

**DEPARTMENT OF FOOD AND AGRICULTURE**  
**FINAL REGULATION TEXT**

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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

**§ 1392. Intent.**

It is the intent of this article to encourage productive and profitable agriculture in California, as directed by state agricultural policy (California Food and Agriculture Code, Division 1, Chapter 6, Article 2, Section 821), by facilitating the sale of agricultural products from producers and certified producers within the state directly to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, while maintaining sufficient regulatory control to ensure that the agricultural products are of acceptable quality and that the selling activities are conducted honestly and fairly.

Note: Authority cited: Sections 14, 407, 42682, 42684, ~~58101, 58101.5, 58102, 58103 and 58104~~, 47001, 47002, 47003, 47004, 47005, 47005.1, 47005.2, 47005.3 and 47020, Food and Agricultural Code. Reference: Sections 821, 42941, ~~58101, 58101.5, 58102, 58103, and 58104~~, 47000, 47000.5 and 47021, Food and Agricultural Code.

**§ 1392.1. Direct Marketing Authorized.**

(a) Notwithstanding other provisions of this ~~Chapter Group~~, this article authorizes producers or certified producers of certified or noncertifiable agricultural products to sell their products, as defined in this article, directly to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, subject to the provisions of this article.

~~(b) A certified producer may sell agricultural products, which he/she has produced, at a certified farmers' market.~~

~~(c) A producer may only sell noncertifiable agricultural products which he/she has produced, at a certified farmers' market, or agricultural products which he/she has produced, at or near the point of production.~~

~~(d)~~ Fresh fruits, nuts, and vegetables may be sold directly to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, exempt from size, standard pack, container, and labeling requirements only by:

(1) The certified producer of the agricultural products, or the authorized representative of the certified producer, at a vendor stand at a certified farmers' market; or

- (2) The certified producer of the agricultural products at an outlet or location; or  
(23) The producer of the agricultural products at a field retail stand, or farm stand located at or near the point of production.

~~(ec)~~ Fresh fruits, nuts, and vegetables may be sold for commercial resale only when such products comply with all applicable size, standard pack, standard container, and labeling requirements in Subchapter 4, (commencing with section 1359) of Chapter 1, of Division 3, of Title 3 of the California Code of Regulations, except as provided in subsection 1392.4(kj).

~~(fd)~~ All fresh fruits, nuts, and vegetables sold pursuant to this article shall comply with the regulations of the California Code of Regulations, title 3, subchapter 4, beginning with section 1359, governing maturity and quality. Fresh fruits, nuts, and vegetables which are sold or offered for sale at a certified farmers' market, a field retail stand, a farm stand at or near the point of production, or an outlet or location, must comply with Subchapter 4, (commencing with section 1359) of Chapter 1, of Division 3, of Title 3 of the California Code of Regulations governing maturity, quality, and consumer package labeling.

~~(ge)~~ Excluding fresh fruits, nuts, and vegetables, agricultural products, as defined in this article, which are sold or offered for sale at a certified farmers' market, a field retail stand, or a farm stand at or near the point of production, must comply with all applicable laws and regulations pertaining to quality and labeling. 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.

~~(hf)~~ This article does not supersede the provisions of federal marketing orders, state marketing orders, state laws and regulations enforced by any state agency, or any other local health and safety laws, regulations, or ordinances.

Note: Authority cited: Sections 407, 42681, 42682, 42684, 47000, 47001, 47002 and 47003, Food and Agricultural Code. Reference: Sections 42941, 47000, 47002 and 47003, Food and Agricultural Code.

### **§ 1392.2. Definitions.**

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

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

(b) Certified Farmers' Market Certificate. A certificate issued by the county agricultural commissioner authorizing the location, months of operation, day(s) of the week, and hours of operation where agricultural products are sold by the producers or certified producers directly to the public, consumers, or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. The certificate is valid only when bearing the original signatures of the county agricultural commissioner and the authorized representative of the certified farmers' market and only for the location, months of operation, day(s) of the week, and hours of operation as specified on the certificate. Upon receipt of a certified farmers' market certificate, an operator shall assume and retain responsibility for all aspects of the operation of a certified farmers' market at the location specified; including, but not limited to legal, financial, and regulatory compliance requirements.

(c) Land Which the Producer or Certified Producer Controls. Land that the producer or certified producer farms and owns, rents, leases, or sharecrops:-

(1) Prior to planting of annual and biannual crops; and

(2) Prior to or within 30 days after preparing perennial field crops for the subsequent cropping pattern (e.g., prior to the fern stage of asparagus or prior to cut back of artichokes); and

(3) Prior to bloom of tree and vine crops.

