

**DEPARTMENT OF FOOD AND AGRICULTURE  
PROPOSED CHANGES IN THE REGULATIONS**

Title 3. Food and Agriculture  
Division 3. Economics  
Chapter 1. Fruit and Vegetable Standardization  
Subchapter 4. Fresh Fruits, Nuts, and Vegetables  
Article. 6.5. Direct Marketing

**INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture (the Department) proposes to amend the California Code of Regulations (3 CCR), Title 3, Division 3, sections 1392, 1392.1, 1392.2, 1392.4, 1392.5, 1392.6, 1392.8, 1392.8.1, 1392.9, 1392.9.1, and 1392.9.2; adopt sections 1392.10, 1392.10.1, and 1392.10.2; and repeal sections 1392.4.1, 1392.7, 1392.10, and 1392.11.

**PROBLEM STATEMENT**

The Department's Certified Farmers' Market (CFM) Program provides opportunities for California farmers to market their agricultural products directly to the public with exemptions for minimum size, labeling, standard pack, and container requirements. These exemptions allow farmers to sell their products directly to the public without the added expense of commercial preparation. There are approximately 2,700 certified producers and 700 CFMs in California.

In the fall of 2010, news reports highlighted instances of cheating at CFMs, including vendors selling fraudulently labeled products and reselling fruits and vegetables directly from wholesale markets. In response to these media reports, the Department held four listening sessions designed to solicit input for improving the CFM Program. Several common themes were echoed throughout the sessions – specifically that the Department, County Agricultural Commissioners (CAC), and market operators and managers should enhance enforcement, communication, and education.

Upon conclusion of the listening sessions, the Department formed a CFM Technical Planning Committee for the purpose of reviewing various functions of the CFM Program (e.g., registration, enforcement, and administration) and evaluating current processes and procedures. The CFM Technical Planning Committee consisted of producers, market managers, CACs, and industry affiliates. The CFM Technical Planning Committee spent a significant amount of time and effort reviewing mechanisms to prevent possible abuse at CFMs.

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 expressed the need for uniform funding mechanisms at both the state and local level. These recommendations were reviewed and approved by the Department's Certified Farmers' Market Advisory Committee (CFMAC) and by the County

Agricultural Commissioners and Sealers Association (CACASA).

Many of the recommendations of the CFM Technical Planning Committee were included in Assembly Bill (AB) 1871 (Dickinson) (Chapter 579, Statutes of 2014). AB 1871 modified several sections of the Food and Agricultural Code (FAC) related to Direct Marketing/CFMs. Specifically, this bill expanded responsibilities and requirements for market operators, producers, CACs, and the Department to prevent incidents of fraud and deception in the marketplace.

AB 2324 (Eggman) (Chapter 384, Statutes of 2016) added raw sheared wool to the definition of an agricultural product, which allows it to be sold within the defined marketing area where only agricultural products may be sold within a CFM.

AB 768 (Aguiar-Curry) (Chapter 83, Statutes of 2017) repealed section 47026 of the FAC, which indefinitely extended the operation of the provision authorizing the secretary of the Department and CACs to levy administrative civil penalties in lieu of prosecution, for violations of this chapter. This allows the Department and CACs the authority to enforce violations regarding Direct Marketing indefinitely.

AB 3260 (Committee on Agriculture) (Chapter 223, Statutes of 2018) amended section 47025 of the FAC, to allow the secretary or a CAC to impose administrative civil penalties, suspensions of certification, or both, on a person who violates this chapter, or any regulation implemented pursuant to this chapter. Previously, CACs were only authorized to impose administrative civil penalties and/or suspensions if that respective CAC either issued the certificate or issued the violation to the violator.

These statutory changes bring the need for regulatory action so the CFM Program can provide market operators and producers with relevant direction while conducting effective enforcement with CACs.

## **PURPOSE**

This regulatory action is intended to interpret and make specific the statutory changes incorporated under AB 1871. It is intended to promote consumer confidence in CFMs, thereby encouraging the continued growth of the direct marketing sector. Unless concerns related to the integrity of CFMs are mitigated, a lack of consumer confidence could hamper this growing industry. Promulgating regulations which align, interpret, and make the statutory changes related to CFMs and direct marketing specific is determined to be the most effective mechanism to protect and promote the direct marketing industry and ensure that selling activities at CFMs are free of fraud, deception, and mislabeling.

## **BENEFITS**

Addressing changes in statute through regulatory action will assist in clarifying and making specific the responsibilities and requirements of market operators and managers, producers, CACs, and the Department. This will ensure that CACs and the Department conduct enforcement and investigate claims of fraudulent activities at CFMs in a

collaborative and seamless manner. The benefits of this regulatory action include increased consumer confidence, the promotion of a fair and equitable marketplace for certified producers and market operators, and greater collaboration among state and county partners.

**SPECIFIC PURPOSE AND RATIONALE FOR EACH SECTION, PER GOVERNMENT CODE 11346.2(b)(1):**

**1392. Intent.**

**Section 1392** is amended to specify that it is the intent of the Direct Marketing Article to facilitate the sale of agricultural products from producers and certified producers within the state directly to “the public.” Previously, statutes governed the sale of agricultural products directly to “consumers”, and now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003, and to ensure selling activities at CFMs are conducted honestly and fairly. Additionally, a technical error was corrected, which changed the word “Agriculture” to “Agricultural;” this change is necessary because the correct naming convention is “Food and Agricultural Code”.

**Section 1392’s Note Section** is amended to include additional authority and references cited, and to remove authority and references cited that are longer relevant to this section. Additional authority cited includes FAC sections 47001, 47002, 47003, 47004, 47005, 47005.1, 47005.2, 47005.3, and 47020. Removed authority cited includes FAC sections 58101, 58101.5, 58102, 58103, and 58104. Additional references cited include FAC 47000, 47000.5, and 47021. Removed references cited include FAC 58101, 58101.5, 58102, 58103, and 58104. These changes are necessary to ensure only pertinent statutes are referenced, and statutes that were incorrectly relied upon are deleted.

**1392.1. Direct Marketing Authorized.**

**Subsection 1392.1(a)** is amended to correct a technical error by removing the term “Group” and replace it with the term “Chapter” because the correct naming convention is “Chapter”, not “Group.” In addition, the term “consumers” is replaced with “the public.” Previously, statutes governed the sale of agricultural products directly to “consumers,” and now statutes govern the sale of agricultural products sold directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003.

**Subsections 1392.1(b) and 1392.1(c)** are repealed because they are duplicative and addressed in subsection 1392.4(a) where they are better aligned. These changes are necessary to ensure there is no duplicative text in the regulations.

**Previous subsections 1392.1(d) through 1392.1(h) are renumbered to 1392.1(b) through 1392.1(f). Additional changes are detailed below.**

**Newly renumbered subsection 1392.1(b)** is amended to change the term “consumers” to “the public.” Previously, statutes governed the sale of agricultural products directly to “consumers,” and now statutes govern the sale of agricultural products sold directly to

“the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003.

**Newly renumbered subsection 1392.1(b)(1)** is amended to clarify that fresh fruits, nuts, and vegetables may be sold at a CFM “vendor” stand, by either a certified producer, or his/her authorized representative. The addition of this language will ensure consistent terminology is used in the FAC and the Direct Marketing regulations. This change is necessary to align with FAC section 47004(c)(1).

**Newly renumbered subsections 1392.1(b)(2)** is adopted to allow a certified producer to sell fresh fruits, nuts, and vegetables directly to the public at an outlet or location, since AB 1871 expanded the definition of where direct marketing may take place. This change is necessary to align with FAC section 47002.

**Newly renumbered subsections 1392.1(b)(3)** is amended due to renumbering in this rulemaking and for a grammatical change; the adoption of 1392.1(b)(2) required the previous 1392.1(b)(2) to become 1392.1(b)(3). This change is necessary to ensure the Direct Marketing regulations are organized in an easily readable manner.

**Newly renumbered subsection 1392.1(c)** is amended to change the code section referenced. The previously referenced section 1392.4(k) was renumbered to 1392.4(i) in this regulatory action. This change is necessary to ensure the correct code section is referenced in the regulations.

**Newly renumbered subsection 1392.1(d)** is amended to change the term “beginning” to “commencing,” to add the term “consumer package labeling,” which was previously incorporated in subsection 1392.1(g), and to properly cite the reference to 3 CCR section 1359. These changes were made to provide clarity to the regulated industry regarding the requirements of selling fresh fruits, nuts, and vegetables directly to the public.

**Newly renumbered subsection 1392.1(e)** is amended to clarify that all agricultural products, as defined in subsection 1392.4(j), sold or offered for sale at a certified farmers’ market, a field retail stand, a farm stand located at or near the point of production, or an outlet or location, must comply with all applicable laws and regulations. This change is necessary to ensure that the regulated industry is aware that even when selling at the locations listed above, they still must comply with the applicable laws and regulations related to that product.

**Section 1392.1’s Note Section** is amended to include additional authority and references cited, and to add a comma. Additional authority cited includes FAC section 47002. Additional references cited include FAC section 47000. These changes are necessary to ensure all pertinent statutes are referenced.

## **1392.2. Definitions.**

**Subsection 1392.2(a)** is amended to replace the term “consumers” with “the public.” Previously, statutes governed the sale of agricultural products directly to consumers, and

now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003.

**Subsection 1392.2(b)** is amended to add the requirements of timeframes to the definition of a Certified Farmers’ Market Certificate; the revised definition includes months of operation, day(s) of the week, and hours of operation. Existing regulations under subsection 1392.8.1 mandate that CFM operators shall provide specified information to the Department, including market days and hours of operation. However, some CFM operators have reoccurring issues of being open during business hours and days that are not listed on their market certificate, which creates inequity amongst CFM operators. This regulatory change is necessary to provide clarity and specificity to the definition of a CFM Certificate, to ensure that CFM operators adhere to their posted hours and days of operation. Consequently, it is anticipated that this regulatory change will enhance equity in the marketplace. The term “certified producer” is added to the language which states products sold in the clearly defined marketing area where only agricultural products may be sold must be produced by the producer or the “certified producer”, in the case of certifiable agricultural products, to align this section with subsection 1392.2(a). The word “consumers” is again replaced with “the public.” Previously, statutes governed the sale of agricultural products directly to consumers, and now statutes govern the sale of agricultural products directly to “the public”. These changes are necessary to align with FAC sections 47001, 47002, and 47003. Additionally, language is added to make the CFM certificate valid only for the location, months of operation, day(s) of the week, and hours of operation specified on the certificate, and a comma was added. These changes are necessary to ensure that CFM operators only operate a market during their posted location, day, and time, as listed on the CFM Certificate.

**Subsection 1392.2(c)** is amended for a technical change; a period was changed to a colon because of the adoption of subsections 1392.2(c)(1), 1392.2(c)(2) and 1392.2(c)(3).

**Subsection 1392.2(c)(1), 1392.2(c)(2), and 1392.2(c)(3)** are adopted to mandate that the producer or certified producer must have been in control of the land prior to planting of annual or biannual crops; prior to or within 30 days after preparing perennial field crops; or prior to the bloom of trees and vine crops. This will ensure that producers or certified producers are predominately responsible for the decisions and actions encompassing the various phases of producing an agricultural product, thus ensuring that individuals are not circumventing the intent of direct marketing statutes and regulations, which encourages the sale of agricultural products grown by the producer. This change is necessary to align with FAC section 47000.5(b), concerning the practice of the agricultural arts; and section 1392.9.2 regarding lease requirements.

