. There are mandates of source identification that are explicitly subject to the new section 890. Such markets allow for producers to jointly, in a cooperative, labor-sharing and cost-sharing manner sell to the public only California produced agricultural products. The exemptions of the membership can be possessed also by the entity acting on behalf of its membership, and the entity may use the term cooperative in its business name. Should be an especially useful vehicle to sell in low income/access areas where the grower's association can use a single checkout stand for payment with EBT. This type of market is to be considered a certified farmers' market for permitting and enforcement purposes under the Health and Safety Code.

Both the above markets must register as such with the State and pay an annual registration fee. Such fees would be used for the creating and maintaining of an online registration and data filing system, and for market site inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for such site inspection. (State can contract with Counties for help in this regard). In addition, quarterly reports of participations and representations by the operators of the two above markets to the State are required.

5. Add a new section 47060 in the Article entitled "Other Direct Marketing Outlets and Distributions" that creates a new marketing outlet called California-Grown Market. These California-Grown Markets have restrictions that only products of registered Direct Marketing Producers may be sold. There are mandates of conspicuous public signage or identifications representing the source of the agricultural products being sold by the agricultural product vendors selling within that market that are explicitly subject to the new section 890. There are restrictions concerning local government use permits that may be issued for a California Producers-Only market. This type of market is to be considered a certified farmers' market only for permitting and enforcement purposes under the Health and Safety Code. The operators of a California-Grown Market must register as such with the State and pay an annual registration fee. Such fees would be used for the creating and maintaining of an online registration and data filing system, and for market site inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for

such site inspection. The operators must submit to the State a quarterly report of the registration numbers and participation frequency of the Direct Marketing Producers whose agricultural products were presented for sale in the operator's market.

6. Amend present 47021 and add a new 47021.5 to require two different assessments on the operators of California Producers-Only Markets, California-Grown markets, and Producers Association or Cooperative Markets.

Amended 47021 will impose a **Direct Marketing Program fee assessment** on each of the above market operators. Such program fee is to be used for the purposes of the chapter, subject to the advice of the Ad Hoc Domestic Direct Marketing committee.

Added section 47021.5 imposes a separate special **Investigation and Enforcement fee assessment** on each of the above market operators. The money generated by the imposition of the fees assessed under this section shall be used exclusively to pursue and conduct investigations and enforcement actions upon properly filed complaints of any violation of Section 890 of this California Food and Agricultural Code. This section has a sunset clause.

7. Create amendments to sections 47010 -47013 to convert the present Certified Farmers Market Advisory Committee into an Ad Hoc Domestic Direct Marketing Advisory Committee. Committee existence and composition is discretionary to the Secretary to whom such committee is advisory. Intent is to create a broader advisory committee to the Secretary that is composed of representative agricultural groups and organizations, growers and the public interested in the orderly advancement of the domestic direct marketing of California agricultural products.

1. Add new Chapter 8.5, Section 890 in Division I, Part I as follows:

(changes from last meeting in red)

Chapter 8.5. INTENTIONALLY FALSE, DECEPTIVE OR MISLEADING MARKETING

Section 890. (a) It is unlawful for any person or entity to intentionally make any statement, representation, or assertion orally, by public statement, advertisement, signage or by any other manner or means whatever that relates to the sales or availability of agricultural products, which is false, deceptive, or misleading concerning the geographical area of production of such agricultural products or concerning the identity of the producers of such agricultural products or concerning the manner and methods of production of such agricultural products. Any violation of the provisions of this section is a misdemeanor punishable by imprisonment in the county jail not exceeding six months, or by a fine not exceeding two thousand five hundred dollars (\$2,500), or by both that imprisonment and fine.

(b) In lieu of prosecution, the secretary **or a county agricultural commissioner under the authority of the secretary** may levy a civil penalty against any person or entity who violates this section in an amount not less than five hundred (\$500), nor more than five thousand dollars (\$5,000) for each violation. The amount of the penalty assessed for each violation shall be based upon the scope of the violation, the seriousness of the deception and the impact of the

penalty on the violator, including the deterrent effect on future violations. Subdivision (e) of Section 43003 shall apply to any fine or civil penalty levied pursuant to this section.

(c) In addition to or in lieu of any action taken by the secretary or a county agricultural commissioner under the provisions of (a) or (b) above, the secretary or a county agricultural commissioner under the authority of the secretary may also modify, suspend, revoke, refuse the issuance or condition the issuance of any license, permit, registration or certification directly related to the enablement of the offense, and that is issued under the provisions of this code to a person found in violation of the provisions of (a) above. Any action taken under this subsection shall be based upon the scope of the violation, the seriousness of the deception, and the corrective or deterrent effect of future violations. Any action taken pursuant to this subsection shall be subject to the due process and applicable civil remedy provisions of this code that govern the issuance of the particular license, permit, registration or certification affected.

(d) All civil penalties collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund, and shall be used exclusively to pursue and conduct investigations and enforcement actions upon properly filed complaints of any violation of Section 890 of this California Food and Agricultural Code. Such funds may be used to contract with a county agricultural commissioner for services that further the objective of this fund, or to reimburse for expenses incurred and accounted by an agricultural commissioner for actions conducted on behalf of the secretary by the agricultural commissioner under the authorities provided by this section.

(e) A proceeding brought by the State or a county for an act that violates the provisions of this section, shall preclude any concurrent or subsequent action brought by the State or a county under the provisions of Section 17500 of the California Business and Professions Code for the same act.

2. Section 43100 – California-Grown Term

Amend Section 43100 as follows:

43100. (a) The terms "California grown," "California-grown," and similar terms with identical connotations shall be used in the labeling or advertising of agricultural products as follows:

(1) The terms "California grown," "California-grown," and similar terms with identical connotations may be used for marketing, advertising, or promotional purposes, only to identify food or agricultural products that have been produced in the state or harvested in its surface or coastal waters.

(2) The Secretary of Food and Agriculture may adopt guidelines, rules, and regulations to further define acceptable uses of the terms "California grown," "California-grown," and similar terms with identical connotations, and to prevent any misleading use of the terms.

~~(b) A fraudulent~~ Any intentional false, deceptive or misleading use of the term "California grown" or "California-grown," or of any seals or other identities officially adopted by the

Department of Food and Agriculture in connection with these terms, or a deliberately misleading or unwarranted use of these items or terms, shall be subject to the provisions and penalties set forth in Section 890 of the California Food and Agricultural Code ~~is a misdemeanor punishable by a fine of not less than one hundred dollars (\$100) or more than three thousand dollars (\$3,000), or by imprisonment in the county jail for not more than six months, or by both the fine and imprisonment.~~

- 3. Repeal the present section 47020 and enact a new section 47020 to read as follows:
(changes and additions since last meeting in red)**

47020. Direct Marketing Producer Registration.

All California agricultural producers intending to sell directly to the California public their California agricultural products that they produced through the practice of the agricultural arts on California land that they own or have the right to possess, must be registered on an annual basis with the California Department of Food and Agriculture as a Direct Marketing Producer. All Direct Marketing Producers will be assigned one or more permanent registration numbers representing their farm or ranch for each county wherein such farm or ranch is located. In addition to pertinent business contact information for the producer, such registration shall include a GPS convertible physical address for the locations in each county wherein they produce or raise the agricultural product they sell or intend to sell directly to the public, and what categories of direct marketing method they are using or intend to use as a means to market such products. Such methods as California Producer-Only Markets, California-Grown Markets, Producer Association or Cooperative Farmers' Markets, Farm Stands, Field Farm Stands, CSA, or other such or similar methods or outlets should be listed.

Each registered Direct Marketing Producer farming fruit, vegetables, nuts, herbs and similar crops must also annually submit to the Department a general seasonal crop plan listing pertinent information about the specific crops that they harvest or intend to harvest for sales directly to the public. Separate crop plans are required for those crops harvested or intended to be harvested in the months of May through September, and those harvested or intended to be harvested in the months of October through April.