(d) ~~Producer. A person or separate entity that produces agricultural products by practice of the agricultural arts upon land which the person or separate entity controls. Producer may be, for the purposes of this article, a person, partnership, corporation or any other entity.~~ A person, partnership, corporation, or an otherwise legally formed farm or ranch that produces agricultural products by the practice of the agricultural arts upon land that the person or entity owns, rents, leases, sharecrops, or otherwise controls and has the documented legal right to possession. A person or entity that rents, leases, or otherwise acquires the right to possession of property essentially only for or limited to the period of the harvest season of the agricultural products produced on that property shall not be considered a producer under the provisions of this chapter.

(e) Certified Producer. A producer authorized by the county agricultural commissioner to sell certified agricultural products, produced by practice of the agricultural arts upon land which the certified producer controls, directly to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, at a certified farmers' market, or an outlet or location.

(f) Authorized Representative of the Certified Producer. A person approved by the certified producer to conduct business on behalf of the certified producer, only at a certified farmer's market.

(fg) Certified Producer's Certificate. A certificate issued by the county agricultural commissioner in the county of production authorizing the transportation and sale of certified agricultural products pursuant to this article.

~~(gh) The Public Consumer. A person who purchases and receives agricultural products at a field retail stand, or a farm stand at or near the point of production, or at a certified farmers' market, or an outlet or location, exclusively for personal or normal household use and does not include a person to whom fresh fruits, nuts, and vegetables are sold for commercial resale except as provided in subsection 1392.4(ki).~~

~~(hj) Direct Marketing. The sale:~~

~~(1) At a certified farmers' market of agricultural products by a certified producer to the public a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users; or~~

~~(2) At a certified farmers' market of noncertifiable agricultural products by a producer to the public a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users; or~~

~~(3) At a field retail stand, or a farm stand near the point of production of agricultural products by a producer to the public a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users; or~~

~~(4) At an outlet or location of agricultural products by a certified producer to the public or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.~~

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

~~(j) Employee. Any person employed by a certified producer at a regular salary or wage, on either a full or part time basis. The term "employee" does not include a person who is reselling agricultural products purchased from another producer or whose compensation is primarily based on a commission of sales.~~

~~Notwithstanding the above, an employee of an agricultural cooperative organized under the laws of California may sell the agricultural products of one of its members in accordance with the provisions of this article.~~

~~(ki) Agricultural Products. Agricultural products Fresh or processed products produced in California, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed bees wax, propolis, royal jelly, flowers, grains, nursery stock, raw sheared wool, livestock meats, poultry meats, rabbit meats, and fish, including shellfish that is produced under controlled conditions in waters located in California. Agricultural Products include all certified and noncertifiable agricultural products as defined in subsection 1392.2(4l) and subsection 1392.2(m).~~

~~(k) Nonagricultural Products. Products that are characterized as services, arts, crafts, bakery, candies, soaps, balms, perfumes, cosmetics, pottery, clothing, fabrics, pastas, compost, fertilizers, candles, ceramics, foraged foods, and types of wares are not agricultural products for purposes of this Chapter.~~

~~(1) A product that combines an agricultural product with a nonagricultural product or service in a manner that materially increases the purchase price of the product~~

shall disqualify the product from being sold as an agricultural product for purposes of this Chapter.

(l) Certified Agricultural Products. Agricultural products, which are certified under the jurisdiction of the county agricultural commissioner relative to inspection and verification of compliance with the provisions of this article, include fresh fruits, nuts, vegetables, herbs, cultivated mushrooms, shell eggs, honey, cut flowers, unprocessed grains, and nursery stock.

(m) Noncertifiable Agricultural Products. Noncertifiable agricultural products include all certified agricultural products that have been processed, any products that are produced from trees, vines, or plants of a certified agricultural product (including flowers and processed products), those products other than certified agricultural products noted in (l) above from any tree, vine or plant and their flowers (including processed products), livestock (including rabbits) and livestock products, dairy, pollen, unprocessed beeswax, propolis, royal jelly, raw sheared wool, livestock meats, poultry meats, rabbit meats, and fish, and including shellfish that is produced under controlled conditions in waters or ponds located in California. The noncertifiable agricultural products shall meet the definition provided in subsection 1392.2(j).

...

(o) Market Operator. 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.

(p) Authorized Representative of the Market Operator. 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, and an employee of the operator.

(eq) Market Manager. A person or persons empowered by the market operator to implement the rules, regulations, policies, and directives of the governing body of a certified farmers' market.

(pr) Market Rules. A set of written rules or regulations approved by each certified farmers' market. The rules and regulations may be more stringent than established state

regulations, provided they do not violate or conflict with any state law or regulation governing their activities.