**Subsection 1392.2(d)** is amended to clarify the definition of a producer, to align with FAC section 47000.5(c), which establishes the definition of a producer. This duplication is necessary to provide the regulated industry and enforcing officers with a clear and easily understandable definition of a “producer,” and to comply with the clarity standard.

**Subsection 1392.2(e)** is amended to change the word “consumers” to “the public.”

Previously, statutes governed the sale of agricultural products directly to consumers, and now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003. Additionally, the definition of a certified producer is revised to add the phrase “outlet or location” to places where direct marketing may take place, since AB 1871 expanded the definition of where direct marketing may take place. This change is necessary to align with FAC section 47002.

**New subsection 1392.2(f)** is adopted to provide a definition for an authorized representative of a certified producer. Previously only a certified producer; his/her immediate family; or his/her employee could sell certifiable agricultural products for that producer. FAC section 47004(b) now states that only a certified producer or the lawful authorized representative of the certified producer may sell agricultural products within the area designated as the CFM. This change is necessary to align with statute and to provide the regulated industry with a clear definition of an authorized representative of a certified producer.

**Previous subsections 1392.2(f) through 1392.2(h) are renumbered to 1392.2(g) through 1392.2(i). Additional changes are detailed below.**

**Newly renumbered subsection 1392.2(h)** is amended to change the definition of “Consumer” to “The Public.” Previously, statutes governed the sale of agricultural products directly to consumers, and now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003. The phrase “outlet or location” is added to places where direct marketing may take place, to align with statute, which also required the restructuring of the sentence. The previously referenced subsection 1392.4(k) is renumbered to 1392.4(i) in this regulatory action. This change is necessary to ensure the correct code section is referenced.

**Newly renumbered subsection 1392.2(i)(1), 1392.2(i)(2), and 1392.2(i)(3)** are amended to replace the term “consumer” with “the public”; previously, statutes governed the sale of agricultural products directly to “consumers,” and now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003. The sentence was restructured for clarity and because of the adoption of subsection 1392.2(i)(4).

**New subsection 1392.2(i)(4)** is adopted to add the phrase “outlet or location” to where direct marketing may take place, to correlate with AB 1871. This adoption is necessary to align with FAC section 47002. This would allow only a certified producer to sell their agricultural products directly to the public or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

**Subsections 1392.2(i) and 1392.2(j)** are repealed, as the definition of an authorized representative, in newly adopted subsection 1392.2(f), makes definitions for immediate family and employee under previous subsections 1392.2(i) and 1392.2(j) unnecessary.

The repeal of these subsections, and the adoption of subsection 1392.2(f), will allow certified producers to appoint authorized representatives to sell agricultural products at a CFM on their behalf. Previously, in an effort to limit fraudulent activity at CFMs, only immediate family members or employees were authorized to sell agricultural products at a CFM on behalf of the certified producer. This change is necessary to align with FAC section 47004, and to provide flexibility for certified producers to allow family members, volunteers, or other authorized individuals to sell their agricultural products within the defined marketing area where only agricultural products may be sold, on behalf of the certified producer.

**Newly renumbered subsection 1392.2(j)** is amended to reflect the statutory changes in the definition of an agricultural product for the purposes of direct marketing, to correlate with FAC section 47000.5. This duplication is necessary to provide the regulated industry and enforcing officers with a clear and easily understandable definition of a “Agricultural Products,” and to comply with the clarity standard.

**New subsections 1392.2(k) and 1392.2(k)(1)** are adopted to provide the regulated industry with a clear definition of what constitutes a nonagricultural product, to correlate with FAC section 47000.5(a)(2). This duplication is necessary to provide the regulated industry and enforcing officers with a clear and easily understandable definition of a “Nonagricultural Products,” and to comply with the clarity standard.

**Subsection 1392.2(l)** is amended to include herbs, cultivated mushrooms, and unprocessed grains to the definition of a certifiable agricultural product to align with FAC section 47004(e). Additionally, the word “cut” was added in front of “flowers” to clarify that only “cut flowers” are a certifiable agricultural product. Herbs and cultivated mushrooms have been considered certified agricultural products; by listing these commodities specifically, it becomes abundantly clear that cultivated mushrooms and herbs are certifiable agricultural products. This is necessary to provide clarity to the regulated industry on which products are certifiable.

**Subsection 1392.2(m)** is amended to include dairy, pollen, unprocessed beeswax, propolis, royal jelly, raw sheared wool, livestock meats, poultry meats, and rabbit meats to the definition of a noncertifiable agricultural product to align with FAC section 47004(e), and the sentence was restructured for ease of interpretation. This duplication is necessary to provide the regulated industry and enforcing officers with a clear and easily understandable definition of a “Noncertifiable Agricultural Products,” and to comply with the clarity standard. Additionally, a sentence was added to clarify that noncertifiable agricultural products shall meet the definition provided in subsection 1392.2(j) to require noncertifiable agricultural products to meet the definition of an agricultural product.

**New subsection 1392.2(o)** is adopted to define “Market Operator”, as “one or more certified producers, a nonprofit organization, or a local government agency who operates a certified farmers’ market. The market operator is the financially responsible party and shall ensure the market’s compliance with all applicable statutes and regulations, and applicable enforcement actions would be brought against the market operator.

If the market operator is more than one certified producer, a nonprofit organization, or a local government agency, the market operator shall designate an authorized representative and an agent for service of process, which shall be listed on the certified farmers' market certificate." This adoption is necessary to provide the regulated industry and enforcing officers with a clear definition of "Market Operator," and ensure market operators are aware they are the financially responsible party for operating a CFM, even if they designate an authorized representative to conduct business on their behalf. This is necessary because the Direct Marketing regulations refer to a Market Operator throughout the chapter, but there was previously no definition of what constitutes a Market Operator.

**New subsection 1392.2(p)** is adopted to define "Authorized Representative of the Market Operator", as "a person under the authority and management of the market operator who is designated to conduct business on the operator's behalf, which includes, but is not limited to: the market manager, the agent for service of process of the operator, a member of the operator's board of directors, an employee of the operator." This adoption is necessary to provide the regulated industry and enforcing officers a clear definition of "Authorized Representative of the Market Operator".

**Previous subsections 1392.2(o) through 1392.2(z) are renumbered to 1392.2(q) through 1392.2(x). Previous subsections 1392.2(v) through 1392.2(y) are renumbered to be 1392.2(w)(1) through 1392.2(w)(4), and previous subsection 1392.2(w)(1) is renumbered to 1392.2(w)(2)(i). Additional changes are detailed below.**

**Newly renumbered subsection 1392.2(q)** is amended to clarify the definition of a "Market Manager," making it clear that a market operator empowers the market manager to implement the rules, regulations, policies, and directives of the governing body of a CFM. This coincides with the newly adopted definition of a Market Operator in subsection 1392.2(o) above. This change is necessary to provide the regulated industry and enforcing officers with a clear definition of a "Market Manager."

**Newly renumbered subsection 1392.2(s)** is amended to include the term secretary to ensure the regulated industry is aware that the secretary or a CAC may initiate a hearing regarding alleged violations of this article. This will inform the regulated industry that either the secretary or a CAC may initiate a notice regarding an alleged violation. This change is necessary to align with changes made throughout this regulatory action.

**Newly renumbered subsection 1392.2(t)** is amended to change the definition from "Agricultural Production and Practice of the Agricultural Arts" to "Practice of the Agricultural Arts" and to reflect the statutory changes to the definition of "Practice of the Agricultural Arts," as defined in FAC section 47000.5. The term "Agricultural Production" is no longer needed in the definition, as the term "Practice of the Agricultural Arts" is the term used in statute. This duplication is necessary to provide the regulated industry and enforcing officers with a clear and easily understandable definition of a "Practice of the Agricultural Arts" and to comply with the clarity standard.



**New subsections 1392.2(t)(1), 1392.2(t)(1)(i), 1392.2(t)(1)(ii), and 1392.2(t)(1)(iii)** are adopted to provide specificity for the practice of agricultural arts for nursery stock. The Department has experienced ongoing questions regarding what constitutes the practice of the agricultural arts for nursery stock (i.e., does the certified producer have to own the nursery stock for a specified amount of time, does the certified producer have to take any measures to raise the nursery stock, etc.). This is necessary to provide guidance to the regulated industry and enforcing officers regarding what constitutes the practice of the agricultural arts for nursery stock, (e.g., planting or transplanting of seeds into containers in a planting medium, etc.

**Newly renumbered subsection 1392.2(u)** is amended to specify that it is the intent of the Direct Marketing Article to facilitate the sale of agricultural products from producers and certified producers, within the state, directly to “the public” Previously, statutes governed the sale of agricultural products directly to “consumers” and now statutes govern the sale of agricultural products directly to “the public”. This change is necessary to align with FAC sections 47001, 47002, and 47003.

**Newly renumbered subsection 1392.2(w)(2)(i)** is amended to further clarify the definition of spices. The phrase “granulated or powdered” is moved within the definition to ensure that processed products are not confused or inappropriately termed as a spice. This is necessary to assist the regulated industry and enforcing officers by providing an easily understandable definition of what constitutes a spice.

**Newly renumbered subsection 1392.2(x)** is amended to restructure the sentence for ease of interpretation. This change is necessary to ensure consistent language is used throughout this regulatory action.

**New subsection 1392.2(y)** is adopted to define “outlet or location”, as an approved location, that is regulated pursuant to this article, that is operated by a certified producer, in which only the certified producer themselves can directly market their agricultural products to the public. This definition will clarify FAC section 47002, which references the phrase “outlet or location.” This is necessary to provide the regulated industry and enforcing officers with a clear definition of “Outlet or Location,”

**New subsection 1392.2(z)** is adopted to define an “Enforcing Officer”, as the secretary; or any county agricultural commissioner, their deputies, and inspectors, who under the supervision and control of the secretary, are authorized under this division to carry out the enforcement of this chapter. This will provide the regulated industry with a clear definition of “enforcing officer.” This adoption is necessary because the term “enforcing officer” is used throughout the FAC and the Direct Marketing regulations.

**Section 1392.2 Note Section** is amended to include an additional reference cited. The additional reference cited is FAC 47000.5. This change is necessary to ensure all authority is applicable is cited.

#### **1392.4. Conditions of Direct Marketing.**

**Subsection 1392.4(a)** is amended to renumber the code section referenced. The

previously referenced subsection 1392.4(f) is renumbered to 1392.4(e), due to changes in this regulatory action. Additionally, the phrase “outlet or location” was added to places where direct marketing may take place, and “at or near the point of production” was added after farm stand to ensure consistency throughout this rulemaking. The word “consumers” is replaced with “the public.” Language is added to stipulate that producers selling certifiable agricultural products at a CFM or an outlet or location must obtain a certified producer certificate from the county agricultural commissioner where the commodities are produced. Language related to immediate family or employee is repealed as the definition of an authorized representative, in newly added subsection 1392.2(f), makes definitions for immediate family and employee under previous subsections 1392.2(i) and 1392.2(j) unnecessary. These changes are necessary to align with FAC sections 47001, 47002, and 47003, and to ensure the regulated industry is aware of the requirements for selling certifiable agricultural products. Previously, statutes governed the sale of agricultural products directly to “consumers,” and now statutes govern the sale of agricultural products directly to “the public”.

**Subsection 1392.4(a)(1)** is adopted to clarify FAC section 47004(b), which allows only the certified producer or the lawful authorized representative of the certified producer to sell agricultural products within the defined marketing area where only agricultural products may be sold within a CFM. This change is necessary to ensure certified producers understand that his/her authorized representative can only sell his/her certifiable agricultural products on his/her behalf at a CFM.