Each registered Direct Marketing Producer that raises animals for meat, cheese, eggs or similar products for sale directly to the public must annually also submit to the Department general informational documentation showing the number of animals kept and the projected production for sale of products produced from those animals on a seasonal or annual basis. In the case of meat products, the producer shall also list the facilities wherein their production will be slaughtered, cut and wrapped in preparation for sale to the public. In the case of any dairy product, the producer shall also list the facilities wherein their production is processed.

Each registered Direct Marketing Producer that sells or intends to sell any processed agricultural product that they produced directly to the public, shall also list the facilities wherein their production was canned, dried, flavored, preserved, fermented, juiced or otherwise processed into the product that they intend to sell to the public.

(Each registered Direct Marketing Producer growing nursery stock to be sold directly?)

(Each registered Direct Marketing Producer growing flowers to be cut and sold directly?)

(Each registered Direct Marketing Producer keeping bees whose honey is to be sold?)

An annual fee for registering as a Direct Marketing Producer shall be \$. Funds from such fees collected shall be deposited in the Food and Agriculture Fund and shall be used exclusively by the Department for the administration of this Section. Such administration may include the creating and maintaining of an online registration and producer data filing system, and for production site verification inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for such site inspection.

All Direct Marketing Producers shall keep an accurate record of sales, including date, location, quantity and product, for all fresh and processed food sales made directly to the California public. The keeping of such records and the registration as a Direct Marketing Producer shall effectively satisfy an "approved source" condition under the applicable provisions of the California Health and Safety Code.

4. Amend Section 47004 as follows:

(changes and additions since last meeting in red)

47004. (a) ~~Certified farmers' markets may establish rules and procedures that are more restrictive or do not violate state laws or regulations governing or implementing this chapter.~~

~~(b)~~ Certified farmers' markets are physical and geographical locations established in accordance with local ordinances, where California farmers may transport and sell to the public California agricultural products that they produced, that are exempt from the established grade, size, labeling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(b) Certified farmers' markets are further defined and categorized as follows:

(1) California Producers-Only Market. California Producers-Only Markets are delimited certified farmers' market locations, as defined in (a) above, wherein only California-Produced agricultural products may be sold. Only the actual producer, employees of the producer or lawful agent of the producer may sell agricultural products within the area delimited as a California Producers-Only Market. All producers must be registered with the State as a Direct Marketing Producer, and have submitted to the State any and all documentation and paid all fees required by section 47020 of this Chapter.

All vendors of agricultural products selling within a California Producers-Only Market shall:

(A) Post conspicuous signage or banners that state the name of the farm or ranch, the city where the farm or ranch is located, and the county where the farm or ranch is located.

(B) Post conspicuous signage or banners that state “We Grew What We Are Selling” or “We Raised What We Are Selling” or “We Grow What We Sell” or like phrases that shall represent and publically proclaim that the farm or ranch is only selling agricultural products that they themselves have grown or raised on land that they possess or control.

(C) Ensure that all processed agricultural products state in a clear manner by container label or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of California agricultural products grown or raised by the farm or ranch selling them.

(D) All the above representations required to be made to the public shall be subject to the provisions and penalties of section 890 of this California Food and Agricultural Code.

No city, county or other public agency shall issue any use, license or other such permit authorizing the operation of California Producers-Only Market unless 90 percent of the activity proposed and authorized by such permit is limited to California farmers and ranchers selling the agricultural products that they themselves have produced directly to the public.

Nothing in this section shall prohibit the city, county or other public agency from issuing additional permits authorizing other activities at the same general location or adjacent vicinity as the California Producers-Only Market permit, so long as it is extensively clear to the public that such area or activity permitted is different, separate and not part of the area permitted as a California Producers-Only Market.

A California Producers-Only Market shall be considered and defined as a certified farmers’ market for permitting and enforcement purposes under the applicable provisions of the California Health and Safety Code.

(2) Direct Marketing Producer Association or Cooperative Farmers’ Market.

Direct Marketing Producer Association or Cooperative Farmers’ Markets are delimited certified farmers’ market locations, as defined in (a) above, wherein California producers may jointly, in a cooperative, labor-sharing and cost-sharing manner sell to the public only California produced agricultural products. A Direct Marketing Producer Association or Cooperative Farmers’ Market may be an unincorporated association or a limited liability company or an incorporated cooperative association whose members are composed only of California agricultural producers who are registered with the State as Direct Marketing Producers, and have submitted to the State any and all documentation and paid all fees required by section 47020 of this Chapter.

On behalf of its members, a Direct Marketing Producer Association or Cooperative Farmers’ Markets may sell only California agricultural products produced by such members to the public, the source of said products being clearly identified as to name, city, and county of the farm or ranch of the producer member that produced such product. All the above source

representations required to be made to the public shall be subject to the provisions and penalties of section 890 of this California Food and Agricultural Code.

Any exemption under any existing law which applies to any agricultural product in the possession, or under the control, of the individual producer, shall apply similarly and completely to such product which is delivered by its producer members that are in the possession, or under the control, of the unincorporated association, limited liability company or incorporated cooperative association that is operating within and subject to the provisions of this section and in accordance with this chapter.

Notwithstanding section 54036 of this code, unincorporated producer associations and producer member limited liability companies may use the word "cooperative" as part of its business name or title for producers' cooperative marketing activities, if it is operating within and subject to the provisions of this section and in accordance with this chapter.

A **Direct Marketing** Producer Association or Cooperative Farmers' Market shall be considered and defined as a certified farmers' market for permitting and enforcement purposes under the applicable provisions of the California Health and Safety Code.

(c) An operator of any of the above certified farmers' markets shall annually register with the State the times and location of the market, the name and contact information for the operator of the market, and the agent for service of process for the operator. An annual registration fee of \$ _____ shall be paid at the time of registration. No certified farmers' market shall operate without fulfilling the annual registration process. Funds from such fees collected shall be deposited in the Food and Agriculture Fund and shall be used exclusively by the Department for the administration of this Section. Such administration may include the creating and maintaining of an online registration and data filing system, and for market site inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for such site inspection.

(d) The operator of a California Producers-Only Market and a **Direct Marketing** Producers Association or Cooperative Market shall keep an accurate participation record of the individual Direct Marketing Producers whose agricultural products were presented for sale in their market each market day. The operators shall submit to the State a quarterly report of the registration numbers and participation frequency of the Direct Marketing Producers whose agricultural products were presented for sale in the operator's market during that past quarter. The State should endeavor to create and maintain online capability for such reporting.

(e) With the exception of a category of certified farmers' market being operated by a government agency, **the nonprofit and other qualified** operators of any certified farmers' markets category shall be considered **under the law as** private entities and as such may adopt rules and impose requirements for information or documentation from their participating

Direct Marketing Producers deemed necessary by said operator for the proper operation of their particular market. Such private entity rights of such an operator of a category of certified farmers' market shall be abridged only by the requirement by this section that any adopted rules or requirements imposed be implemented with uniform application and in a nondiscriminatory manner. Government agency operators of a category of certified farmers market are subject to any applicable State laws, the laws of their agency and any other laws governing the conduct and actions they may take as an agency of government.