(qs) Notice and Hearing Process. A process initiated at the discretion of the secretary or a county agricultural commissioner after alleged violation(s) of the provisions of this article has occurred.

~~(ft) Agricultural Production and Practice of the Agricultural Arts. To be involved in and make decisions regarding all phases of producing an agricultural product, which includes, but is not limited to, planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting. The undertaking of being predominantly responsible for the decisions and actions encompassing the various phases of producing an agricultural product. The practice of the agricultural arts for fruit, floral, nut, vegetable, and other plant products includes directive or actual responsibility for all the actions of planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting. The practice of the agricultural arts for agricultural animal products includes directive or actual responsibility for a substantial time of the raising, feeding, veterinary care, and product harvesting.~~

(1) The practice of the agricultural arts specifically for nursery stock shall include planting or transplanting one of the following into containers in a planting medium:

(i) Seed, bulbs or corms, or

(ii) Plant cuttings, or

(iii) Rooted seedlings which are in containers or plugs less than 2" in diameter.

(su) Partnership. A partnership is a separate entity distinct from its individual members. As a separate entity, a partnership must obtain a certified producer's certificate to market its agricultural products directly to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. Such agricultural products shall be produced by practice of the agricultural arts upon land that the partnership, as a separate entity, exclusively controls.

(tv) Sprouts. Sprouts are germinated seeds, legumes and nuts such as, but not limited to, pumpkin seeds, peanuts, flax, soybeans and fenugreek. For the purpose of practicing the agricultural arts to sell sprouts at a certified farmers' market, a minimum of fifty percent of the seeds, legumes, or nuts, in any package or container offered or displayed for sale, must have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering. No requirement for a minimum measurement of the sprout shall apply nor shall a minimum time of seed hydration be required.

(uw) Processed Agricultural Products. Processed agricultural products shall be defined as agricultural products that have been altered or prepared by such means as, but not limited to, slicing, juicing, drying, shelling, smoking, freezing or cooking, provided, however, that the seller has produced all of the ingredients contained in the final product. The only exceptions to this production requirement shall be the inclusion of food coloring, pectin, rennin/rennet or ingredients used as preservatives, seasonings, and flavorings.

(v1) Preservative. An additive, substance or ingredient(s) added to agricultural products to prevent decomposition due to chemical change or microbial action

and/or to protect against decay, discoloration or spoilage. Preservatives include, but are not limited to: sulfites added to dried fruits, dried vegetables or wine; sugar added in the making of jams, jellies and preserves; salt or salt brine solution for curing olives; or vinegar for pickling of products such as, but not limited to, beans, asparagus, and cucumbers.

(w~~2~~) Seasoning. Seasoning shall be defined as salt or spice used in food preparation.

(4i) Spice. Spice shall be defined as any ~~of various~~ granulated or powdered aromatic plant products used in food preparation. Spices include, but are not limited to the following ~~granulated or powdered~~ salts or spices: chili powder, black pepper, ginger, garlic, onion, jalapeno, cinnamon and nutmeg.

(~~x~~3) Flavoring. A substance, additive or ingredient, which may itself include seasonings or preservatives, that imparts flavor to a food without changing the consistency of or rendering unidentifiable the original product. Flavorings include, but are not limited to: liquid, powder or natural smoke, hickory, vanilla extract, nut oil, and soy sauce.

(y4) Food Coloring. For the purposes of this regulation, food coloring shall be defined as a dye or pigment that is added to a product to impart color.

(z~~x~~) At or Near the Point of Production. ~~For this article's purposes, the purpose of this article, "at or near the point of production" means not beyond the first paved county or primary road.~~

(y) Outlet or location. For the purpose of this article, an "outlet or location" means an approved location that is regulated pursuant to this chapter, that is operated by a certified producer, in which only the certified producer may directly market their agricultural products to the public.

(z) Enforcing Officer. For the purpose of this article, "an enforcing officer" means 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.

Note: Authority cited: Sections 407, 42681, 42684, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47000.5, 47001 and 47003, Food and Agricultural Code.

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

(a) Except as provided in subsection (f~~e~~) below, a producer or certified producer may sell or offer to sell, at a certified farmers' market, a field retail stand, ~~or a farm stand~~ at or near the point of production, or an outlet or location, only agricultural products which he or she produced to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. To sell certifiable agricultural products at a certified farmers' market or an outlet or location, a producer shall obtain a certified producer's certificate from the county agricultural commissioner where the commodities are produced. ~~The certified producer's immediate family or employee(s)~~

~~may also act for and sell the certified producer's agricultural products. No certifiable agricultural products may be sold at a certified farmers' market unless such products are listed on the certified producer's certificate.~~

(1) The authorized representative(s) of the certified producer shall only sell the certified producer's agricultural products at a certified farmers' market.