**Subsection 1392.4(a)(2)** is adopted to clarify that the certified producer is responsible for the actions of his/her authorized representative at a CFM. This will ensure the certified producer is aware that any subsequent violations and associated penalties and/or suspensions that stem from the actions of the certified producers authorized representative’s actions will be levied against the certified producer. This change is necessary to make it abundantly clear that the certified producer’s authorized representative is acting on behalf of the certified producer, and that the certified producer is responsible for the actions of their authorized representatives.

**Subsection 1392.4(a)(3)** is adopted to clarify that all certifiable agricultural products that are sold at a CFM, or an outlet or location, must be produced by the certified producer. This language prevents individuals from obtaining agricultural products that they did not produce and fraudulently reselling the products as their own. This change is necessary to ensure equity in the marketplace, by stipulating that all certifiable agricultural products sold at a CFM, or an outlet or location, must be produced by the certified producer.

**Subsection 1392.4(a)(4)** is adopted to clarify that only certifiable agricultural products produced by the certified producer, and listed on their certificate, may be sold at a CFM or an outlet or location. This will assist in creating equity in the marketplace, and is necessary to ensure unfair competition between certified producers and individuals that buy and resell agricultural products does not occur.

**Subsection 1392.4(a)(5)** is adopted to ensure that when noncertifiable agricultural

products are sold in the defined marketing area where only agricultural products may be sold, the products must be produced by the producer, aside from exceptions listed in subsection 1392.2(w). This language prevents persons from buying and reselling noncertified agricultural products within a CFM. This change is necessary to ensure equity in the marketplace, by not allowing unfair competition between certified producers and individuals that buy and resell noncertifiable agricultural products.

**Subsection 1392.4(a)(6)** is adopted to clarify that the sale of nonagricultural products shall not be permitted in the defined marketing area where only agricultural products may be sold at a CFM. This will ensure that only agricultural products are sold in this area, by producers and certified producers. This change is necessary to clarify FAC section 47004(e).

**Subsection 1392.4(b)** is repealed because the Department has determined that this subsection is duplicative and simply lists various California Health and Safety Code provisions without providing any clarity or specificity regarding their application. This is necessary because any sale of agricultural products would still be governed by the requirements of these respective Health and Safety Code statutes, regardless of whether they are referenced in this subsection.

**New subsection 1392.4(b)** is adopted to prevent authorized representatives from acting on the behalf of more than one certified producer per CFM, unless they are representing a certified producer who is authorized to sell for another certified producer in accordance with subsection 1392.4(e). This is necessary to limit buying and selling activities between producers at CFMs and to ensure the intent of direct marketing is upheld.

**Subsection 1392.4(c)** is repealed because it was incorporated into subsection 1392.4(a)(6), where it is better aligned. This is necessary to ensure the Direct Marketing regulations are well organized and like items are found in the same section.

**Newly renumbered subsection 1392.4(c)** is amended to allow CACs the flexibility to provide certified producers with an embossed photocopy certificate or a photocopy certificate with the county seal affixed to it. This amendment will provide counties with the option to either emboss a certified producer certificate or affix their county seal to the photocopy certificate. This change was requested by CACASA to provide flexibility for CACs based on the needs of their respective county. Additionally, the requirement of having the valid certified producer certificate conspicuously posted at the point of sale is deleted because it is incorporated into subsection 1392.4(k)(1) where it better aligned.

**Subsections 1392.4(d) through 1392.4(f) are renumbered to 1392.4(c) through 1392.4(e). Additional changes are detailed below.**

**Newly renumbered subsection 1392.4(d)** is amended to clarify that when products are sold by weight, the scale used must be approved by the “California” Department of Food and Agriculture. This language is necessary to clarify that the scales used at CFMs must be approved by the Department.

**Newly renumbered subsection 1392.4(e)** is amended to delete the terms “immediate family member or employee” because language related to immediate family or employee is repealed under previous subsections 1392.2(i) and 1392.2(j). Language that stipulated a market operator must specify in their market rules if a certified producer is authorized to sell on behalf of another certified producer is deleted. Previously, if a market operator chose to allow a certified producer to sell at a CFM for one or two other certified producers, the Department required market operators to specify in their market rules the provisions of this subsection. Rather than requiring the provisions governing second certificates to be duplicated in both CFM rules and the 3 CCR, the Department has determined that it would be less burdensome to the regulated industry to have the requirements identified in this subsection, without a mandate that market operators must adopt rules. This change is necessary to provide clarity to market operators regarding certified producers selling on behalf of other certified producers. A comma was added for ease of reading.

**Newly renumbered subsection 1392.4(e)(2)** is amended to stipulate that a certified producer selling on behalf of another certified producer must post both certified producer’s valid certificate and sign or banner at the point of sale. This will align with FAC section 47004(c), and newly renumbered subsection 1392.4(c). This change is necessary to ensure when a certified producer is selling on behalf of another certified producer, they are aware of signage requirements.

**Newly renumbered subsection 1392.4(e)(3)** is amended to move an apostrophe in the word farmers to correct a grammatical error. This is necessary to ensure consistent terminology and grammar is used throughout the Direct Marketing regulations.

**New subsection 1392.4(e)(4)** is amended to add the term “certified agricultural” to clarify that when a certified producer is selling on behalf of another certified producer, they may only sell his/her certifiable agricultural products. This change is necessary to provide clarity to the regulated industry on what they may sell for another certified producer.

**New subsection 1392.4(e)(6)** is adopted to clarify that when a certified producer is selling for another certified producer, they cannot sell the same commodity, product, or variety/type, at the same CFM, on the same day. This change is necessary to prevent fraudulent reselling activities at CFMs.

**Subsection 1392.4(e)(6) through 1392.4(e)(10) are renumbered to 1392.4(e)(7) through 1392.4(e)(11). Additional changes are detailed below.**

**Newly renumbered subsection 1392.4(e)(8)** is amended to stipulate that buying and reselling of any agricultural product between certified producers is prohibited. If a certified producer is selling on behalf of another certified producer, and if any payment is made for this service, it shall be a fixed amount. Additionally, language was adopted to require certified producers selling for another certified producer to have a signed agreement, in place prior to the commencement of sales, which shall include reimbursable expenses covered by the payment. The intent of allowing certified producers to sell on behalf of a

maximum of two other certified producers is to assist producers in selling their certified agricultural products. This change is necessary to ensure producers are aware that buying and reselling agricultural products at a CFM is prohibited, and to ensure enforcing officers can consistently enforce this issue at CFMs.

**Newly renumbered subsection 1392.4(e)(10)** is amended to clarify that when a certified producer is selling on behalf of another certified producer, they may only sell his/her certifiable agricultural products. This will ensure certified producers are aware they cannot sell any processed products or noncertifiable agricultural products on behalf of another certified producer. This change is necessary to provide clarity to the regulated industry.

**Newly renumbered subsections 1392.4(e)(10)(i), 1392.4(e)(10)(ii), and 1392.4(e)(10)(iii)** are amended to align recordkeeping requirements for a certified producer who sells for another certified producer at a CFM. Specifically, for the date of transfer to the seller and date of sale of the products, each separate product and amount is required to be recorded as listed on the valid certified producer's certificate, rather than according to variety as currently written. It is further amended to require the certified producer to maintain records of the names of both certified producers involved "as listed on the valid certified producer's certificate". These changes are intended to ensure consistency in recordkeeping, and are necessary to provide consistency for enforcing officers to enable the review of records between certified producers. These changes are necessary to limit fraud and deception in the marketplace, thus enhancing consumer confidence.

**Newly renumbered subsection 1392.4(e)(11)** is amended to clarify that a representative of the secretary, rather than a representative of the Department, may request a certified producer's records, as authorized by this section. This change is necessary to ensure consistent naming conventions are used throughout this article, and to aid in enforcement efforts.

**Subsection 1392.4(g)** is repealed. The requirements and terms for certified producer certificates are detailed in subsection 1392.5, making this subsection unnecessary.

**Subsections 1392.4(h) through 1392.4(l) are renumbered to 1392.4(f) through 1392.4(j), and previous subsection 1392.4(k)(i) through 1392.4(k)(iv) are renumbered to 1392.4(i)(1) through 1392.4(i)(4). Additional changes are detailed below.**

**Newly renumbered subsections 1392.4(f) and 1392.4(g)** are amended to include a reference to the Code of Federal Regulations (Title 7, §205.101), relating to organic certification. This amendment informs the regulated industry of the requirements of selling organic products at CFM's. This is necessary to ensure certified producers are aware of organic certification stipulations. The term "enforcement officer" was changed to "enforcing officer" to ensure consistent terminology is used throughout the Direct Marketing regulations.

**Newly renumbered subsection 1392.4(i)** is amended to give certified producers, when implementing exemptions to size, standard pack, container, or labeling requirements, and selling agricultural products to any individual, organization, or entity that intends to sell the product directly to end users or distribute the product at no cost to end users, the option of a bill of sale or container label, in lieu of a memorandum, to meet the requirements of FAC section 47002(e). This change is necessary to provide flexibility for certified producers related to these types of sales, yet still providing traceability for potential food safety issues.

**Subsection 1392.4(i)(4)** is amended to add a semi-colon and delete a period, due to the adoption of subsection 1392.4(i)(5).

**New subsection 1392.4(i)(5)** is adopted to stipulate that when a certified producer issues a memorandum, bill of sale, or container label, it must include the date the transaction occurred. This change is necessary to assist enforcing officers and the regulated industry in accurate record keeping and traceability for potential food safety issues.

**Newly renumbered subsection 1392.4(j)** is amended to remove the word “knowingly,” because a memorandum, bill of sale, or a container label is always required as described in subsection 1392.4(i). The terms bill of sale or container label were added to provide as options, in lieu of a memorandum, to meet the requirements of FAC section 47002(e). This change is necessary to provide flexibility for certified producers related to these types of sales, yet still providing traceability for potential food safety issues. The code section referenced was changed from subsection 1392.4(k) to 1392.4(i) due to renumbering in this rulemaking.

**New subsections 1392.4(k), 1392.4(k)(1), 1392.4(k)(2), 1392.4(k)(2)(i), (k)(2)(ii) and (k)(2)(iii)** are adopted to align and clarify FAC sections 47004(c)(1) and 47020(c)(1)(a) which requires agricultural vendors selling at a CFM to obtain and conspicuously post their certified producer certificate and conspicuously post a banner or signage that states: the name of the farm or ranch as listed on the certified producer’s certificate and the dba (if applicable) as listed on the valid certified producer’s certificate; and, the county of production; and a statement that “We Grow What We Sell” or a similar phrase. This language is necessary to enhance consumer confidence in the direct marketing industry by deterring vendors from making false and misleading claims within the confines of a CFM.

**Newly renumbered subsection 1392.4(l)** is amended to align the labeling requirements of processed agricultural products with FAC section 47004(c)(2) and CCR section 1392.2(w). This duplication is necessary to enhance consumer confidence in the direct marketing industry by deterring vendors from making false and misleading claims within the confines of a CFM and to comply with the clarity standard. In addition, the term “above required” is added to reference the code above and “sub” is added in front of the word section to correct a grammatical error.