~~(c) The governing body of any certified farmers' market operating with more than one participating certified producer shall adopt written rules and procedures pertaining to the operation of the market. The rules shall include a requirement that the governing body and its designated agents establish, implement, and enforce all rules and procedures pertaining to the operation of the certified farmers' market in a fair, nondiscriminatory, and equitable manner.~~

~~47004.1. (a) Any certified producer aggrieved by a rule or procedure of a certified farmers' market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion. The request for and issuance of an advisory opinion is not a prerequisite to the pursuit of any civil litigation. However, the advisory opinion shall be given substantial weight in any subsequent civil or administrative proceeding involving the parties and subject matter of the advisory opinion. The department may adopt regulations providing for the precedent value of its advisory opinions issued pursuant to this section. Notwithstanding any other provision of law, the department shall not incur liability in connection with the preparation and issuance of any advisory opinion issued pursuant to this section.~~

~~—(b) The department shall provide for an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, with regard to any grievance of a certified producer involving questions of fact concerning any action taken by a certified farmers' market against the producer, or any implementation of a rule or procedure established by certified farmers' market against the producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. The informal hearing shall proceed without the option of conversion to a formal hearing. The request for an informal hearing to resolve issues involving disputes of fact is not a prerequisite to the pursuit of any civil litigation.~~

~~—(c) In addition to, or in lieu of, the alternatives set forth in subdivisions (a) and (b), the parties may agree to employ mediation. If mediation fails to resolve the dispute, the parties may agree to employ binding arbitration. The department and the county agricultural commissioners shall incur no expense or liability for mediation or binding arbitration.~~

5. New Section 47060 – California-Grown Market

47060. California-Grown Market. California-Grown Markets are delimited locations wherein only California produced agricultural products may be sold. All agricultural products offered for sale must be from California agricultural producers who are registered with the State as a Direct Marketing Producer, and have submitted to the State any and all documentation and paid all fees required by section 47020 of this Chapter. Products not grown but offered for sale by a vendor must have been procured from a registered Direct Marketing Producer under the conditions and limitations set forth in section 47002 of this Chapter. Sales of agricultural products at a California-Grown Market are limited to consumers, restaurants and other end users of the products. Wholesale sales and other sales to individuals or entities intending to resell such products are otherwise prohibited.

All vendors selling agricultural products within a California–Grown Market shall:

(a) Post conspicuous signage that states the name of the California farm or ranch that produced the product or products offered, the city where such farm or ranch is located, and the county where such farm or ranch is located, for each agricultural product or group of agricultural products being offered for sale. Products from different producers shall be grouped and separated in a manner that consumers will be clear as to the source of each product offered.

(b) Ensure that all processed agricultural products include the essential producer identification elements in (a) above, and state in a clear manner by container label or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of California agricultural products grown or raised by the California farm or ranch so identified.

(c) All the above representations required to be made to the public shall be subject to the provisions and penalties of section 890 of this California Food and Agricultural Code.

No city, county or other public agency shall issue any use, license or other such permit authorizing the operation of a California-Grown Market unless 90 percent of the activity proposed and authorized by such permit is limited to the sale of California-Grown agricultural products.

Nothing in this section shall prohibit the city, county or other public agency from issuing additional permits authorizing other activities at the same general location or adjacent vicinity as the permitted California-Grown Market, so long as it is extensively clear to the public that such area or activity permitted is different, separate and not part of the area permitted as a California-Grown Market.

A California-Grown Market shall be considered and defined as a certified farmers’ market for limited exemption purposes under this chapter and for permitting and enforcement purposes under the applicable provisions of the California Health and Safety Code.

(d) An operator of any of a California-Grown Market shall annually register with the State the times and location of the market, the name and contact information for the operator of the market, and the agent for service of process for the operator. An annual registration fee of \$

shall be paid at the time of registration. No California-Grown Market shall operate without fulfilling the annual registration process. Funds from such fees collected shall be deposited in the Food and Agriculture Fund and shall be used exclusively by the Department for the administration of this Section. Such administration may include the creating and maintaining of an online registration and data filing system, and for market site inspections pursuant to any properly submitted complaint or pursuant to information received or detected causing the necessity for such site inspection.

(e) The operator of a California-Grown market shall keep an accurate participation record of the individual Direct Marketing Producers whose agricultural products were presented for sale in their market each market day. The operators shall submit to the State a quarterly report of the registration numbers and participation frequency of the Direct Marketing Producers whose agricultural products were presented for sale in the operator's market during that past quarter. The State should endeavor to create and maintain online capability for such reporting.

6. Amend Section 47021 as follows:

47021. (a) Every operator of a ~~certified farmers' market~~ California Producers-Only Market, a California-Grown market, or a Producers Association or Cooperative Market shall remit to the department, within 30 days after the end of each quarter, a **Direct Marketing Program fee** equal to the number of ~~certified producer certificates and other agricultural producers participating on each~~ individual registered Direct Marketing Producers who's products were presented for sale per market day for the entire previous quarter. ~~The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall not exceed~~ be sixty cents (\$0.60) for each ~~certified producer certificate and other agricultural producers participating~~ individual registered Direct Marketing Producers whose products were presented for sale on each market day. ~~A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.~~

(b) Any operator of a ~~certified farmers' market~~ California Producers-Only Market, a California-Grown market, or a Producers Association or Cooperative Market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. Subject to the advice and recommendations of the Domestic Direct Marketing Advisory Committee, The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out the intent, mission and directives set forth in section 47000 of this chapter., including all of the following actions undertaken by the department:

~~—(1) The coordination of the advisory committee.~~

- ~~—(2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.~~
 - ~~—(3) The adoption of regulations to carry out this chapter.~~
 - ~~—(4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.~~
 - ~~—(5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.~~
 - ~~—(6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.~~
 - ~~—(7) The maintenance of a current statewide listing of certified producers.~~
 - ~~—(8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.~~
 - ~~—(9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.~~
- ~~(d) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.~~

Add new Section 47021.5 to read as follows:

47021.5 (a) Every operator of a California Producers-Only Market, a California-Grown market, or a Producers Association or Cooperative Market shall remit to the department, within 30 days after the end of each quarter, an **Investigation and Enforcement Fee** equal to the number of individual registered Direct Marketing Producers whose products were presented for sale on each market day for the entire previous quarter. The fee shall be one dollar (\$1.00) for each individual Registered Direct Marketing Producers who's products were presented for sale on each market day.

(b) Any operator of a California Producers-Only Market, a California-Grown market, or a Producers Association or Cooperative Market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees assessed under this section shall be used exclusively to pursue and conduct investigations and enforcement actions

upon properly filed complaints of any violation of Section 890 of this California Food and Agricultural Code.

(d) This section shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date. If this section is no longer in effect or is repealed or is not extended by a later enacted statute that is enacted before January 1, 2016, any and all residual funds collected and deposited pursuant to subsection (c) above, shall be transferred within the Department of Food and Agriculture Fund and used in accordance with the provisions of Section 47021 (c) of this chapter.

7. Amend Sections 47010 – 47013 as follows:

47010. (a) The secretary shall establish ~~a~~ an ad hoc committee which shall be known as the ~~Certified Farmers'~~ Domestic Direct Marketing Advisory Committee. The primary ~~goal function~~ of the committee shall be to ~~ensure the integrity of certified farmers' markets.~~ assist the department in reviewing, modifying, establishing and/or eliminating regulations affecting ~~direct the domestic direct~~ marketing of California produced agricultural products and to advise the secretary in matters pertaining to the domestic direct marketing of California produced agricultural products by California producers. Said ad hoc advisory committee shall develop ideas, innovations and funding sources for the safe, effective, efficient and honest marketing of California produced agricultural products to occur in California, with special attention given to California's underserved and low income communities, and determine what barriers could be removed or what actions could be established to encourage the implementation of such ideas, innovations and funding. Members of the above ad hoc committee shall serve without compensation or reimbursement for expenses from the State.

(b) The committee ~~shall~~ may be composed of ~~17 members and their alternates~~ representatives of organizations that have a significant number of members engaged in the domestic direct marketing of California produced agricultural products, of representatives of marketing groups that substantially devote their resources to the marketing and encouragement of consumption of California produced agricultural products by California consumers, of individuals whose livelihood is substantially supported by the domestic direct marketing of their California produced agricultural products, of representatives of other branches of government whose regulations or programs monitor, control or encourage the consumption of California produced agricultural products, and of individuals of the California consumer public who have demonstrated a special interest in the availability and marketing of California produced agricultural products.