(2) The certified producer is responsible for the actions of the authorized representative(s) of the certified producer and any violations and associated penalties and/or suspensions that stem from the actions of the authorized representative(s) of the certified producer, while selling on behalf of the certified producer at a certified farmers' market.

(3) All certifiable agricultural products that are sold at a certified farmers' market, or an outlet or location, must be produced by the certified producer.

(4) All certifiable agricultural products that are sold at a certified farmers' market, or an outlet or location, must be listed on the certified producer's certified producer's certificate.

(5) All noncertifiable agricultural products, that are sold in the defined marketing area where only agricultural products may be sold, must be produced by the producer, aside from exceptions listed in subsection 1392.2(w).

(6) The sale of nonagricultural products shall not be permitted in the defined marketing area where only agricultural products may be sold at a certified farmers' market.

~~(b) All agricultural products, when sold or offered for sale at a certified farmers' market or at a field retail stand near the point of production, shall comply with all applicable requirements of Article 1 (beginning with Section 113700), 2, 3, 4, 5, 6, 7, 11, 13, and 15 of Chapter 4 (California Uniform Retail Food Facilities Law), Division 104, Part 7, of the California Health and Safety Code, and Chapters 1 (beginning with Section 109875), 2, 4, 5, and 8 (California Sherman Food, Drug, and Cosmetic Law), and Division 104, Part 5, of the California Health and Safety Code.~~

(b) An authorized representative of the certified producer may only sell on behalf of one certified producer per certified farmers' market, per market day, unless operating under subsection 1392.4(e).

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

(d) The certified producer's embossed photocopy certificate or the certified producer's photocopy certificate with the county seal affixed to it shall accompany the certified agricultural products during transportation and ~~shall be conspicuously posted at the point of sale.~~

(e) When any agricultural products are sold by weight, the type of scale used shall be approved by the California Department of Food and Agriculture, and shall be tested and sealed for use by the county sealer-director of weights and measures.



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

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

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

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

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

(5) The certified producer selling for another certified producer shall be selling or offering for sale, at the same certified farmers' market on the same day, certified agricultural products which the certified producer conducting the sales has produced and which are in greater volume than the volume offered for sale for the other certified producer. For purposes of this section, the volume shall be measured by the weight or dollar value of the products at the time and point of sale. This volume requirement shall apply only at the beginning of each day of sale.

(6) The certified producer, selling for another certified producer shall not sell or offer for sale, at the same certified farmers' market, on the same day, the same commodity, variety/type, or product(s).

~~(67)~~ The producer applying for certification shall obtain and submit to the agricultural commissioner, prior to certification, written authority from said other certified producers to sell on their behalf.

~~(78) Commission sales and B~~ buying and reselling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall be a fixed amount and shall not be related to the volume or value of the products sold. A documented agreement, signed by both certified producers, shall be in place prior to the commencement of sales, and shall include reimbursable expenses covered by the payment.

~~(89)~~ The operator of a certified farmers' market may prohibit or otherwise establish rules regarding sales permitted under this subsection that are more restrictive, provided that such prohibition or restriction is contained in the market's written rules and regulations.

~~(910)~~ A certified producer who sells certified agricultural products on behalf of another certified producer or whose certified agricultural products are sold by

another certified producer at a certified farmers' market shall keep for a period of not less than three years, the following records relating to such products:

(i) Date of transfer to seller and accurate amount of products, by weight, dry measure, or count, transferred. Each separate product and amount shall be recorded ~~according to variety~~ as listed on the valid certified producer's certificate.

(ii) Date of sale and accurate amount of products, by weight, dry measure, or count, sold. Each separate product and amount shall be recorded ~~according to variety~~ as listed on the valid certified producer's certificate.

(iii) Names of both certified producers involved, as listed on the valid certified producer's certificate.

~~(4011)~~ A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the ~~department~~ secretary or county agricultural commissioner.

~~(g) The provisions of this section, and any amendments thereof, shall apply to all new certified producer's certificates, including renewals, upon filing with the Secretary of State, unless another effective date has been designated by the Office of Administrative Law. Certified producer's certificates already issued shall conform to the requirements of this section, and any amendments, within twelve (12) months of the certificate issue date.~~

~~(hf)~~ Any person selling organic products or representing products as organic at a certified farmers' market shall conspicuously post at the point of sale a photocopy of his or her current State of California organic registration and, if applicable, in accordance with the Code of Federal Regulations, Title 7, §205.101 (1-1-20 Edition), which is hereby incorporated by reference, documentation of his or her organic certification. Prior to posting organic documents, it is permissible to conceal from public view acreage and dollar amounts pertaining to annual sales. A complete photocopy of the original, unaltered, current organic document(s) shall, upon the request of an enforcement officer, be made available for review at any time during participation in a certified farmers' market.