**New subsections 1392.4(m) and (m)(1)** are adopted to require certified producers or

his/her authorized representative selling agricultural products at a CFM to provide the market operator with an itemized list of all products sold at the conclusion of each market day, including the name of certified producer, as listed on the valid certified producer's certificate, certified producer's certificate number, market name, date of market, commodity, variety/type, and quantity of each product sold at the market, including processed agricultural products, and requires the certifiable products to be listed as they are listed on the certified producer's certificate. This change is necessary to align with subsection 1392.9(b), which requires market operators to collect this information from certified producers each market day. Requiring this information as a condition of direct marketing is intended to assist market operators in their efforts to collect this information from certified producers. It is also anticipated that the collection of this information may limit incidents of fraud and deception at CFMs, since individuals participating at the market are required to submit specified sales information. Product lists are a critical enforcement tool utilized to ensure that selling activities at CFMs are conducted without fraud, deception, or misrepresentation. They provide enforcing officers with a mechanism to verify the commodities and volume of product sold by a certified producer. This information is often critical when investigating a producer that is fraudulently buying and reselling agricultural products at a CFM. Without these product lists, the secretary and CACs would not be able to meet their statutory mandates of ensuring that direct marketing is a viable marketing system. Accordingly, this new subsection is necessary to promote consumer confidence in the industry, and assist enforcing officers in conducting investigations.

**Subsection 1392.4(n)** is adopted to allow the secretary or a CAC to deny a certificate for a certified producer or market operator who is determined to be delinquent in fees or penalties related to this chapter or article. This change is necessary to align with FAC section 47020(d), and ensure certificate holders are accountable for their fees and penalties.

#### **1392.4.1. Administrative Civil Penalties for Direct Marketing.**

**Existing subsection 1392.4.1** is repealed due to the adoption of subsection 1392.10, where it is better aligned.

#### **1392.5. Producer Certification Procedures.**

**Subsection 1392.5(a)** is amended to clarify that a producer automatically becomes registered with the California Department of Food Agriculture upon approval of a certified producer's certificate by the agricultural commissioner of the county where the producer's farm is located. Additionally, the word "county" was added in front of agricultural commissioner to ensure consistency throughout this article. This change is necessary to clarify FAC subsection 47020(c), which mandates that a producer shall register with the Department before selling at a CFM. In addition, the phrase "or an outlet or location" is added to correlate with FAC Section 47002, which added the phrase "outlet or location" to places where direct marketing may take place.

**Subsection 1392.5(a)(1)** is adopted to clarify that any revocation or suspension of a

certificate by the CAC or secretary shall cause the concurrent revocation or suspension of the secretary's registration. This adoption is intended to clarify FAC section 47020(c)(1)(A), which mandates that a certified producer shall annually register with the Department. They are necessary to inform certified producers how to become registered with the Department.

**Subsection 1392.5(b)** is amended to clarify that certified producer certificates and applications shall be on a form authorized by the "secretary", instead of the "director"; this change is necessary due to a title change of the Department's civil executive officer and to restructure the sentence for ease of interpretation. This section states that upon certification, the certified producer and all authorized representatives selling on their behalf, agree to comply with the terms of this article. These changes are necessary to ensure that certified producers understand their responsibilities, and to clarify that CACs must use the certificate and application approved by the secretary, to ensure consistent enforcement throughout the State.

**Subsections 1392.5(b)(1), (b)(1)(i), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6)** are adopted to require that certified producer certificates and applications must include specified information, e.g., producer name, farm or ranch name, dba if applicable, business address, phone number, e-mail address (if applicable); fax number (if applicable); all production sites, including total acreage per production site, and storage locations; all commodities in alphabetical order by common name, and identified by variety/type, if known; estimated amount/unit grown per commodity, estimated production per commodity, harvest season, season altering devices, if applicable, and months in storage, if applicable; authorized counties where commodities may be sold; certified producers the certificate holder may sell for; certified producers authorized to sell the certificate holder's commodities; the certificate number; and the date declared; and a list of all authorized representatives who are authorized to sell on behalf of the certified producer, and their contact information. It also stipulates that certified producers shall notify the CAC within 30 days of any business address change to update their certificate. These requirements are necessary to assist enforcing officers and market operators and managers in determining who is authorized to sell on behalf of a certified producer. The Department anticipates that this will limit incidents of fraud and deception in the marketplace by giving enforcing officers and market operators and managers an additional tool to show that the conditions of direct marketing are being met. The certified producer's certificate is a vital mechanism used to verify production of agricultural products. Consequently, the information provided on the certificate and application will assist with enforcement, thereby benefitting both the consumer and the regulated industry.

**Subsection 1392.5(d)** is amended to clarify that CACs are required to review a producer's application and determine that the applicant meets the requirements of a certified producer before issuing a certified producer's certificate. This change is necessary to clarify FAC subsection 47020(c), by spelling out the process for issuing certificates. The Department anticipates that these proposed changes will benefit the regulated industry by ensuring a consistent approach to the issuance of certificates.



**New subsection 1392.5(e)** is adopted to mandate that CACs shall perform at least one on-site inspection of each property listed on each producer's initial application prior to issuing a certified producer certificate. This subsection is added to align with FAC section 47020(c)(3), which requires CACs to perform at least one on-site inspection for all new certified producer applicants. This requirement is necessary to verify the production and storage capabilities of each applicant, and is anticipated to benefit both the regulated industry and consumers by reducing fraud and deception in the marketplace.

**Newly renumbered subsection 1392.5(f)** is amended to clarify the procedures for issuing certified producer's certificates. Specifically, the CAC now has the flexibility to issue an embossed photocopy of the original certificate or a photocopy with a county seal affixed to it. These amendments clarify procedures governing the issuance of valid certified producer certificates. The Department anticipates that these proposed changes will benefit the regulated industry by ensuring a consistent approach to the issuance of certificates. This change is necessary to align with changes in this regulatory action.

**Subsection 1392.5(g)** is adopted to incorporate language previously under subsection 1392.7(c), which specified that a certified producer's certificate shall be valid for up to 12 months from the date of issue. This language is being consolidated under subsection 1392.5, and this change is necessary to provide the regulated industry and enforcing officers with one point of reference for regulations governing producer certification procedures, rather than spreading the requirements throughout the Direct Marketing Article.

**Newly renumbered subsection 1392.5(h)** is amended to require CACs to send a photocopy of the original certified producer certificate, to the Department, in addition to the current requirement to send a photocopy to each destination county listed on the certificate. This is necessary to align with statute, and to ensure the Department has accurate records of all registered certified producers.

**Subsection 1392.5(h)(1)** is adopted to stipulate that CACs shall provide the Department and each destination county with the updated business address of a certified producer, when an update is reported by the certificate holder, within 10 business days. This adoption coincides with the requirements of newly adopted subsection 1392.5(b)(1)(i), which requires certified producers to inform the CAC of a business address change within 30 days. This adoption is necessary to ensure the Department and each destination county maintains updated contact information for all registered certified producers.

**Section 1392.5 Note Section** is amended to include additional authority and references cited, and to remove incorrect authority and references cited. Additional authority cited includes FAC 47001, 47002, 47003, and 47020. Authority removed includes 58101.5, 58102, 58103. Additional references cited include FAC 47000 and 47000.5. References removed includes 58101, 58101.5, 58102, 58103, 58104. These changes are necessary to ensure only pertinent statutes are referenced, and statutes that were incorrectly relied upon are deleted.

### **1392.6. Certification Requirements of a Certified Farmers' Market.**

**Subsection 1392.6(a)** is amended and **subsection 1392.6(a)(1), 1392.6(a)(1)(i), and 1392.6(a)(2)** are adopted to clarify that a CFM automatically becomes registered with the California Department of Food Agriculture upon approval of a CFM certificate by the CAC, of the county where the CFM is located, and any revocation or suspension of a certificate by the secretary or CAC shall cause the concurrent revocation or suspension of the secretary's registration. This section also stipulates that CACs shall provide the Department with a photocopy of the original certificate and shall provide the Department with any updates to the mailing address, when reported by the certificate holder, within 10 business days. These changes are intended to clarify changes to FAC section 47020(a), which mandates that a market operator shall annually register with the Department. They are necessary to ensure the Department maintains updated contact information for all market operators and to inform market operators how to become registered with the Department.

**Subsection 1392.6(b)** is amended to clarify that a signed CFM application/certificate shall be on a form authorized by the "secretary", instead of the "director"; this change is necessary due to a title change of the Department's civil executive officer. Additionally, language was added to state that the applicant agrees to comply with the terms of this article upon certification; this change is necessary to ensure market operators are aware of their responsibilities when operating a CFM.

**Subsections 1392.6(b)(1), (b)(1)(i), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6)** are adopted to interpret and make specific the requirements of a CFM application/certificate under FAC subsection 47020(a). These proposed amendments specify that the CFM application/certificate is required to contain the following: name of the operator and specified contact information; the market name and specified contact information; the market location, days and hours of operation, and estimated number of vendors per market day; applicant's name, designation of whether the person completing the form is the applicant themselves or their authorized representative, signature, date, a map that clearly locates and identifies the boundaries of the designated area where only agricultural products may be sold, and documentation of qualification to operate a CFM, to align with subsection 1392.2(a). It also stipulates that market operators shall notify the CAC within 30 days of any mailing address change. This adoption coincides with the requirements of newly adopted subsection 1392.6(a)(1)(i), which requires CACs to inform the Department of a mailing address change, when reported by the certificate holder. The CFM certificate is an important tool for enforcing officers to locate and inspect CFMs. These changes are necessary to effectively provide enforcement in the marketplace and may potentially limit incidents of fraud and deception, benefiting both the regulated industry and the public.

**Subsections 1392.6(d), 1392.6(e), 1392.6(f), 1392.6(g)** are repealed since market operators are no longer required to adopt written rules and procedures. Previously, market operators with more than one participating certified producer were required to adopt written rules and procedures governing the operation of the market. Recent statutory amendments under FAC subsection 47004(g) are permissive, allowing market

operators to adopt rules if desired. This is necessary due to changes in statute, since it is no longer a requirement for market operators to adopt rules and procedures.

**New subsection 1392.6(d)** is adopted to provide that the secretary or a CAC may deny a certificate to any market operator who is determined to be delinquent in the payment of fees or penalties required under this chapter or article. This change is necessary to align with FAC subsection 47020(d), and to provide a mechanism for enforcing officers to deny a certificate for individuals who have failed to pay fees or penalties assessed.

**New subsection 1392.6(e)** is adopted to incorporate language previously under subsection 1392.7(d), which specifies that a CFM certificate shall be valid for 12 months from the date of issue. This language is being consolidated under subsection 1392.6 and is necessary to provide the regulated industry and enforcing officers with one point of reference for regulations governing market operator certification procedures, rather than spreading the requirements throughout the Direct Marketing article. Additionally, this language clarifies that a market certificate is only valid during the specified months of operation, day of the week, and hours of operation as listed on the certificate. This change is necessary to provide equity amongst market operators, and to make it clear that market operators may only operate a market during the times and locations specified on their certificate.

**New subsection 1392.6(f)** is adopted to provide that if a market operator adopts market rules, they must include specific criteria regarding admission of producers to the market, admission of agricultural products to the market, imposition of a fine or suspension or expulsion of any producer from the market, allowance of a certified producer selling on behalf of another certified producer, a clause that states that all rules will be enforced fairly and equitably, and violation and appeal procedures. These changes are necessary to provide guidance to market operators who wish to adopt market rules, and are being consolidated in this subsection, rather than in several subsections above.

**Section 1392.6 Note Section** is being amended to include additional authority cited. Additional authority cited includes FAC 47020 and 47025. These changes are necessary to reference pertinent statutes.

### **1392.7. Certificates Issued.**

**Subsection 1392.7** is repealed as the procedures governing the issuance of certified producer and CFM certificates have been consolidated in subsections 1392.5 and 1392.6, respectively. This change is necessary to assist the regulated industry and CACs by providing points of reference for certified producer certificates (subsection 1392.5) and one section for CFM certificates (subsection 1392.6), rather than cross referencing throughout several sections.