~~The secretary shall appoint the members of the committee from a list of nominees provided by the industry subject to this chapter. The secretary shall appoint eight members and their alternates who shall be active certified producers, four members and their alternates who shall be certified farmers' market managers or representatives, two representatives from~~

~~different major state direct marketing associations, one public member, and two members and their alternates who shall be county agricultural commissioners. An alternate member shall serve at a committee meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is designated as alternate.~~

~~(c) The secretary shall appoint only one certified producer, certified farmers' market manager, or representative to represent any one farm or certified farmers' market and shall make every effort to ensure that there is a diverse representation from major production and market areas.~~

~~(d) The committee shall meet at least once each year at the request of the secretary, the committee chairperson, or upon the request of four committee members. It shall meet at least once each year.~~

~~(e)~~ (d) The committee ~~shall~~ may appoint its own officers, including a chairperson, a vice chairperson, a secretary, and any other officers it deems necessary. The committee may adopt rules that it deems are necessary for the conduct of its meetings and functions to carry out the objectives of this chapter.

47011. The committee shall be advisory to the secretary on ~~all~~ matters pertaining to ~~direct the domestic direct~~ marketing of California produced agricultural products including but not limited to those marketed through outlets such as ~~at~~ certified farmers' markets, farm stands, C.S.A's, California Producers-Only Markets, California-Grown Markets, Producer Association or Cooperative Markets, Urban Farm Stands, Flea Market Farmers Markets, Farm Trails, Agro-Tourism Establishments, and other such marketing entities that may emphasize or limit their merchandised offering to California produced agricultural products, or represent to the public that a substantial portion of their merchandise offerings are California-Grown or are direct from California producers, and may make recommendations including, but not limited to, the following:

(a) The amendment, repeal, or adoption of legislation and regulations that relate to the administration and enforcement of this chapter.

(b) Administrative policies and procedures that relate to the inspection and registration of ~~certified direct marketing~~ producers and ~~certified farmers' markets~~ other domestic direct marketing individuals and entities.

(c) Administrative civil penalties for violations of ~~direct~~ any domestic direct marketing regulations.

(d) Certification, inspection and/or registration fees collected ~~pursuant to Section 47020.~~

(e) Statewide review of marketing and enforcement actions.

(f) The annual budget of the department to carry out this chapter and the assessment of fees to pay for the costs incurred by the department to carry out this chapter.

(g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

~~47012. (a) Except as provided in subdivisions (b) and (c), the term of any member of the committee shall be two years.~~

~~—(b) With respect to the terms of initial members of the committee, eight members shall serve for one year and nine members shall serve for two years, with the determinations of the term of each member to be made by lot. No member of the committee shall serve more than four full consecutive two-year terms.~~

~~—(c) Any vacancy that occurs during an unexpired term shall be filled by appointment for the unexpired term. 47013. The members of the committee and any alternate shall serve without compensation, but may be reimbursed by the department for travel expenses incurred in the performance of their duties.~~

Questionable Regulations or Regulations for Potential Elimination or Modification *(In Red Italics)*

Preface:

If we enact substantial changes to the Statutes contained in the Food and Agricultural Code, then we must complete a corresponding substantial change to the Code of Regulations that are by law limited to interpreting the Statutes, whether existing or new.

Might be wise first to decide and introduce the code section changes, then work on the regulation changes during the legislative process in 2013?

3 CCR § 1392.2

Unless the context otherwise requires, the following definitions govern the construction of the language in this article.

(a) Certified Farmers' Market. A location approved by the county agricultural commissioner of that county where agricultural products are sold by producers or certified producers directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. *A certified farmers' market may only be operated by one or more certified producers, by a nonprofit organization, or by a local government agency.*

i) Immediate Family. Parents, children, grandparents, or grandchildren of the certified producer or a family member regularly residing in the certified producer's household.

(j) Employee. Any person employed by a certified producer at a regular salary or wage, on either a full or part time basis. The term "employee" does not include any person who is reselling agricultural

products purchased from another producer *or whose compensation is primarily based on a commission of sales.*

(n) Nonprofit Organization. An organization which qualifies for nonprofit status for California income tax purposes.

(p) Market Rules. A set of written rules or regulations approved by each certified farmers' market. The rules and regulations may be more stringent than established state regulations, provided they do not violate or conflict with any state law or regulation governing their activities.

3 CCR § 1392.4

(a) Except as provided in subsection (f) below, a producer or certified producer may sell or offer to sell, at a certified farmers' market, a field retail stand, or a farm stand, only agricultural products which he or she produced to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. The certified producer's *immediate family* or employee(s) may also act for and sell the certified producer's agricultural products. *No certifiable agricultural products may be sold at a certified farmers' market unless such products are listed on the certified producer's certificate.*

(c) Only agricultural products may be sold or offered for sale at a certified farmers' market. The sale of nonagricultural products shall not be permitted in the area designated as a certified farmers' market.

(d) The certified producer's embossed photocopy certificate shall accompany the certified agricultural products during transportation and *shall be conspicuously posted at the point of sale.*

(f) A certified farmers' market may allow, or prohibit, a certified producer or his/her immediate family member or employee to sell at that market certified agricultural products on behalf of a maximum of two other certified producers including, but not limited to, separate entities, such as partnerships, in which the certified producer has an interest as an individual member. If such a practice is allowed, the following provisions shall be met by the certified producer and shall be specified in the certified farmers' market's rules and regulations:

(1) A certified producer shall not represent, nor be represented by more than two other certified producers in a 12-month period.

(2) Each certified producer's certified agricultural products to be sold or offered for sale shall be separated and identifiable by each certified producer's valid certificate at the point of sale.

(3) The name of the certified producer for whom another certified producer is selling shall appear on the certificate of the certified producer that is conducting sales at a certified farmer's market.

(4) The name of the certified producer who is selling the products of another certified producer shall appear on the certificate of the person or entity for whom the certified producer is selling.

(5) The certified producer selling for another certified producer shall be selling or offering for sale, at the same certified farmers' market on the same day, certified agricultural products which the certified

producer conducting the sales has produced and which are in greater volume than the volume offered for sale for the other certified producer. For purposes of this section, the volume shall be measured by the weight or dollar value of the products at the time and point of sale. This volume requirement shall apply only at the beginning of each day of sale.

(6) The producer applying for certification shall obtain and submit to the agricultural commissioner, prior to certification, written authority from said other certified producers to sell on their behalf.

(7) Commission sales and buying and selling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall not be related to the volume or value of the products sold.

(8) The operator of a certified farmers' market may prohibit or otherwise establish rules regarding sales permitted under this subsection that are more restrictive, provided that such prohibition or restriction is contained in the market's written rules and regulations.

(9) A certified producer who sells certified agricultural products on behalf of another certified producer or whose products are sold by another certified producer at a certified farmers' market shall keep for a period of not less than three years, the following records relating to such products:

(i) Date of transfer to seller and accurate amount of products, by weight, dry measure, or count, transferred. Each separate product and amount shall be recorded according to variety.

(ii) Date of sale and accurate amount of products, by weight, dry measure, or count, sold. Each separate product and amount shall be recorded according to variety.

(iii) Names of both certified producers involved.

(10) A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the department or county agricultural commissioner.

(m) A seller of processed agricultural products shall document compliance with the production requirements referenced in Section 1392.4(k) with documents such as but not limited to a health department certificate for the processing facility, written agreement or bill for rent from a certified kitchen, or a written agreement or bill for work accomplished from a person or entity that processed the product. He or she shall have a copy of the documentation in his or her possession at the point of sale, and shall make this documentation available upon request of an enforcing officer. The quantities of certifiable agricultural product processed and sold shall not exceed the quantities listed on the seller's Certified Producer's Certificate.

Additionally, the included ingredients not of own production, as defined in section 1392.2, other than sugar and water, must be the last items on the label required by the Food and Drug Administration (i.e. where the ingredients are listed in descending order of quantity.)

3 CCR § 1392.6

(d) The governing body of a certified farmers' market operation for or by more than one certified producer shall promulgate a set of market rules and regulations which specify procedural criteria pertaining to:

(1) Admission of any producer to the market(s).

(2) Admission of any agricultural products to the market(s).

(3) Removal of any producer from the market(s).

(4) Allowance of a certified producer selling on behalf of another certified producer as provided in Section 1392.4.

(e) The governing body of a certified farmers' market has authority to establish specific rules and regulations for any market(s) under its control which regulate the:

(1) Type and number of producers and certified producers admitted.