~~(ig)~~ Any person selling organic products or representing products as organic on behalf of another certified producer at a certified farmers' market shall conspicuously post at the point of sale a photocopy of the represented certified producers' current State of California organic registration and, if applicable, in accordance with the Code of Federal Regulations, Title 7, §205.101, documentation of the represented certified producers' organic certification. Prior to posting organic documents, it is permissible to conceal from public view acreage and dollar amounts pertaining to annual sales. A complete photocopy of the original, unaltered, current organic document(s) shall, upon the request of an enforcement officer, be made available for review at any time during participation in a certified farmers' market.

~~(jh)~~ A certified producer shall not sell or represent sprouts as his or her own production resulting from practicing the agricultural arts if less than 50 percent of the seeds, legumes

or nuts in any package or container have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering.

(ki) A certified producer, when implementing any exemption to size, standard pack, container, or labeling requirements and selling agricultural products under such exemption(s) to any individual, organization, or entity that intends to subsequently sell the product(s) directly to end users or distributes the product(s) at no cost to end users, shall provide to the purchasing individual, organization, or entity a dated memorandum, bill of sale, or container label in accordance with Section 47002(e) of the Food and Agricultural Code. The memorandum, bill of sale, or container label must list all of the following:

- (i)(1) Identity of the producer;
- (ii)(2) Address of the producer;
- (iii)(3) Identity of the product purchased;
- (iv)(4) Quantity of the product purchased; and
- (5) Date transaction occurred.

(lj) A certified producer shall not knowingly fail to provide the memorandum, bill of sale, or a container label so described and under the circumstances set forth in subsection (ki) of this section and shall, under any circumstances, issue a memorandum, bill of sale, or a container label, as described in regard to any sale of a single agricultural commodity in excess of twenty-five pounds net weight to any individual consumer or end user.

(k) Every person selling certifiable agricultural products within a certified farmers' market shall, at the point of sale:

- (1) Conspicuously post their valid certified producer's certificate; and
- (2) Conspicuously post a legible sign or banner that states:
  - (i) The name of the farm or ranch, as listed on the valid certified producer's certificate and "doing business as" name ("dba") (if applicable), as listed on the valid certified producer's certificate; and
  - (ii) The production county where the products being offered for sale were produced; and
  - (iii) A statement of "We Grow What We Sell" or a similar phrase.

(ml) A seller of processed agricultural products shall state in a clear manner by package label, container label, or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm or ranch is located. In addition, every processed product shall identify on a package label, container label, or on bulk sales signage the registration number or other identity reference of the facility where the food was processed, or another required labeling statement or information, in accordance with Sections 110460, 114365, and 114365.2 of the Health and Safety Code, or, in the case of meat or poultry products, the identity of the facility where the meat or poultry products were cut and wrapped, in accordance with the applicable United States Department of Agriculture or State of California inspection standards, or, in the case of dairy products, the identity of the facility where the dairy products were manufactured or processed. document

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

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

(m) Within 48 hours of the conclusion of each market day, each certified producer or the authorized representative of the certified producer participating in the sale of agricultural products at a certified farmers' market shall provide the market operator an itemized list of all products sold at the certified farmers' market.

(1) The product list shall state the name of the certified producer, as listed on the valid certified producer's certificate, certified producer's certificate number, market name, date of market, the commodity, variety/type, and quantity of each product sold at the market, including all processed agricultural products. For certifiable products, the commodity, variety/type, and quantity of each product sold must be listed in the same unit of measure or count as it appears on the valid certified producer's certificate.

(n) The secretary or a county agricultural commissioner may deny the issuance of a certificate to any certified producer or market operator who is determined to be delinquent in the payment of fees or penalties required under Chapter 10.5 of Division 17 of the Food and Agricultural Code or this article.

Note: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003, 47004 and 47005, Food and Agricultural Code. Reference: Sections 861, 47000, 47002, 47003, 47004, 47005 and 47022, Food and Agricultural Code.

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

~~In applying Section 47025 of the California Food and Agricultural Code, the secretary and county agricultural commissioners shall use the provisions of this section to determine the violation class and amount of the penalty.~~

~~(a) For the purposes of this section, violation classes are designated as "Serious," "Moderate," and "Minor".~~

~~(1) "Serious". Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices or for any violation which is a repeat of a violation of sub-paragraph (2) that~~

occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty.

(2) "Moderate". Violations which undermine enforcement, or those in which there is a potential for intermediate level of consumer or competitive harm; or for any violation which is a repeat of a violation of sub-paragraph (3) that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty.