### **1392.8. Fees.**

**Subsection 1392.8** is amended to add language specifying that the CAC may charge a fee for inspection, as authorized by the board of supervisors of that county. This language

is added to align with FAC section 47020(b), which provides that at the time of application or renewal, the CAC shall provide a schedule of fees that reflects an estimate of expenses for inspections and may charge a certification and inspection fee equal to the actual expenses incurred. In addition, the term “valid” replaces the term “embossed” to align with changes throughout this regulatory action. This amendment is necessary to provide consistency throughout the Direct Marketing Article regarding applicable fees that CACs may charge for certification.

**Subsection 1392.8 Note Section** is amended to include additional authority and references cited, and remove authority and references no longer relevant to this section. Additional authority cited includes FAC 47020 and 47021. Authority removed includes 58101.5, 58102, 58103. Additional references cited include FAC 47000 and 47001. References removed include 58101, 58101.5, 58102, 58103, and 58104. These changes are necessary to ensure only pertinent statutes are referenced, and statutes that were incorrectly relied upon are deleted.

#### **1392.8.1. Certified Farmers’ Market Fees.**

**Section 1392.8.1 is amended to provide consistency in the numbering of subsections throughout the Direct Marketing Article. Accordingly, primary subsections are renumbered from 1, 2, and 3 to a, b, and c. Secondary subsections are renumbered from a, b, and c to 1, 2, and 3, and so on. Additional changes are detailed below.**

**Newly renumbered subsection 1392.8.1(a)** is amended to add the word “California” to the Department of Food and Agriculture. Additionally, language is added to clarify that a market operator must remit \$2 to the Department for every vendor participating and selling goods under the authority and management of the market operator, the authorized representative of the market operator, or an individual or entity that is empowered by the market operator, including vendors participating in a separate vending event that is contiguous to the operation of the CFM and concurrently operated. This language is necessary to clarify fees market operators are required to pay to the Department. Additional fee information is moved to subsection 1392.8.1(a)(2), to better align with the requirements of what specific information must be submitted to the Department on the quarterly remittance form, on a quarterly basis.

**New subsections 1392.8.1(a)(1) and 1392.8.1(a)(1)(i)** are adopted to clarify that for purposes of the Direct Marketing article, goods include: tangible, material products. It further clarifies that if materials are being distributed by a vendor, without charge at a CFM, which will not result in a future monetary transaction taking place, no fee is due for that vendor. This will assist market operators in understanding the required fees that must be paid to the Department quarterly. This change is necessary to provide the regulated industry with clarification on what is considered goods for purposes of this article.

**New subsection 1392.8.1(a)(2)** is adopted to incorporate fee language from subsection 1392.8.1, to better align the requirements of what information must be submitted to the Department on the quarterly remittance form; to stipulate that market fees are due within 30 days after the end of each quarter; and to require market operators to use a form that

is authorized by the secretary. These changes are necessary to clarify market operator's responsibilities when submitting quarterly remittance forms and fees.

**Newly renumbered subsection 1392.8.1(a)(2)(i)** is amended to change the term market "sponsor" to market "operator," and to stipulate that the market operator listed on the quarterly remittance form must be the market operator that is listed on the valid market certificate. Sponsor is an industry term that is not defined in the regulations; this change is necessary to provide consistency throughout this article, and ensure correct terms are used.

**Newly renumbered subsection 1392.8.1(a)(2)(ii)** is amended to add the term "as listed on market certificate", to ensure when a market operator or manager is completing the quarterly remittance form, they list the market certificate number, as listed on the valid market certificate. This is necessary to ensure market operators, CACs, and the Department all reference the same number regarding a specific market.

**Newly renumbered subsection 1392.8.1(a)(2)(iii)** is amended to add the term "as listed on market certificate", to ensure that when a market operator or manager is completing the quarterly remittance form, they do not attempt to update any contact information with the Department. As clarified in subsection 1392.6, market operators shall inform the CAC of any mailing address changes within 30 days. This will ensure market operators are aware who to contact regarding contact information changes. Since the CAC issued the certificate, it is necessary for the CAC to amend the certificate, and then provide the updated information to the Department. This will ensure a consistent approach on how a certificate holder updates their certificate.

**Newly renumbered subsection 1392.8.1(a)(2)(iv)** is amended to change the name of market "contact person" to the name of market "manager" to align with subsection 1392.6 and to ensure consistent terms are used throughout the Direct Marketing article. The term "as listed on market certificate," was added to ensure when a market operator or manager is completing the quarterly remittance form, they do not attempt to update the market managers name with the Department. These changes are necessary to clarify that market operators must contact the CAC who issued the certificate for any updated certificate information.

**Newly renumbered subsection 1392.8.1(a)(2)(v)** is amended to stipulate that the market day(s) and hours of operation should be consistent with the information listed on the valid market certificate, that was provided to the issuing CAC. These changes are necessary to clarify that market operators must contact the CAC who issued the certificate for any updated certificate information, since the CAC is the issuer of the certificate.

**Previous subsection 1392.8.1(1)(f)** is repealed because this information is already listed on the valid market certificate, and the Department does not need the market operator or manager to repeat this information while completing the quarterly remittance form. This is duplicative in nature, and unnecessary.

**Newly renumbered subsection 1392.8.1(a)(2)(vi)** is amended to remove an unnecessary period.

**Newly renumbered subsection 1392.8.1(a)(2)(vii)** is amended to restructure the sentence for ease of interpretation, in order to clarify that there are three vendor types (certified producers, producers of non-certifiable agricultural products, non-agricultural vendors) on the remittance form that the market operator must submit information for, and pay vendor fees for, on a quarterly basis. This subsection also clarifies what information must be included for each vendor type, and removes an unnecessary period, and adds a comma. These changes are necessary to align with FAC section 47021(a), and will provide a mechanism for the Department to determine if market operators are paying applicable fees.

**Newly renumbered subsection 1392.8.1(a)(2)(viii)** is amended to remove an unnecessary period.

**Newly renumbered subsection 1392.8.1(a)(2)(ix)** is amended to remove an unnecessary period, and is reworded to ensure consistent terms are used throughout this regulatory action.

**Newly renumbered subsection 1392.8.1(a)(2)(b)** is renumbered due to previous changes in this regulatory action.

**Newly renumbered subsection 1392.8.1(c)** is amended to correct a reference from subsection 1392.8.1(2) to 1392.8.1(b). This change is technical in nature. Additionally, this sentence was restructured to clarify that late penalty fees are charged at the rate of \$100 per month, not a one-time \$100 penalty. This change is necessary to ensure the regulated industry is aware of the penalty for not submitting complete remittance information and/or payment within the specified time frame.

### **1392.9. Direct Marketing, Compliance Requirements for the Operator of a Certified Farmers' Market.**

**Subsection 1392.9(a)** is amended to restructure the sentence to clarify that the market operator shall ensure vendors selling in the defined marketing area where only agricultural products may be sold must comply with subsections 1392.9(a)(1) through (a)(8). The previous language used was not consistent with AB 1871, which changed the FAC to include the ancillary vending event as part of the CFM. These changes are necessary to make it abundantly clear that vendors selling in this area within a CFM must comply with these specific requirements and to align with the FAC.

**Subsection 1392.9(a)(1)** is amended to change the terms "members of the producer's immediate family" and "employee" to "authorized representative of the certified producer." This amendment is intended to provide flexibility for certified producers to allow family members, volunteers, or other authorized individuals to sell a certified producers agricultural products in the defined marketing area where only agricultural products may be sold, on their behalf. This change is necessary to align with changes made throughout

this regulatory action, and to align with FAC section 47002.

**Subsection 1392.9(a)(5)** is amended to restructuring the sentence for ease of interpretation and to reference subsection 1392.4, to ensure noncertifiable agricultural products sold within a CFM meet the requirements in the Direct Marketing regulations, rather than generically state “rules and regulations”. This change is necessary to align with changes throughout this article.

**Subsection 1392.9(a)(6)** is amended to clarify that if a certified producer represents another certified producer at a CFM, they must sell in accordance with subsection 1392.4(e). Adding the reference to subsection 1392.4(e) makes the Direct Marketing regulations consistent, instead of spreading the requirements throughout the Article. This change is necessary to ensure certified producers are following all applicable laws and regulations.

**Subsection 1392.9(a)(7)** is amended to add language to include a bill of sale or a container label(s) as acceptable in lieu of a memorandum, when a certified producer sells agricultural products to any individual, organization, or entity that intends to subsequently sell the product directly to end users or distributes the product at no cost to end users; or when a certified producer sells a single commodity to any individual, consumer, or end user in excess of 25 pounds. The reference to subsections 1392.4(k) and 1392.4(l) are changed to 1392.4(i) and 1392.4(j) to align with changes made in this regulatory action. This will provide certified producers flexibility regarding the documentation required to be provided to the purchaser for these types of sales, yet still provides traceability for potential food safety issues. These changes are necessary to align with the changes provided in this regulatory action.

**Subsection 1392.9(a)(8)** is adopted to require market operators to ensure that each person participating in the sale of agricultural products in the defined marketing area where only agricultural products may be sold within a CFM, is in compliance with applicable signage requirements under subsection 1392.4(k). This change is necessary to align the direct marketing regulations with the requirements under FAC section 47004(c). This language will potentially enhance consumer confidence in the direct marketing industry by deterring vendors from making false and misleading claims within the confines of a CFM.

**Subsection 1392.9(b)** is amended to require market operators to obtain an itemized list from certified producers or his/her authorized representatives selling their agricultural products in the defined marketing area where only agricultural products may be sold, within a CFM, at the conclusion of each market day. The language “in the area designated as a certified farmers’ market” is deleted because due to changes in statute, all vendors participating and selling goods under the authority and management of the CFM operator are considered part of the CFM. A reference to subsection 1392.4(m) was added to ensure market operators require certified producers to complete these lists with accurate and consistent information. These changes are necessary to align with the changes provided in this regulatory action and to provide consistency throughout the State.

**Subsection 1392.9(b)(1)** is amended to delete product list requirement details, as this information is already incorporated into subsection 1392.4(m)(1), and to add language to clarify that a market operator must keep the product lists for a minimum of 18 months, which was previously in subsection 1392.9(b)(2). These changes are necessary to align with the changes provided in this regulatory action.

**Subsection 1392.9(b)(2)** is amended to delete the requirement to keep product lists for a minimum of eighteen months because it was incorporated into subsection 1392.9(b)(1). Language was added to stipulate that upon the request from an enforcing officer, the market operator shall submit the itemized product list for inspection within 48 hours. Product lists are a critical enforcement tool utilized to ensure that selling activities at CFMs are conducted without fraud, deception, or misrepresentation. Specifically, product lists assist enforcing officers in determining whether a certified producer is buying and reselling agricultural products or supplementing agricultural products with products not of their own production. Without product lists, the Department and CACs would not be able to ensure that direct marketing is a viable marketing system. Accordingly, these changes are necessary to create equity in the marketplace and promote consumer confidence in the industry.

**Subsection 1392.9(e)** is repealed because market rules are no longer required. Since the Department is no longer involved in reviewing market operator's rules, the Department will not be involved in reviewing appeals from certified producers regarding decisions made by market operators. This change is necessary to ensure consistency in this rulemaking because subsection 1392.11 is repealed.