(2) Type and number of certified and non-certifiable products admitted.

(3) Methods of selling certified and non-certifiable agricultural products.

(f) The certified farmers' market's rules and regulations shall contain:

(1) A clause, which states that the governing body and its designated agents shall implement and enforce all rules and regulations pertaining to the operation of a certified farmers' market in a fair and equitable manner.

(g) A current copy of the certified farmers' market's rules and regulations shall be sent to the Department of Food and Agriculture, Inspection and Compliance Branch and to the agricultural commissioner of the county in which the certified farmers' market is located.

In order to ensure the fair and equitable operation of the market, a provision that provides market participants with the right to appeal the imposition of a fine or suspension or expulsion from a certified farmers' market. While the appeal process may be informal, it must provide market participants with the following:

(1) Notice of the alleged violation by setting forth the factual basis for it as well as the proposed penalty;

(2) A reasonable time period to request an appeal;

(3) If an appeal is requested, an opportunity to dispute the alleged violation and/or the proposed penalty;

(4) A short, written statement of decision.

3 CCR § 1392.9

(a) The operator of a certified farmers' market shall ensure that each person participating in the sale of agricultural products in the area designated as a certified farmers' market:

(1) Is a producer, *a certified producer, a member of the producer's immediate family*, or an employee of the producer.

(2) Sells only *certified and noncertifiable* agricultural products.

(3) Has in his or her possession, in the case of certifiable agricultural products, a valid certificate *that is posted at the point of sale*.

(4) Has each certifiable agricultural product in his or her possession listed on the certified producer's current, valid certificate.

(5) Sells, when selling noncertifiable agricultural products, only those products which were produced in accordance with the certified farmers' market's rules and regulations.

(6) When representing another certified producer under an additional certificate, separates and identifies the items listed on each respective certificate, and that the name of the certified producer he or she is selling for appears on both of the certificates.

(7) Issues dated memorandums of sale in compliance with subsections 1392.4 (k) and (l).

(b) The operator of a certified farmers' market shall obtain from each person participating in the sale of agricultural products in the area designated as a certified farmers' market an itemized list of all products sold at the certified farmers' market each market day.

(1) The product list shall state the name of the certified producer, the identity of each product sold as it appears on the certified producer's certificate, and the quantity of each product sold at the market, including all processed agricultural products.

(2) The market operator shall keep the list of products sold for a period of not less than eighteen months.

(e) The operator of a certified farmers' market shall provide certified farmers' market participants with the right to appeal the imposition of a fine or suspension or expulsion from the market consistent with the requirements of section 1392.6(g).

General Comment: Distinction between Certifiable and Non-Certifiable agricultural products may not be necessary if we go to a more complaint driven inspection system. All products would therefore be Agricultural Products rather than separated into two categories.

Under such system, without two categories, nursery stock and cut flowers would be treated the same as other agricultural products authorized. Inspection procedures for nursery stock pursuant to a detection or complaint would be similar to meat products, and cut flowers would be treated similar to lettuce, asparagus and greens in that the product is the plant and not fruit, vegetable or nut borne by the plant.

PROPOSAL #2, addresses Issue #3

Introduction

A wise doctor once told me that what ails you is usually the simplest, not the most serious, disease. The same could be said of Direct Marketing. Being open to new constructs is good, but change for change's sake will not be helpful to the direct marketing industry if it distracts from the presenting symptoms and causes us to overlook the simplest, most effective cure.

Since September 2010—from KNBC’s “expose,” to the series of listening sessions, Technical Planning Committee, and the current work on this task force, a number of goals and overarching ideals have been established, including:

1. That there is strong public and industry support for a robust, well-run, well-enforced certified farmers’ market system
2. The need for improved enforcement and enforceability and funding for it
3. The need for clearer communication/education to all sectors—public, growers, managers, enforcement
4. Promotion of California grown produce
5. Greater access to California produce by more Californians
6. Increased opportunities for family farms

It is important to remember why and for whom the direct marketing opportunity was created, that DM sales are a miniscule percentage of the California agriculture industry, and that it is specifically the DM piece of the industry we are tasked to serve and protect. It is not this task force’s mandate to create opportunities for produce retailers or California agriculture at large.

If one of the intentions of direct marketing is to promote California agriculture, then there is no room for out-of-state produce at a certified farmers’ market. Statutes and regulations need to clearly reflect that. The presence of any out-of-state produce at CFMs makes enforcement more difficult and confuses consumers, preventing them from easily seeing what is California-grown.

As a journalist, I can attest that editors and segment producers give CFMs “space on the page” because they believe enough viewers and readers are interested. This coverage, for better and worse, is a powerful educational and promotional tool for California crops, better nutrition practices, and greater awareness generally of the need to get healthy, safe food to all Californians. This is advertising and industry validation that money cannot buy. The industry must safeguard its position in this relationship.

As a member of the public who supports and teaches about certified farmers’ markets, I can attest that the public is hungry for knowledge about how to recognize good markets and growers. They want to know the state “has their back” and will protect them from fraudulent practices. And they want a “badge” of reassurance. Over the past 30-plus years, the term “Certified” has come to signify a standard of trust, a brand that can and should be built, protected, and promoted. Yes, there is room for improvement in quality and oversight and most definitely a need for greater education about the differences in meanings of certified producer, certified market, and certified organic. But renaming all the components may be a case of overlooking the obvious cure and make the education process much more challenging.

I would rather see CFM definitions amended to more clearly reflect the parameters spelled out in the state’s mission statement, the definition of direct marketing, and the goals of Agvigion

2030. CFM definitions should be amended to more clearly support the importance of certification.

If one of the issues being studied is the redefinition of “approved source” as it applies to direct marketing systems for purposes of food safety, it should be its own stand-alone item and not touch the more public terms certified producer or certified farmers’ market.

If we are to overhaul something, let’s spend our precious time on the parts that give the most trouble--cleaning up the second certificate section, who can sell, and non-certifiable products.

Below is my suggested path of changes to enhance the concept of California-grown, yet keep CFMs a fair playing field for producers who have gone to the effort to become certified and for the family farms whose economic survival depends on the ability to sell direct without undue competition from resellers. Thinking ahead to merging the work of the other subcommittees, I’ve kept in mind the need for consistency across all acceptable forms of direct marketing so that it’s easier for growers to be in compliance, inspectors to enforce, and the public to understand.

CCR: 1392.2 Definitions

Add to (a) CFM. where **California-grown** agricultural products are sold....

Add to (c) Land...Controls. **California** land that the producer or certified producer....

Add to (d) Producer: that produces agricultural products **in California** by practice of...

Add to (e) Certified Producer: produced **in California** by practice of...

Add to (h) 1 The sale. at a CFM of **California-grown** agricultural products

Change (h) 2: get rid of non-certifiable ag products within boundaries? or leave as is and further define in (m)?

Change (h)3 Field Retail stand or farm stand as follows:

- Delete field retail stand from this item and cover elsewhere if we are allowing retail stands to sell anything—not exempt—fall under another category?
- (h) 3 At a farm stand ...of California-grown agricultural products

Replace (i) and (j) Immediate family and employee definitions:

- (i) Seller. Family members of certified producer or any person employed by a certified producer at a regular salary or wage, on either a full or part time basis.
 1. the term “employee” does not include any person who is reselling agricultural products purchased from another producer or whose compensation is ~~primarily~~ based on a commission of sales.
 2. TK—2nd cert sales, cooperative sales

Add to (m) non-certifiable ag products:include all certified **California-grown** products that have been processed

1392.4 Conditions of Direct Marketing

Change (a) ~~...producer and~~ certified producer may sell or offer to sell at a CFM, a field retail stand....

Create a second item that refers to non-certified producers and what the rules for them at retail farm stands are. Add (b) a producer may sell or offer to sell at a field retail stand...clearly labeled in public view county grown and farm name....

(f)—2nd certificates TBD, but at least mandate proper visible source labeling

Change and add to (m): define recognized source and its various tiers—farm direct, etc.