(3) "Minor". Violations that have minimal adverse effect on consumers or equitable competition in the marketplace.

(b) As stated in paragraph (a) repeat violations may result in an escalation of violation class except those found under Table A, Section II. Market Operator Violations, Code Sections 1392.6(d), 1392.6(d), (e), (f), and 1392.6(g). Repeat violations in these areas would remain in the "Minor" violation type.

(c) Table A shall be used to establish the level of severity of a particular violation and the corresponding penalty range for "Serious," "Moderate," and "Minor" violation classes. Except where specific violation parameters are provided, the violation column in Table A is an abbreviated description of the corresponding section in the California Food and Agricultural Code, Division 17. Fruit, Nut and Vegetable Standards, and Title 3, Article 6.5. Direct Marketing, California Code of Regulations.

<b>Table A</b>				
		<b>VIOLATION TYPE</b>		
		<i>MINOR</i>	<i>MODERATE</i>	<i>SERIOUS</i>
		<i>Fine Range</i>	<i>Fine Range</i>	<i>Fine Range</i>
<i>Code Section</i>	<i>Description of Violation</i>	<i>\$50-\$150</i>	<i>\$151-\$400</i>	<i>\$401-\$1000</i>
<b>Section I</b>	<b>Certified Producer Violations</b>			
1. FAC 47002	Transport, pack, or sale of nonconforming products, i.e. Minimum Grade Stds., Minimum Maturity Stds., Closed Consumer Cont. (IRQ), Egg Labeling Requirements	2nd NC in 12 months		
2. FAC 47002(e)	Failure to provide to purchaser of product a memorandum/receipt which includes all required information	X		

3. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
4. FAC 47022.1	Deceptive pack	2nd NC in 12 months		
5. FAC 47022.2	Mislabel/Misleading statement	2nd NC in 12 months		
6. FAC 47022.3	Falsify documents or make false statements regarding size, maturity, condition, or quality of products offered for sale	-	-	X
7. FAC 47022.4	Unlawfully removing warning tag or product held under NC	-	-	X
8. FAC 47022.5	Refusing to submit for inspection or stop any vehicle for inspection	-	-	X
9. FAC 47022.6	Refusing to allow inspection of property, storage etc.	-	-	X
10. FAC 47022.7	Alteration of any documents issued by an enforcing officer			X
11. CCR 1392.1(d)	Selling product exempt from size, standard pack, container, and labeling requirements at a certified farmers market without being a certified producer		-	X
12. CCR 1392.1(e)	Failure to sell fresh fruits, nuts, and vegetables in compliance with maturity and quality requirements	2nd NC in 12 month		
13. CCR 1392.1(f)	Failure to sell agricultural products in compliance with quality and labeling requirements - (excludes fresh fruits, nuts, and vegetables)	2nd NC in 12 month		
14. CCR 1392.1(g)	Products sold that are not under exemption must comply with all regulations regarding quality and labeling	2nd NC in 12 month		

15. CCR 1392.4(a)	Certified producer selling product(s) not of their own production	-	-	X
16. CCR 1392.4(a)	Certified producer selling product(s) which they produced but do not have listed on their certified producer's certificate	2nd NC in 12 month		
17. CCR 1392.4(b)	Selling products at a certified farmers market not in compliance with specified California Health and Safety Code Requirements	X		
18. CCR 1392.4(c)	Selling nonagricultural products in the certified section of a certified farmers market	-	X	
19. CCR 1392.4(d)	Producer not having a valid Certified Producer's Certificate	-	-	X
20. CCR 1392.4(d)	Certified producer's embossed certificate not in possession and/or not conspicuously posted	2nd NC in 12 months		
21. CCR 1392.4(e)	Failure to use approved scale or sealed scale	-	X	
22. CCR 1392.4(f)1	A certified producer representing or being represented by more than two other certified producers in a 12-month period		X	
23. CCR 1392.4(f)(2)	Failure to separate and identify, at the point of sale, one's own products from that of another Certified Producer from whom one is selling	2nd NC in 12 month		
24. CCR 1392.4(f)(2)	Failure to post Certified Producer Certificate of producer for whom another Certified Producer is selling	2nd NC in 12 month		
25. CCR 1392.4(f)(3)	Failure to add name of another certified producer that the producer is selling for to his/her certificate	-	X	
26. CCR 1392.4(f)(4)	Failure to have the name of the certified producer who is selling the products of another certified producer appear on the	-	X	