#### **1392.9.1. Direct Marketing. Requirements for Partnerships, Sharecropping Agreements, and Similar Contractual Agreements.**

**Subsection 1392.9.1(a)** is amended to correct the reference from subsection 1392.2(s) to 1392.2(u) due to renumbering in this regulatory action. The word "county" was added to agricultural commissioner to ensure consistency throughout this article, and language was added to clarify that the agreement must be entered into prior to the commencement of agricultural production, and a comma was added. These changes are necessary to ensure that if the regulated industry enters into a partnership, sharecropping agreement, or a similar contractual agreement, they are aware of these requirements.

**Subsection 1392.9.1(a)(4)** is amended for a grammatical change, which combined two sentences regarding notary requirements for partnerships, sharecropping agreements, and similar contractual agreements, for ease of interpretation. This change is necessary to provide clarity to the regulated industry regarding notary requirements for partnerships, sharecropping agreements, and similar contractual agreements.

**Subsection 1392.9.1(d)** is amended to change the term "embossed" to "valid" and "copies" to "photocopies" since this rulemaking now allows CACs the flexibility to provide certified producers with an embossed photocopy certificate or a photocopy certificate with the county seal affixed to it. This amendment is necessary to provide consistency throughout the Direct Marketing Article. Additionally, the word "county" was added to



agricultural commissioner to ensure consistent terminology is used throughout these regulations.

### **1392.9.2 Direct Marketing. Requirements for Farm Leases.**

**Subsection 1392.9.2(a)** is amended to add the word “county” to agricultural commissioner to ensure consistency throughout this article, and language was added to clarify that the agreement must be entered into prior to the commencement of agricultural production, and a comma was added. These changes are necessary to ensure that if the regulated industry enters into a farm lease, they are aware of these requirements.

**Subsection 1392.9.2(a)(4)** is amended for a grammatical change, which combined two sentences regarding notary requirements for farm leases, for ease of interpretation. This change is necessary to provide clarity to the regulated industry regarding notary requirements for farm leases.

**Subsection 1392.9.2(d)** is amended to change the term “embossed” to “valid” and “copies” to “photocopies” since this rulemaking now allows CACs the flexibility to provide certified producers with an embossed photocopy certificate or a photocopy certificate with the county seal affixed to it. The language “to the partnerships” is deleted, as this section refers to farm leases, not partnerships. These amendments are necessary to provide consistency throughout the Direct Marketing Article. Additionally, the word “county” was added to agricultural commissioner to ensure consistent terminology is used throughout these regulations.

### **1392.10. Penalties.**

**Existing subsection 1392.10** is repealed due to the adoption of subsection 1392.10.1 and 1392.10.2 where it is better aligned.

### **1392.10. Administrative Civil Penalties for Direct Marketing.**

**New subsection 1392.10** is adopted to emphasize that when taking an enforcement action pursuant to statutes governing direct marketing enforcement, the Department and CACs are required to use the provisions of this section to determine the violation class, amount of the penalty, and length of the suspension. Additionally, this adoption stipulates that repeat violations of the same code section, that occurred within a two-year period from the date of the last violation which resulted in a penalty, shall be escalated to the next violation class. These changes are necessary to ensure that enforcement provisions are consistently applied throughout the State. In addition, this amendment may benefit consumers since uniform enforcement will ensure that direct marketing selling activities are conducted without fraud and deception.

**New subsection 1392.10(a)** is adopted to clarify that when determining the violation class (“serious,” “moderate,” and “minor”), the descriptions in subsection 1392.10(a)(1), (2), and (3) should be used. This change is necessary to provide enforcing officers with a clear definition of what constitutes a serious, moderate, and minor violation to enforcing officers, and to the regulated industry.

**New subsection 1392.10(a)(1)** is adopted to establish the definition of the “serious” violation class, specifically that serious violations are repeat or intentional violations. Intentional violations are those which preclude or interfere with enforcement, or cause false, misleading or deceptive business practices. Additionally, repeated “moderate” violations of the same code section, that occurred within a 2-year period from the date of the last violation which resulted in a penalty, can be escalated to the “serious” violation class. For serious violations, the violator’s certificate may also be suspended, based on the authority in FAC section 47025(a). This adoption is necessary to ensure the regulated industry and enforcing officers understand what constitutes a “serious” violation and is intended to limit incidents of fraud in the marketplace.

**New subsection 1392.10(a)(1)(i)** is adopted to stipulate that serious violations are punishable by a minimum administrative civil penalty in the amount of \$401, and a maximum administrative civil penalty of \$1,000. This change is necessary to ensure the regulated industry and enforcing officers are aware of the penalties associated with serious violations.

**New subsection 1392.10(a)(1)(ii)** is adopted to stipulate that serious violations are punishable by a suspension of certification, for a period of not less than six months, and not more than 18 months, per action. This change is necessary to ensure the regulated industry and enforcing officers are aware of the suspension timeframes associated with serious violations.

**New subsection 1392.10(a)(2)** is adopted to establish the definition of the “moderate” violation class, specifically that moderate violations are repeat violations or those which undermine enforcement. Additionally, repeated “minor” violations of the same code section, that occurred within a 2-year period from the date of the last violation which resulted in a penalty, can be escalated to the “moderate” violation class. This adoption is necessary to ensure the regulated industry and enforcing officers understand what constitutes a “moderate” violation and is intended to limit incidents of fraud in the marketplace.

**New subsection 1392.10(a)(2)(i)** is adopted to stipulate that moderate violations are punishable by a minimum administrative civil penalty in the amount of \$151, and a maximum administrative civil penalty of \$400. This change is necessary to ensure the regulated industry and enforcing officers are aware of the penalties associated with moderate violations.

**New subsection 1392.10(a)(3)** is adopted to establish the definition of the “minor” violation class, specifically that a minor violation has minimal adverse effects on the public or equitable competition in the marketplace. This adoption is necessary to ensure the regulated industry and enforcing officers understand what constitutes a “minor” violation and is intended to limit incidents of fraud in the marketplace.

**New subsection 1392.10(a)(3)(i)** is adopted to stipulate that minor violations are punishable by a minimum administrative civil penalty in the amount of \$50, and a

maximum administrative civil penalty of \$150. This change is necessary to ensure the regulated industry and enforcing officers are aware of the penalties associated with minor violations.

**New subsection 1392.10(b)** is adopted to explain that Tables A and B provide the level of severity of an initial violation and the corresponding penalty range for “serious,” “moderate,” and “minor” violation classes, and the “Description of Violation” column in Tables A and B is an abbreviated description of the corresponding section in the FAC and 3 CCR. This is necessary to clarify that Tables A and B are only a summarized version of the full code, and that enforcing officers should refer to the full code when taking an enforcement action.

**New Table A** is adopted into new subsection 1392.10, where it is better aligned, due to the repeal of the previous table in subsection 1392.4.1; and **New Table B** is adopted to differentiate between Certified Producer Violations (Table A) and Market Operator Violations (Table B). The new tables detail the code section associated with each specific violation; an abbreviated description of the violation; whether the violation is a minor, moderate, or serious violation; the fine range (per violation - minor is \$50-\$150; moderate is \$151-400; serious is \$401-\$1,000) and which penalties allow for suspension of certification (a range of 6 – 18 months per incident for serious violations). The tables also include a reference to the full code section (1392.10) if additional details are needed when assessing an administrative civil penalty.

#### **Table A. Certified Producer Violations.**

1. The violation for FAC section 47002 is adopted to provide that transporting, packing, or selling products that do not meet maturity or quality standards; or do not have the labeling requirements constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and is being re-adopted in this section to reword the description of the violation for ease of interpretation; the violation class has not been changed.
2. The violation for FAC section 47022 is adopted to provide that preparing, packing, placing, delivering for shipment, loading, transporting, or selling any products that do not conform to the provisions of this chapter or the regulations adopted thereunder constitutes a minor violation because the Department has determined that this violation causes minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and is being re-adopted in this section to reword the description of the violation for ease of interpretation; the violation class has not been changed.
3. The violation for FAC section 47022.1 is adopted to provide that deceptively preparing, packing, placing, delivering for shipment, loading, transporting; or deceptively selling any products constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously

incorporated into the penalty matrix that was repealed in this rulemaking action in the minor class after two notice of noncompliances within a 12-month period. Additionally, this violation is being reworded for ease of interpretation.

4. The violation for FAC section 47022.2 is adopted to provide that mislabeling products or making false or misleading statement regarding products constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action in the minor class after two notice of noncompliances within a 12-month period. Additionally, this violation is being reworded for ease of interpretation.

5. The violation for FAC section 47022.3 is adopted to provide that falsifying documents or making false statements regarding size, maturity, condition, or quality of products offered for sale constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

6. The violation for FAC section 47022.4 is adopted to provide that unlawfully removing warning tags or notices regarding products or containers that have been affixed by an enforcing officer constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

7. The violation for FAC section 47022.5 is adopted to provide that refusing to submit any container, load, or products for inspection; or refusing to stop any vehicle for inspection constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

8. The violation for FAC section 47022.6 is adopted to provide that refusing to allow inspection of any property used in the sales, storage, or production of an agricultural product constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended,

based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

9. The violation for FAC section 47022.7 is adopted to provide that altering any document referred to in this chapter issued by an enforcing officer constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

10. The violation for 3 CCR subsection 1392.1(b) is adopted to provide that selling product exempt from size, standard pack, container, or labeling requirements at a CFM without being a certified producer or a certified producer's authorized representative; at an outlet or location without being the certified producer; or at a field retail stand or farm stand without being the producer constitutes a serious violation because this violation has the potential for consumer harm. For serious violations, the violator's certificate may also be suspended, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

11. The violation for 3 CCR subsection 1392.1(c) is adopted to provide that selling fresh fruits, nuts or vegetables for commercial resale that do not comply with the regulations regarding applicable size, standard pack, standard container, or labeling requirements constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

12. The violation for 3 CCR subsection 1392.1(d) is adopted to provide that selling fresh fruits, nuts, or vegetables that do not comply with the regulations regarding maturity, quality, and consumer package labeling is a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

13. The violation for 3 CCR subsection 1392.1(e) is adopted to provide that selling

agricultural products that do not comply with applicable laws and regulations constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

14. A violation for 3 CCR subsection 1392.2(k)(1) is adopted to provide that selling agricultural products combined with nonagricultural products or services that materially increases the purchase price of the product, in the defined marketing area where only agricultural products may be sold constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace.

15. The violation for 3 CCR subsection 1392.4(a) is adopted to provide that a producer selling certifiable agricultural products at a CFM or an outlet or location without obtaining a certified producer certificate constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry.

16. The violation for 3 CCR subsection 1392.4(a)(3) is adopted to provide that the selling certifiable agricultural products at a CFM that the certified producer did not produce constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

17. The violation for 3 CCR subsection 1392.4(a)(4) is adopted to provide that a certified producer selling products not listed on their Certificate at a CFM constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

18. A violation for 3 CCR subsection 1392.4(a)(5) is adopted to provide that a producer who sells noncertifiable agricultural products that they did not produce, in the defined marketing area where only agricultural products may be sold, constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry.

19. A violation for 3 CCR subsection 1392.4(a)(6) is adopted to provide that the selling of

nonagricultural products in the defined area where only agricultural products may be sold constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer.

20. A violation for 3 CCR subsection 1392.4(b) is adopted to provide that authorized representatives who sell on behalf of more than one certified producer per market day, unless selling under the provisions of subsection 1392.4(e), constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer.