PROPOSAL #3, addresses Issue #1

Proposed procedure overview: First time applicants. There shall be an onsite inspection of a new applicant's production sites. Ideally, this inspection will include gps mapping to include access points and well locations, The office process shall include basic instruction by CAC.

Renewals. For CPs in good standing, producers will submit map, crops, etc as specified in the application, noting any sites or crops that are changes from previous year's CPC. Onsite inspection not required unless there have been substantial changes (major amount of new commodity, new or different production site).

Questions: Should renewal process be extended to every two years as long as grower submits above paper work annually? Should there be a separate CP renewal app that is basically the same as CP first app, maybe with added question about if have incurred any violations, asking for id'ing any changes? The term renewal at top would help CAC and managers know at a glance where things stand?

For CPs who have had any violations: Mandatory annual inspection.

What: Make onsite inspection mandatory for first-time CP applicants

Why: It is far easier to establish seriousness of purpose and self-police abusers at the beginning. Gives CAC opportunity to red-flag potential abusers; also to make sure CPC application and production site information are in sync. By "weeding" out at least some abusers at the very beginning, will streamline and target future farm inspection work, making CAC job more efficient and cost-effective. Making inspection mandatory will make clear what inspector's responsibilities are and ensure that CAC are uniformly in compliance with their duties. The public wants to be assured that growers are legitimate from the get-go.

CCR: 1392.7 Certificates Issued

- Add to 1392.7 (a): When issuing the CPC **for the first time**,...
- Change 1392.7 (a): ...the CAC ~~should~~ **shall**:
- Change 1392.7 (a) 1: ~~insofar as practicable~~ **shall** include an on-site inspection

FAC:

What: At the time of first-time application, CAC shall provide basic information/definition of Direct Marketing principles [a one-page set of guidelines? the definition as spelled out at beginning of regs? plus verbal?]

Why: Doing due diligence to educate and communicate to new applicants about parameters of Direct Marketing—to better understand the privilege and basic tenets so that they may be in compliance.

CCR: does this require reg change? If so add to 1392.7 (b). Upon issuance, CAC shall explain in writing the general principles of direct marketing.

What: Streamline renewal process by waiving required inspections with certain provisions

Why: making renewal process for producers in good standing will reduce work load for CAC and allow them to focus on problems. Efficiency equals found time and money, maximizing what can be accomplished with existing funds.

CCR: 1392.7

- add new (d) [existing item (d) becomes (f)]: Certified Producers in good standing (no violations in preceding 12 month period) shall be allowed to renew CPC by submitting the following:
 1. completed CPC form with all changes crops from previous year clearly noted, including changes to production site locations, ownership, or lease information, and all additions and deletions of crops and varieties
 2. map of growing site(s) with growing rotations, TK TK indicated
- add new (e): For CPC in good standing renewal, onsite inspection shall be at CAC's discretion. For any CPC that has been in violation/non-compliance, CAC shall perform on-site inspection before re-issuing certificate.

FAC:

What: CAC shall include an on-site inspection of land controlled by producers who have been found in violation during the 12 months-term of previously issued certificate.

Why: CAC can target time to potential issues of non-compliance. Self-regulatory: encourages growers to be compliant on all levels to avoid inspections due to violations.

CCR: 1392.7

FAC:

What: Add an exemption or explanation about avocados to CPC being valid for no more than 12 months?

Why: Fair to avocado growers, reduce issues of non-compliance for CAC

CCR: 1392.7 (c) make change here?

FAC:

PROPOSAL #4, addresses Issue #4 (also see Appendix B-1)

Overview: The public wants reassurance of grower and market integrity. Growers want a fair and level playing field. The public and honest growers deserve protection from abusers of the direct marketing system. Managers and enforcement need their jobs to be doable and

effective. Certification is the tool and “badge” for grower legitimacy and consumer confidence. For maximum effectiveness, enforcement and compliance should start at the very beginning of the certification process—with the application.

Improving the CP application and ensuing Certificate will provide substantially more at-a-glance information in the field and at the market for CAC and market managers, including much-needed cross-county information. Asking the grower to provide details at the outset opens education channels, makes boundaries clear, and establishes a seriousness of purpose.

Here below are proposed changes and suggested CCR citations and amendments (please excuse any layman’s errors here) that show how this could work. Through our research, it became clear that most everything needed for improvement already exists in the CCR. What’s needed is more consistent adherence to what is already spelled out for certification and greater consistency by CAC across counties in how CPCs are completed from county to county [Would providing a template be helpful? CAC training?] The variability and inconsistency in CPCs makes enforcement at the markets nearly impossible. When CPCs are accurate and specific, they can be used to monitor and enforce potential reselling activities.

We have not yet touched the 2nd cert portion of the application nor added any FAC citations.

What: Make changes to CP application

Why: To improve the specificity, consistency, and accuracy of CPCs so that they can be used as a more effective enforcement tool by the State, Counties (CAC) and Market Managers

CCR: 1392.5 Producer Certification procedures

- (b) already allows for change to cert and application to be approved by director

FAC:

What: Add to production site section the following: Attach map of growing ground, indicate areas for successive plantings and approximate planting schedule.

Why: Onus on grower but not burdensome for legitimate growers—would take about 5 minutes to produce rough sketch; self-policing—every extra small step makes it more of a bother for abusers. Clarity on the form would be a better communication tool of the rules for growers. Helpful to CAC—becomes part of record, helps red flag potential abusers.

CCR: 1392.5 (c) documentation to provide

- Add: Such documentation may include map of growing ground....

FAC:

What: Add to production site section: Production Site(s) and Acreage (give specific address(es) or if there is no address, specific site location such as “1/8 of a mile on the right past Graton Street and on Maxton Street.”)

Why: Information at-a-glance for CAC and managers to know/have a better idea how much production possible as well as sufficient address or location information to be able to visit the farm site.

CCR: 1392.5 (b) allows

FAC:

What: Add to production site section: Indicate if parcel is owned (O) or leased (L). If leased, provide proof of insurance, storage receipts, payments to workers, and/or other...

Why: Curtail phantom farms; abuse of 2nd certs by placing onus on grower to provide documentation, self-policing weeding out of cheaters. Spelling out what can expect to ask or be asked for is helpful to both applicant and CAC

CCR: 1392.5 (c) documentation to provide

- Add: Such documentation may include map of growing ground, proof of insurance, storage receipts....

CCR: 1392.9.2 (b) DM requirements for farm lessees

- change/add: enforcing officer ~~may~~ shall request paper work showing proof of insurance, payments to workers, storage receipts...

What: Add to commodities section Amount/Unit Grown column: Indicate use of green house (GH) or other season-altering device.

Why: Helpful to CAC during market inspections and to managers generally to know at a glance if seasons can legitimately be pushed.

CCR: 1392.5 (b) allows—no change needed

FAC:

What: Add to Authorized counties section: Counties/names of markets in each.

Why: Help CAC and managers know at a glance intended/appropriate volume to sell. Provides cross-county snapshot. Demonstrates producer forethought and communicates seriousness of purpose. Since CPC is valid for one year only, it is grower's responsibility to update and inform CAC of any changes. [Do the changes below allow for any inconsistencies that may arise during the year, say adding a new market or commodity? do we need to specify that a grower notifies CAC of any adds or drops as they occur so that a grower will not be in violation?]

CCR: 1392.5 (cp procedures)

- add to (d): name of each destination county and number of markets in each where CP will be selling.
- (e) already requires that CP request correct number of copies of Cert to match number of markets [is this too vague, open for abuse, unenforceable as currently written? changing (d) takes care of improving (e)]

FAC:

What: Add in or near Authorized Counties Section: Types of Direct Sales: CFM___ CSA___ Farm stand___. Please list counties and names of each. [alternative to item above? in addition to?]

Why: Help CAC and managers know at a glance intended/appropriate volume to sell. Provides cross-county snapshot. Demonstrates producer forethought and communicates seriousness of purpose. Makes it easier for growers who engage in more than type of direct sales systems to list on one application.