	certificate of the person for whom the certified producer is selling			
27. CCR 1392.4(f)(5)	A certified producer offering for sale product for another certified producer in greater volume than the certified producer is offering for sale	2nd NC in 12 month		
28. CCR 1392.4(f)(7)	Commission sales / buying and selling between certified producers	-	-	✗
29. CCR 1392.4(f)(9)	When selling on behalf of another producer, failure to keep required records for a period of three years	✗		
30. CCR 1392.4(f)(10)	Failure to produce records for inspection upon demand	✗		
31. CCR 1392.4(h)	Failure to post organic registration and/or documentation of organic certification when representing product as organic	✗		
32. CCR 1392.4(i)	Failure to post organic registration and/or documentation of organic certification for product of other Certified Producer when selling for another and representing product as organic	✗		
33. CCR 1392.4(j)	Sale of sprouts with less than 50% having emerged	✗		
34. CCR 1392.4(k) (l)	Not providing memorandum with required information		✗	
35. CCR 1392.4(m)	Does not have required documentation on processed products		✗	
36. CCR 1392.5(c)	Refusing to provide documentation	-	-	✗
37. CCR 1392.9.2(d)	Failure to report to County Agricultural Commissioner any change in Farm Lease Agreement and/or surrender invalid certificates to CAG	-	✗	



<b>Section II.</b>	<b>Market Operator Violations</b>	-	-	-
1. CCR 1392.6(d)	Failure to promulgate a set of market rules	X		
2. CCR 1392.6(d),(e),(f)	Market rules must be in compliance.	X		
3. CCR 1392.6(g)	Failure to submit copy of current CFM rules to CDFA and/or the County Agricultural Commissioner	X		
4. CCR 1392.8.1.	Failure to submit remittance with required information	X		
5. CCR 1392.9(a)(1)	Failure to ensure each seller is a Certified Producer, member of immediate family of Certified Producer, or employee of Certified Producer	2nd NC in 12 months	-	-
6. CCR 1392.9(a)(2)	Failure to ensure the producers are selling only certified and non-certifiable products in the area designated as the certified farmers market	X	-	-
7. CCR 1392.9(a)(3)	Failure to ensure the certified producer has in their possession a valid certified producer's certificate	2nd NC in 12 months	-	-
8. CCR 1392.9(a)(3)	Failure to ensure the Certified Producer posts a valid Certified Producer's Certificate	2nd NC in 12 months		
9. CCR 1392.9(a)(4)	Failure to ensure all products for sale by producer are listed on their certificate	2nd NC in 12 months	-	-
10. CCR 1392.9(a)(5)	Failure to ensure the producers are selling only approved non-certifiable ag. products	2nd NC in 12 months	-	-
11. CCR 1392.9(a)(6)	Failure to ensure the producer's products being sold for other producer(s) are separated and identified and all certified producer's names are cross referenced	2nd NC in 12 months		

12. CCR 1392.9(b)	Failure to collect all of the load lists required on any single market day, and/or failure to ensure that each load list contains all required information, and/or failure to keep load lists for 18 months	2nd NC in 12 months	-	-
13. CCR 1392.9(c)	Operation of a CFM without possession of a current, valid CFM Certificate	-		X
14. CCR 1392.9(d)	Failure to present, upon request of officer, a current, valid CFM Certificate for review	X		-
15. CCR 1392.9(e)	Deny right to appeal	X		
16. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
17. FAC 47022.3	Falsify documents or false statements to obtain market Certificate	-	-	X
18. FAC 47022.6	Refusing to allow inspection of property	-	-	X
19. FAC 47022.7	Altering any official document issued by enforcing officer	-	-	X

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code. Reference: Sections 42651, 43003 and 47025, Food and Agricultural Code.

**§ 1392.5. Producer Certification Procedures.**

(a) A producer may become certified by applying to the county agricultural commissioner of the county where the producer's farm is located. Upon approval of a certified producer's certificate, issued by the county agricultural commissioner of the county where the producer's farm is located, a producer automatically becomes registered with the California Department of Food and Agriculture. A producer who farms in more than one county must be certified in each county where he/she produces certifiable agricultural products for sale at a certified farmers' market, or an outlet or location.

(1) Any revocation or suspension of a certified producer's certificate by the county agricultural commissioner or secretary, pursuant to Food and Agricultural Code section 47025, shall cause the concurrent revocation or suspension of the certified producer's registration with the California Department of Food and Agriculture.

(2) Certified producers shall notify the county agricultural commissioner within 30 days of any change of business address to update their certified producer's certificate.

(3) Certified producers shall provide the county agricultural commissioner with a list of all authorized representatives who are authorized to sell on their behalf.