21. A violation for 3 CCR subsection 1392.4(c) is adopted to provide that a certified producer who does not have a valid certified producer certificate in their possession while selling and transporting certifiable agricultural products constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

22. A violation for 3 CCR subsection 1392.4(d) is adopted to provide that selling agricultural products by weight, using an unapproved or unsealed scale, constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

23. The violation for 3 CCR subsection 1392.4(e)(1) is adopted to provide that a certified producer selling on behalf of more than two other certified producers, during a 12-month period constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

24. The violation for 3 CCR subsection 1392.4(e)(2) is adopted to provide that a certified producer, when selling on behalf of another certified producer, who fails to separate and identify one's own products from the products of the other certified producer, and conspicuously posting both certified producer certificates of whose products are being sold, and required signage at a CFM, constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance.

25. The violation for 3 CCR subsection 1392.4(e)(3) is being adopted to provide that a certified producer who fails to list the name of the certified producer for whom the certified producer is conducting sales for constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation

was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

26. The violation for 3 CCR subsection 1392.4(e)(4) is being adopted to provide that a certified producer who fails to list the name of the certified producer who is authorized to conduct sales on their behalf constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

27. The violation for 3 CCR subsection 1392.4(e)(5) is adopted to provide that a certified producer who is offering for sale product in greater volume than the certified producer who they are selling for constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action in the minor class after two notice of noncompliances within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

28. The violation for 3 CCR subsection 1392.4(e)(6) is adopted to provide that a certified producer who offers for sale the same commodity as the certified producer they are selling for constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace.

29. The violation for 3 CCR subsection 1392.4(e)(8) is adopted to provide that buying and reselling agricultural products between certified producers constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

30. The violation for 3 CCR subsection 1392.4(e)(10) is adopted to provide that a certified producer who sells on behalf of another certified producer and fails to keep the required records for less than three years constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

31. The violation for 3 CCR subsection 1392.4(e)(11) is adopted to provide that a certified producer who fails to produce inspection records when requested by an enforcing officer constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.



32. The violation for 3 CCR subsection 1392.4(f) is adopted to provide that a certified producer who fails to post their organic registration and/or documentation of organic certification when representing their product as organic constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

33. The violation for 3 CCR subsection 1392.4(g) is adopted to provide that a certified producer selling on behalf of another certified producer who fails to post their organic registration and/or documentation of organic certification when representing their product as organic constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

34. The violation for 3 CCR subsection 1392.4(h) is adopted to provide that a certified producer who offers for sale sprouts with less than 50% of the seeds/legumes/nuts having emerged constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

35. The violation for 3 CCR subsection 1392.4(i) is adopted to provide that a certified producer, when implementing any exemption to size, standard pack, container, or labeling requirements, who sells agricultural products to any individual, organization, or entity who intends to subsequently sell the product directly to end users or distribute the product at no cost, who fails to provide the purchasing individual, organization, or entity a dated memorandum, bill of sale, or container label, constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

36. The violation for 3 CCR subsection 1392.4(j) is adopted to provide that a certified producer selling any single agricultural commodity in excess of 25 pounds, when implementing any exemption to size, standard pack, container, or labeling requirements, who fails to provide the purchasing individual, organization, or entity a dated memorandum, bill of sale, or container label, constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

37. The violation for 3 CCR subsection 1392.4(k)(1) is adopted to provide that a certified producer who fails to conspicuously post a valid certified producer's certificate at the point of sale constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the

minor class for the first noncompliance.

38. Violations for 3 CCR subsection 1392.4(k)(2), (k)(2)(i), (k)(2)(ii), (k)(2)(iii) are adopted to provide that a certified producer who fails to conspicuously post signage stating: farm/ranch name as listed on the certified producer's certificate, production county as listed on the certified producer's certificate, and a phrase "We Grow What We Sell" or similar phrase constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace.

39. The violation for 3 CCR subsection 1392.4(l) is adopted to provide that a seller of processed products who fails to state in a clear manner by package label, container label, or bulk sales signage that they consist of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm is located, with the exception of incidental flavorings and necessary preservatives, constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

40. The violation for 3 CCR subsection 1392.5(b)(1)(i) is adopted to provide that a certified producer who fails to report to the respective CAC changes in their business address within 30 days constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer.

41. The violation for 3 CCR subsection 1392.5(c) is adopted to provide that a certified producer who refuses to provide an enforcing officer certificates, documentation, information, or any other identification that may be reasonably required to show that the conditions of this article are being met constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

42. The violation for 3 CCR subsection 1392.9.1(d) is adopted to provide that a person who fails to immediately report changes in partnership agreements or failure to surrender invalid certificates to the respective CAC constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer.

43. The violation for 3 CCR subsection 1392.9.2(d) is adopted to provide that a person who fails to immediately report changes in farm leases or failure to surrender invalid certificates to the respective CAC constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the moderate class.

## **Table B. Market Operator Violations.**

1. The violation for FAC section 47004(e) is adopted to provide that a market operator who allows the sale or distribution of fresh whole fruits, nuts, vegetables, cultivated mushrooms, herbs, or flowers by vendors selling in separate sales activity that is concurrently operated, adjacent to, or contiguous to the CFM constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry.

2. The violation for FAC section 47022.6 is adopted to provide that a market operator that refuses to allow the inspection of the property that is used in the sale of agricultural products constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

3. The violation for FAC section 47022.7 is adopted to provide that a market operator who alters any document referred to in this chapter, that was issued by an enforcing officer, constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

4. The violation for 3 CCR subsection 1392.6(b)(1)(i) is adopted to provide that a market operator who fails to report to the respective CAC any change in mailing address within 30 days constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer.

5. The violation for 3 CCR subsection 1392.6(f) is adopted to provide that a market operator who adopts market rules that are not in compliance with the requirements of this section constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

6. The violation for 3 CCR subsection 1392.8.1 is adopted to provide that a market operator who fails to submit quarterly remittance forms to the Department or who fails to submit quarterly remittance forms with the required information constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice

is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action in the minor class. Additionally, this violation is being reworded for ease of interpretation.

7. The violation for 3 CCR subsection 1392.9(a)(1) is adopted to provide a market operator who fails to ensure that each seller of agricultural products at a CFM is a certified producer or his/her authorized representative, or in the case of non-certifiable agricultural products, the producer themselves, constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

8. The violation for 3 CCR subsection 1392.9(a)(2) is adopted to provide that a market operator who allows the sale of nonagricultural products in the defined marketing area where only agricultural products may be sold constitutes a moderate violation because it undermines enforcement and causes an intermediate level of harm to the consumer. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action in the minor class. Additionally, this violation is being reworded for ease of interpretation.

9. The violation for 3 CCR subsection 1392.9(a)(3) is adopted to provide that a market operator who fails to ensure that certified producers have in his/her possession a valid certified producer certificate that is posted at the point of sale constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and is being re-adopted in this section to reword the description of the violation for ease of interpretation; the violation class has not been changed. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

10. The violation for 3 CCR subsection 1392.9(a)(4) is adopted to provide that a market operator who fails to ensure that each certifiable agricultural product that a certified producer has in possession at the CFM is listed on the certified producer's valid certified producer's certificate constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and is being re-adopted in this section to reword the description of the violation for ease of interpretation; the violation class has not been changed. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded

for ease of interpretation.

11. The violation for 3 CCR subsection 1392.9(a)(5) is adopted to provide that a market operator who fails to ensure that producers selling noncertifiable agricultural products were produced in accordance with the requirements of subsection 1392.4, constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and is being re-adopted in this section to reword the description of the violation for ease of interpretation; the violation class has not been changed. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

12. The violation for 3 CCR subsection 1392.9(a)(6) is adopted to provide that a market operator who fails to ensure that when a certified producer is selling on behalf of another certified producer, the certified producer separates and identifies each certified producer's products at the point of sale, and conspicuously posts each valid certified producer certificate and required signage constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

13. The violation for 3 CCR subsection 1392.9(b) is adopted to provide that a market manager who fails to collect an itemized list of all products sold from each certified producer or his/her authorized representative at the end of each market day constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

14. The violation for 3 CCR subsection 1392.9(b)(1) is adopted to provide that a market operator who fails to keep the itemized load list from each certified producer of all products sold for a period of not less than 18 months, constitutes a minor violation because this violation has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously in the minor violation class but could not be assessed a penalty until after two notice of noncompliances had been issued within a 12-month period. This violation is now in the minor class for the first noncompliance. Additionally, this violation is being reworded for ease of interpretation.

15. The violation for 3 CCR subsection 1392.9(b)(2) is adopted to provide that a market operator who fails to submit a certified producer's itemized product list for inspection,

upon the request of an enforcing officer, constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace.

16. The violation for 3 CCR subsection 1392.9(c) is adopted to provide that a person who operates a certified farmer's market without a valid CFM certificate constitutes a serious violation, and a suspension of the violator's certificate may also be imposed, based on the authority in FAC section 47025(a). The Department has determined that this practice is a significant false, misleading, and deceptive business practice that threatens the integrity of the direct marketing industry. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the serious class.

17. The violation for 3 CCR subsection 1392.9(d) is adopted to provide that a market operator who fails to present, upon request of an enforcing officer, a current, valid, CFM certificate for review, while operating a CFM constitutes a minor violation because it has minimal adverse effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

#### **1392.10.1 Appeal of a California Department of Food and Agriculture Notice of Proposed Action and Informal Hearing Process.**

**Subsection 1392.10.1(a)** is adopted to establish that the secretary may, at any time, issue a written notice of proposed action for violations, based on the authority provided in FAC 47025(c). The notice must include the nature of the violation, the proposed penalty and/or length of suspension (if applicable). This duplication is necessary to have the complete appeals process provided in regulation and to provide clarity by establishing in regulation an appeal process when the person charged wants to appeal a written notice, and ensure the regulated industry and enforcing officers are aware of the notice process.

**Subsection 1392.10.1(b)** is adopted to establish that the secretary shall send written notices of proposed actions by certified mail or a mail delivery service that tracks delivery, to the last known address, that is on file with the Department, of the person charged, and that the notice is considered received by the person charged, even if delivery is refused at that address. This duplication is necessary to align with FAC section 47025(c) in order to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry and enforcing officers are aware of the notice delivery process.

**Subsection 1392.10.1(c)** is adopted to establish that the person charged may appeal a notice, or the Department's selection of an informal hearing procedure, within 20 calendar days of receiving the notice, by submitting a written request to the Department's Legal Office of Hearings and Appeals. This duplication is necessary to align with FAC section 47025(c) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry is aware of their appeal rights, the appeal process, and the appeal timeframe. This section further establishes that any objection to the

Department's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing, pursuant to Government Code section 11445.30. This language is necessary to make the appellant aware that they can make an objection to the Department's selection of the informal hearing process and that any objection made will be resolved by the Hearing Officer prior to the hearing pursuant to Government Code section 11445.30.

**Subsection 1392.10.1(d)** is adopted to establish that if the appellant does not request a hearing within 20 calendar days, they waive their rights to contest the notice and the secretary may take the action proposed without a hearing. This duplication is necessary to have the complete appeals process provided in regulation and to provide clarity to ensure the regulated industry is aware of the timeframe of their appeal rights and the consequences if they do not appeal in a timely manner.

**Subsection 1392.10.1(e)** is adopted to establish that if the appellant requests a hearing in a timely manner, the Department must provide the appellant with a notice of the informal hearing, including the date, location, and time, at least 10 business days before the hearing. This duplication is necessary to align with FAC section 47025(c) to have the complete appeals process provided in regulation to provide clarity and to ensure the Department provides the appellant with sufficient notice of the time and place the hearing will be held and time to prepare for the hearing.

**Subsection 1392.10.1(f)** is adopted to establish that the secretary shall send notice of an informal hearing to the last known address, that is on file with the Department, of the appellant, and that the notice is considered received, even if delivery is refused at that address. This duplication is necessary to ensure the regulated industry is aware of the delivery process for informal hearing notices.