CCR: 1392.5 (cp procedures)—TBD

FAC:

What: Add an area that asks producer to list other certificates held in their name (by the producer), the county(ies) in which the certificate(s) was issued and the certificate number(s)

Why: Some growers farm in multiple counties. At-a-glance cross-county information for CAC and managers.

CCR: 1392.5 (b)

FAC:

What: Add toward bottom of application: Have you or any representative of your farm had a CPC suspended or revoked? No ___ Yes ___ Please explain.

Why: Helps CAC curb mistakenly letting suspended/revoked licensees reapply under an employee or relative's name. Dissuades some abusers from reapplying.

CCR: 1392.5 (b) allows for such additions

FAC:

What: Add toward bottom of application: Have you or any representative of your farm been found in violation of DM CCR by CAC? No ___ Yes ___ Please explain.

Why: Helps CAC gauge serial abuse, seriousness of infractions; gives CAC discretion. Self-policing: growers would prefer to pay more attention to the rules than have a stain. Dissuades some abusers from reapplying.

CCR: 1392.5 (b) allows for such additions

FAC:

What: Add to signature box:information provided is true and correct under penalty of perjury.

Why: the most common, simplest, best self-policing phrase to add. no burden on enforcement to do anything, but useful later if there is a problem. precedent--used consistently everywhere, from testifying in court to applying for absentee ballot. Gives CDFA/CAC more power when there is an abuse.

CCR: 1392.5 (b) allows

FAC:

What: 2nd certificate section on application: TBD. [Create a second form specifically for this? change how one applies for 2nd cert? what is specified in signature box will change as well.]

What: Add CP registration number to For Official Use Box

Why: A personalized registration number would be a helpful enforcement and traceability tool. would cover multiple issues for multiple agencies.

CCR:

FAC:

Community Supported Agriculture (CSA)

Leveraging a 3-tiered approach, the California model for CSA's has been designed to identify and define the existing forms of CSA marketing that occurs in California. The CSA subcommittee has also reviewed issues impacting the selling of potentially hazardous food and non-potentially hazardous foods and mechanisms to ameliorate potential food safety issues. Additionally, included in the recommendation is a mechanism to promote opportunities to market California agricultural products.

Issue(s)

1. Food Safety
2. Truth in labeling
3. Registration process

Existing Statute

None

Proposed Model and Statute

Note: Reference to GAPs is NOT to USDA GAPs or Harmonized GAPs or Global GAPs but is to some basic GAPs to be required by FDA for larger farms and by CDFA for smaller farms. These will not be legally required for several years. Registration process needs further debate, especially how to get county data to state.

I. CSA Model

1. Single-Farm CSA, or CSA (everything from one farm or a legal cooperative of farms) (must be sold prior to delivery)

A. If only whole produce, shell eggs, and non-PHF processed foods (final list TBD), then need only register with local Ag Commissioner (or state?), self-certify that following on-farm GAPs (TBD by FDA or state), and

- (1) Label box with name and address of farm
- (2) Box is single use, or if multi-use is cleaned after use or free from contamination (has a liner)
- (3) If purchase produce for processing, must have processor's license

(4) Labeling requirement for eggs and processed foods--farm name & contact information.
[Main ingredient in processed foods must be grown by the farm?]

Name and address of the farmer, phone #

(5) If a legal cooperative, consumers must be informed of farm of origin of each item in each box, either by including a list or electronically. Cooperative must keep traceability records for every box.

B. If include PHFs, then must do all of above plus follow code requirements for PHFs (storage/temperature/processing requirements)

[Do they need a health permit if they are just selling their own products, e.g. meat CSA? It would be good to be able to exempt single farm CSAs from this requirement. Wouldn't it be the same as selling at the farm? Dan Best says: As an "agricultural product" meat sales at a certified farmers' market are covered under the umbrella health permit of the CFM. Other food vendors such as bakeries and fish sales need their own retail sales health permit.]

2. **Multi-Farm CSA** (everything from a group of CA farms) **(must be sold prior to delivery)**

This is the most common form of CSA in California, where a farm buys in some products from other farms or a group of farms forms the CSA. There are conflicting opinions on how to limit this. Some have suggested limiting it to a fixed group of farms, so that you can't decide each week from which farm you are going to buy. Some have suggested limiting it to farms in a particular region, but then that might not satisfy the desire to provide fruit in vegetable regions and vice versa. Others have suggested limiting the size, i.e. the number of boxes, that would qualify for this category.

A. Must be led by a farm and box must have name and address of farm

B. Every box must contain [X% of] products from lead farm [needs discussion]

C. Other items in box must be purchased from other registered farmers (wholesalers can only be used for transport—needs further discussion, how would you enforce)

D. Consumers must be informed of farm of origin of each item in each box, either by including a list or electronically. Lead farm must keep traceability records.

E. Lead farm and all participating farms must register with their local ag commissioners (or state?) and self-certify that they are following on-farm GAPs

F. Lead farm must have produce dealer's license, unless the group of farms is a non-profit cooperative; any farm buying produce for processing must have a processor's license

G. If only whole produce, shell eggs, and non-PHF processed foods, then

1. Box is single use, or if multi-use is cleaned after use or free from contamination (has a liner)

H. If includes PHFs, then lead farm needs a handler's license from health and must have a facility for storage that can pass inspection. [But could we exempt them if lead farm is source of all PHFs?] Must follow code requirements for PHFs (storage/temperature/processing requirements)

II. California-Grown Box (must be sold prior to delivery)

Basically this category allows you to put in the box anything produced in California, as long as it is from an "approved/registered source." It is no longer a CSA. It can buy from wholesalers, but it cannot procure products from outside the state.

1. 100% of items in box are from California

2. Lead does not have to be a farm

3. Cannot use term "CSA"

4. Must register with State (or ag commissioner?)

5. All items in the box must be from registered farmers (who have registered with ag commissioner and self-certified GAPs) or other approved sources (e.g. processors), includes purchasing from wholesalers. We exclude only unregistered farmers, who would not be an "approved source." *[Do all raw materials have to be from California if a processed product? Shermain suggests only the "main" materials, Richard suggests "all". What if you are buying from a packing house/marketer, how do you identify the farm?]*

6. Lead needs marketing license and produce dealer's license

7. If include PHFs, need health permit as a handler and must have facility that passes inspection. All PHFs must be handled according to code. *[But what if lead is a farm and all PHFs are from that farm?]*

8. Consumer must be informed of the origin of each item in each box, either by including a list or electronically. Lead must keep traceability records for every box.

Examples of list:

- Spaghetti squash, Blue Dog Farm, Madera
- Carrots, Grimmway Farms, Bakersfield, from wholesaler SYSCO

- Raw milk, Organic Pastures Dairy, Fresno
- Brown rice, Lundberg Family Farms, Richvale, from wholesaler Albert's Organics

III. **Everyone else is a food retailer** and must follow the retail food code.

Examples:

- Include products from outside California
- Sell at time of delivery

Farm Stands

The existing models as defined in the Food and Agriculture Code and California Retail Food Code identify the activities, which are permitted at a Farm Stand. However, it was noted that limitations occurred with regard to off-farm sales. It was important to bring equity to the growers, and likewise increase enforcement where misrepresentation could occur to the consumer.

Issue(s)

1. Allow for growers to be able to sell product of their own production direct to a consumer without the limitations that AB 2168 imposed on growers.
2. Establish guidelines and an enforcement model to mitigate the misrepresentation which occurs at some roadside stands.

Existing Statute

Section 47002 et seq.

Proposed Model and Statute

Amend Section 47002 as follows:

47002. California farmers registered as Direct Marketing Producers in accordance with the provisions of section 47020 of this chapter may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market, as defined in Section 47004, a field retail stand, as defined in Section 47030, or a farm stand, as defined in Section 47050, or at any other site or location properly permitted by local laws and ordinances, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

(d) If a farmer selling produce pursuant to this section implements any exemption to size, standard pack, container, or labeling requirements as provided by this section, those sales may only be conducted as direct sales to the following:

(1) Consumers who are end users.

(2) Individuals, organizations, or entities that subsequently sell the produce directly to end users.

(3) Individuals, organizations, or entities that distribute the produce directly to end users at no cost to those end users.

(e) A farmer selling produce under paragraph (2) or (3) of subdivision (d) shall provide the individual, organization, or entity a memorandum that lists the identity of the producer, the address of the producer, and the identity and quantity of the produce purchased. A bill of sale or a container label including this information shall meet the requirements of this subdivision.

Roadside Vendors

- Registered under the Direct Marketing Model
- Any ag product sold on the side of the road must have a permit: 1) County Health Permit (County) 2) Produce handlers license (Marketing Division, State) 3) Proof of ownership (Inspection Services, State).
- Would need to be an approved (recognized) source.
- Identify an enforcement plan

Selling – *this subcommittee has been combined with Farm Stands because of the areas of overlap*

Issue(s)

1. Limitations imposed by AB 2168
2. Access to CA grown products in areas where CFMs are not successful or viable

Existing Statute

Proposed Model and Statute

See Farm Stands

APPENDIX A – REFERENCED DOCUMENTS

The documents identified below are source documents to support proposals listed in the Requirements section.

Number	Document	Control Number	Comment
A - 1	Approved Source/BMP Designation	Version 0.1 12/8/2011	Draft example from Napa County, provided 3.19.2012
B - 1	CPC Application	51-049M Rev 08/01	Incorporates changes from subcommittee

Napa County Best Management Practices Agreement for a Garden to Become an “Approved Source”

Attachment A-1

Locally grown, fresh fruit and vegetables benefit the consumer, the environment and the community as a whole. Most fruits and vegetables consumed in the United States are wholesome and free of pathogens (microbes that cause foodborne illness). Many fruits and vegetables have natural barriers, such as skins and rinds that protect the internal edible parts from contamination. However, contamination of fruits and vegetables can occur any time from planting through food preparation. Most pathogens can be killed by cooking, but they can be difficult to remove by washing when foods are eaten raw. Prevention of microbial contamination is the most effective way to maximize the safety of fruits and vegetables. The best approach to maintaining the wholesome nature of your culinary garden's harvest is to be aware of potential risks and to establish and implement commonsense practices that will minimize contamination.

Program Criteria

- Operator shall ensure that water used for irrigation is from a clean, potable source. If a question arises regarding the quality of water to be used, it must be tested to ensure it is free of pathogens. Surface water is much more susceptible to contamination. Gray water is not an approved water source for culinary gardens.
- Operator shall identify the effect of rain fall and resultant drainage pathways to minimize runoff through the garden that may contaminate the site.
- Operator shall ensure that all produce is washed with a pathogen-free source before being served, as required by the California Retail Food Code.
- Operator shall ensure that produce and harvest equipment are stored in a sanitary location, protected from vectors, such as rodents and insects, that can spread disease.
- Gardens shall not be planted over or within 10 feet of a septic system or leach field.
- All organic matter will be fully composted, and raw manure will not be used. Composted manure will only be used if purchased from a commercial outlet.
- It is desirable that any plants used in culinary gardens be purchased in Napa County to ensure they are inspected by the Napa County Agricultural Commissioner and free of pests that present a hazard to agriculture in the County.
- Operator shall keep animals away from garden site to avoid contamination to the maximum extent practical.
- Operator shall minimize (but need not eliminate) vegetation at the edges of small fruit and vegetable patches to help avoid nesting or hiding places for rats, mice etc.
- Operator shall minimize the presence of vector attractants such as piles of decaying fruit and vegetables.
- Operator shall contact and gain approval from the Napa County Agricultural Commissioner before utilizing any pesticide on the culinary garden, and Operator shall not use the term “organic” in reference to the produce from the culinary garden unless the products have been registered as organic by the Napa County Agricultural Commissioner.
- Operator shall establish worker awareness of proper hand washing techniques with special attention to cleaning around the fingernails and provide sanitary hand wash and toilet facilities. Workers shall be taught that gloves can contaminate from one place to another such as from the compost pile to harvested produce. Workers with symptoms of illnesses that can be spread by food will not be permitted to handle produce, equipment or food contact surfaces.

 Field is required.  Field format is invalid. Hover over icon to see formatting information.

*Operator Name:

*Garden/Business Name(DBA):

*Contact Phone Number:

Format: ###-###-####

*E-Mail Address:

*Garden Address:

*Garden City:

*Garden Zip:

Format: ##### or #####-####

*Garden parcel Number:

Format: ###-###-###-###

Web Address:

*Mailing Address:

*Mailing City:

*Mailing Zip:

Format: ##### or #####-####

*Produce to be grown:

*Water Source:

*Where is produce to be sold or used:

Attach a site plan, identifying the location of any septic systems within 100 feet and other potential sources of contamination.

I hereby acknowledge, by submitting this form that I have read and understand the program criteria above and agree to implement good agricultural practices in my culinary garden. I agree that the information entered above is accurate. Submitting this form shall constitute the execution of this document in exactly the same manner as if you had signed, by hand, a paper version of this agreement.

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STATE OF CALIFORNIA
 DEPARTMENT OF FOOD AND AGRICULTURE
 CERTIFIED FARMERS' MARKET INSPECTION PROGRAM
 51-049M (REV 08/01)

CERTIFIED PRODUCER'S CERTIFICATE

ISSUING COUNTY: _____

CERTIFIED PRODUCER

NAME:	
DBA:	
ADDRESS:	
CITY AND ZIP:	
PHONE: (RES.)	PHONE: (BUS.)

FOR OFFICIAL USE ONLY

CERTIFICATE NUMBER:
COUNTY FEE:
ISSUING DATE:
EXPIRATION DATE:
AMENDED DATE:
COPIES ISSUED:

Only those products listed below, and grown at the following production site(s) by the certified producer may be sold at a certified farmers' market.

PRODUCTION SITE(S) (L)-LEASED or (O)-OWNED. ACREAGE. ADDRESS/SPECIFIC SITE LOCATION (Attach growing ground map(s), indicate successive planting areas, approximate planting schedule)			
1.	2.		
3.	4.		
5.	6.		
STORAGE LOCATION (A)	MONTHS IN STORAGE	STORAGE LOCATION (B)	MONTHS IN STORAGE

SITE #	COMMODITY	VARIETY/TYPE	AMOUNT/UNIT GROWN	HARVEST SEASON	EST. PRODUCTION (LBS., CTN.)
			(list # of trees (fruits, nuts), # of vines (vines), # rows x length of row (row crops). GH for greenhouse)		

AUTHORIZED COUNTY(IES) - transporting products into another county for the purpose of selling at a certified farmers' market within that county is permitted only in the authorized counties listed on this certificate. List each market name and county.

OTHER CERTIFICATES - List other certificates held by applicant. Include county name(s) and certificate number(s).

Name(s) of the Producer(s) that the Certificate Holder May Sell FOR:	Certificate Number	Date Declared	Name(s) of the Producer(s) Authorized to SELL the Certificate Holder's Product:	Certificate Number	Date Declared

Have you or any representative of your farm had a Certified Producer's Certificate suspended or revoked? Please explain.

--

I have reviewed this certificate and certify that the information provided is true and correct under penalty of perjury.
 I further certify that persons representing me are family members, or employees as defined by the regulations cited herein, or a certified producer I have authorized to sell on my behalf. I understand that violations of these regulations may subject me to criminal and/or civil penalties, including fines up to \$1,000.00 per violation, and/or suspension or revocation of this Certificate and/or my privilege to participate in certified farmers' markets. This certificate is valid when embossed by the issuing county.

This certificate is issued under authority of Title 3, Chapter 3, Article 6.5 of the California Code of Regulations. It authorizes the certified producer to sell produce directly to consumers at a certified farmers' market.

Issuing Agricultural Commissioner

BY: _____

Certified Producer's Signature

****THIS CERTIFICATE MUST BE CONSPICUOUSLY POSTED AT POINTS OF SALE****