**Subsection 1392.10.1(g)** is adopted to establish that any documents that the appellant wants to be considered by the hearing officer shall be received by the Department's Legal Office of Hearings and Appeals at least three business days prior to the scheduled hearing. This is necessary so that an appellant will know of the timeframe for submitting any documents they want considered by the Hearing Officer. It is also necessary to ensure there is enough time to distribute any documents submitted to all parties and the Hearing Officer prior to the hearing and to allow adequate time for all parties and the Hearing Officer to review all documents related to the hearing and prepare for the hearing.

**Subsection 1392.10.1(h), (h)(1), (h)(2), (h)(3), and (h)(4)** are adopted to establish the format of an informal hearing, which stipulates that: the hearing will be presided over and conducted by a hearing officer designated by the secretary; the standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard; a teleconference line shall be available; and hearings shall be recorded and a transcript of the recording or an electronic copy shall be provided to any interested party upon written request. These subsections are necessary to inform the regulated public that it is the Secretary who

designates the hearing officer, to inform the regulated public of what the standard of proof is for the hearing, to ensure an appellant will have access to the informal hearing process even if they are not able to travel to the hearing location, to maintain the administrative record and so the appellant or any interested party will know that the Department will record the hearing and that it will be available.

**Subsection 1392.10.1(i)** is adopted to establish that the hearing officer will provide a decision in writing within 30 calendar days after the conclusion of the hearing, and it shall be effective immediately. This is necessary to ensure that the appellant is aware of the time frame of when the hearing officer will issue a written decision.

**Subsection 1392.10.1(j)** is adopted to establish that the appellant may request a review of the secretary's decision within 30 calendar days of the date of the decision and order, pursuant to Section 1094.5, of the Code of Civil Procedure. This is necessary to ensure that the appellant is aware of their appeal rights.

**Subsection 1392.10.1(k)** is adopted to establish that the appellant may incur additional expenses, aside from the administrative civil penalty, including the costs of the administrative hearing, unless the decision of the secretary or county agricultural commissioner is overturned. This duplication is necessary to align with FAC section 47025(f) to have the complete appeals process provided in regulation to provide clarity and to ensure the appellant is aware of the potential additional charges they may incur during an appeal.

**Section 1392.10.1's Note Section** is adopted to ensure the authority and references related to the code are cited. Authority cited includes FAC sections 407 and 47001; Government Code (GC) section 11400.20. References cited include FAC section 47025; GC section 11445.20 and 11445.30; California Evidence Code section 115. These changes are necessary to ensure pertinent statutes are referenced.

### **1392.10.2 Appeals of a County Agricultural Commissioner's Decision.**

**Subsection 1392.10.2(a)** is adopted to establish that a person whom the CAC imposed an administrative civil penalty or suspension, who requested and appeared at a hearing, may appeal the CAC's decision to the secretary by submitting a written appeal request to the secretary at the Department's Legal Office of Hearings and Appeals within 30 calendar days after receiving the CAC's decision. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to establish an appeal process when the person charged wants to appeal the imposition of an administrative civil penalty or suspension, and ensure the regulated industry is aware of the appeal process.

**Subsection 1392.10.2(b)** is adopted to establish that if an appellant is appealing a CAC's decision, the appellant must concurrently submit a copy of the appeal to the Department and to the CAC who imposed the administrative civil penalty and/or suspension. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals



process provided in regulation to provide clarity and to ensure the regulated industry is aware of their responsibilities when requesting an appeal.

**Subsection 1392.10.2(c), (c)(1), (c)(2), (c)(3), and (c)(4)** are adopted to establish the requirements when appealing the decision of a CAC, which specify: the request shall be in writing, be signed by the appellant or his/her authorized agent, state the grounds for the appeal, and include a copy of the CAC's decision. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry is aware of their responsibilities when requesting an appeal.

**Subsection 1392.10.2(d)** is adopted to allow the CAC and/or the appellant, at the time of filing the appeal or within ten calendar days after filing the appeal, to submit the record of the hearing and a written argument stating the grounds for affirming, modifying, or reversing the CAC's decision. It also provides the appellant with the address that all documents must be submitted to at the Department's Legal Office of Hearings and Appeals. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry is aware of their appeal rights, the appeal process, and the appeal timeframe.

**Subsection 1392.10.2(e)** is adopted to allow the CAC or the appellant, or both, the option to request oral argument when submitting their appeal. This request must be submitted when the appellant submits their written argument to the secretary. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry is aware of their appeal rights, the appeal process, and the appeal timeframe.

**Subsection 1392.10.2(f)** is adopted to inform the regulated industry and CAC's that the secretary may grant or deny oral arguments upon application made at the time written arguments are filed. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry and CAC's are aware of their rights to request oral arguments.

**Subsection 1392.10.2(g)** is adopted to establish that if the secretary grants the request for oral argument, the secretary shall send written notice of the time and place for the oral argument and shall be given at least 10 calendar days before the date set. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure the regulated industry and the CAC are aware of their rights to request oral arguments and to ensure the Department provides the appellant and the CAC with sufficient time to prepare for the oral argument.

**Subsection 1392.10.2(h)** is adopted to establish that if the secretary denies the request for oral argument, the Department shall send written notice of the denial and state the reasons why. This is necessary to ensure the Department provides the appellant with sufficient information regarding the denial.

**Subsection 1392.10.2(i)** is adopted to stipulate that the secretary shall send written notice of oral argument to the last known address, on file with the Department, of the appellant, and that the notice is considered received, even if delivery is refused or not accepted at that address. This is necessary to ensure the regulated industry is aware of the delivery process for oral argument notices.

**Subsection 1392.10.2(j), (j)(1), (j)(2), (j)(3), (j)(4), and (j)(5)** are adopted to describe the secretary's appeal process, which stipulates that the decision will be based on the record of the CAC's hearing, written evidence, and written arguments submitted. The secretary will affirm the CAC's decision if there is substantial evidence to support the CAC's decision. The secretary can affirm, modify, or reverse the CAC's decision. The secretary will render a written decision within 45 calendar days of the date the appeal is received by the Department or within 15 calendar days of the date of oral arguments, or as soon thereafter as practicable. The secretary will deliver or mail a copy of the written decision and order to the appellant and the respective CAC. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity.

**Subsection 1392.10.2(k)** is adopted to establish that the appellant may request a review the secretary's decision within 30 calendar days of the date of the decision and order, pursuant to Section 1094.5, of the Code of Civil Procedure. This duplication is necessary to align with FAC section 47025(d) to have the complete appeals process provided in regulation to provide clarity and to ensure that the appellant is aware of their appeal rights.

**Subsection 1392.10.2(l)** is adopted to establish that the appellant may incur additional expenses, aside from the administrative civil penalty, including the costs of the administrative hearing, unless the decision of the secretary or CAC is overturned. This duplication is necessary to align with FAC section 47025(f) to have the complete appeals process provided in regulation to provide clarity and to ensure the appellant is aware of the potential additional charges they may incur during an appeal.

**Section 1392.10.2's Note Section** is adopted to ensure the authority and references related to the code are cited. Authority cited includes FAC sections 407 and 47001; Government Code (GC) section 11400.20. References cited include FAC section 47025. These changes are necessary to ensure pertinent statutes are referenced.

### **1392.11. Appeals.**

**Subsection 1392.11** is repealed as the procedures governing appeals have been consolidated in subsections 1392.10.1 and 1392.10.2, respectively. Language regarding market rules is repealed since the Department is no longer involved in reviewing market operator's rules, the Department will not be involved in reviewing appeals from certified producers regarding decisions made by market operators. This change is necessary to separate and make specific appealing an action taken by the secretary and an action taken by a CAC.

## **TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS**

- Meeting Minutes from the May 4, 2017 Certified Farmers' Market Advisory Committee Meeting
- Assembly Bill 1871 (Dickinson) (Chapter 579, Statutes of 2014)

## **ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

In accordance with Government Code §11346.3(b), the Department has made the initial determination that the proposed regulations would not have an impact on the general public or protection of public health and safety; the creation or elimination of jobs; the creation of new businesses; the elimination of existing businesses; the expansion of businesses currently doing business within this state, that would insignificantly affect a private person or business, and would not impact the ability of California businesses to compete with businesses in other states, or on representative private persons.

This initial determination is supported by the contention that this regulatory action is intended to align with the statutory changes codified under AB 1871 (Dickinson) (Chapter 579, Statutes of 2014), which has been operational since January 1, 2015.

CFMs provide a number of direct (e.g., profits for CFM producers, job creation, etc.) and indirect (e.g., stimulating traffic for local economies, community development, etc.) economic benefits. While CFMs provide a number of economic benefits, these proposed regulations are intended to better equip market operators and county and state enforcing officers with the tools to ensure that selling activities are free of fraud, deception, and mislabeling.

Promulgating regulations which align, interpret, and make the most recent statutory changes related to CFMs and direct marketing specific is determined to be the most effective mechanism to promote the direct marketing industry and ensure that selling activities at CFMs are free of fraud, deception, and mislabeling. Accordingly, these regulations continue a lengthy body of statutory and regulatory precedent which is intended to promote consumer confidence in CFMs and enhance the conditions for an equitable marketplace in the industry, thereby encouraging the continued growth of the direct marketing industry. Conversely, if these regulations are not promulgated, market operators and state and county enforcing officers would lack the tools necessary to ensure that selling activities are free of fraud, deception, and mislabeling at CFMs. This may eventually lead to a diminished level of public confidence in buying from CFMs and may eventually harm the industry.

"Table A" and "Table B," within 3 CCR subsection 1392.10(b) have been revised to encompass changes made in this regulatory action, and to ensure uniformity of enforcement throughout the State. It is expected that the industry will comply with the laws and regulations, so any increased penalties will not have an economic impact on the industry.

Persons in violation may have an economic impact of the penalty, but this is similar to the penalty matrix in its current form. There are approximately 2,700 certified producers and 700 CFMs in California. Based on the information provided to CDFA in fiscal year 2018/19, only 71 Notices of Proposed Actions were issued, which is two percent of the persons participating in CFMs.

### **EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESSES**

Based upon the reasons stated in the economic impact assessment/analysis, the Department has initially determined that these proposed changes to the regulations would not have a significant adverse economic impact to persons that are compliant with the FAC and 3 CCR.

This regulatory action is intended to promote consumer confidence in CFMs, thereby encouraging the continued growth of the direct marketing sector. Unless concerns related to the integrity of CFMs are mitigated, a lack of consumer confidence could hamper this growing industry. Promulgating regulations which align, interpret, and make the recent statutory changes related to CFMs and direct marketing specific is determined to be the most effective mechanism to protect and promote the direct marketing industry and ensure that selling activities at CFMs are free of fraud, deception, and mislabeling. Based on the information provided to CDFA in fiscal year 2018/19, only 71 Notices of Proposed Actions were issued, which is two percent of the persons participating in CFMs. It is expected that persons who participate in CFMs will comply with the laws and regulations, so these penalties will not have an economic impact on the industry as a whole. Persons assessed a Notice of Proposed Action will still have the right to due process. It is critical to address this proposed regulatory action would not financially impact any compliant person.

### **REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Department must determine that no reasonable alternative considered by the Department or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed regulatory action, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provisions of law. Interested persons are invited to present statements or arguments with respect to any alternatives to the changes proposed at the scheduled hearing or during the written comment period.

### **DUPLICATION OR CONFLICT WITH FEDERAL REGULATIONS**

The proposed regulations do not duplicate or conflict with federal regulations.