(b) ~~The certificate and application shall be on a form authorized by the director~~ secretary. ~~and include an agreement signed by the applicant that~~ Upon certification, the applicant certified producer and all authorized representatives of the certified producer selling on behalf of the certified producer will shall comply with the terms of this article, ~~and the form must include the following:~~

(1) Producer name; farm or ranch name; dba (if applicable); business address, including city, zip code; phone number; e-mail address (if applicable); and fax number (if applicable);

(2) All production sites, including total acreage per production site, and storage locations;

(3) All commodities in alphabetical order by common name and identified by variety/type, if known;

(4) Estimated amount/unit grown per commodity; estimated production per commodity; harvest season; season altering devices (if applicable) and months in storage (if applicable); and

(5) 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 date declared.

...

(d) The county agricultural commissioner, upon the review of a producer's application, and determination that the applicant meets the requirements of a certified producer, shall issue only one original certificate, which bears the signatures of the agricultural commissioner and the certified producer, and the name of each destination county where the certified producer will be selling. The original certificate shall be maintained in the issuing county agricultural commissioner's office.

(e) The county agricultural commissioner shall perform at least one on-site inspection of each property listed on each new producer's initial application, prior to issuing the certified producer's certificate.

(ef) The county agricultural commissioner shall issue an embossed photocopy of the original certified producer's certificate or a photocopy of the original certified producer's certificate with the county seal affixed to it of the original certificate to the certified producer, which will serve as the valid certified producer's certificate. Certified producers who intend to sell at more than one certified farmers' market must obtain the necessary number of valid embossed photocopies of the original certificate from the issuing county to comply with the provisions of this article.

(g) A certified producer's certificate shall be valid for up to 12 months from the date of issue.

(fh) The issuing county agricultural commissioner shall send a photocopy of the original certificate to each destination county listed on the certified producer's certificate and to the California Department of Food and Agriculture.

(1) The issuing county agricultural commissioner shall provide each destination county and the California Department of Food and Agriculture with the updated business address when reported by the certificate holder, within 10 business days.

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47001, 47002, 47003 and 47020 ~~58101.5, 58102 and 58103~~, Food and Agricultural Code. Reference: Sections 42941, 47000 and 47000.5 ~~58101, 58101.5, 58102, 58103 and 58104~~, Food and Agricultural Code.

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

(a) A county agricultural commissioner may issue a certified farmers' market certificate, which specifies a location where agricultural products may be sold or offered for sale. Upon approval of a certified farmers' market certificate, issued by the county agricultural commissioner, of the county where the certified farmers' market is located, a certified farmers' market automatically becomes registered with the California Department of Food and Agriculture. The certificate shall indicate that the marketplace is a certified farmers' market.

(1) The issuing county agricultural commissioner shall send a photocopy of the original certified farmers' market certificate to the California Department of Food and Agriculture.

(i) The issuing county agricultural commissioner shall provide the California Department of Food and Agriculture with the updated mailing address when reported by the certificate holder, within 10 business days.

(2) Any revocation or suspension of a certified farmers' market certificate by the county agricultural commissioner or secretary, pursuant to Food and Agricultural Code section 47025, shall cause the concurrent revocation or suspension of the certified farmers' market registration with the California Department of Food and Agriculture.

(3) Market operators shall notify the county agricultural commissioner within 30 days of any change of mailing address to update their certificate.

(b) The signed application/certificate ~~Application~~ shall be made by the proposed operator(s) of a certified farmers' market on a form authorized by the secretary. Upon certification, the applicant agrees to comply with all terms of this article, and the form must include the following: ~~and shall include~~ 1) ~~a map that clearly locates and identifies the boundaries of the certified, non-certified and/or non-agricultural product areas of the market, and~~ 2) ~~a signed agreement by the operator(s) to comply with the terms of this article.~~ The application and certificate shall be on a form authorized by the director.

(1) The name of the market operator, operator mailing address, phone number, fax number (if applicable), website address (if applicable), physical address, and email address (if applicable);

(2) The market name, market mailing address, phone number, fax number (if applicable), email address (if applicable), and the name of the market manager;

(3) The market location; including city, county, and cross streets; months of operation; days of operation; hours of operation; and the estimated number of vendors per market day;

(4) Applicant's printed name, designation of whether the person filling out the form is the applicant or the applicant's authorized representative, signature, and date;

(5) A map that clearly locates and identifies the defined marketing area where only agricultural products may be sold; and

(6) Documentation of qualification to operate a certified farmers' market as defined in the California Code of Regulations Section 1392.2(a).

...

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

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

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

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

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

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

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

~~(2) Type and number of certified and noncertifiable products admitted.~~

~~(3) Methods of selling certified and noncertifiable agricultural products.~~

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

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

~~(g) A current copy of the certified farmers' market's rules and regulations shall be sent to the Department of Food and Agriculture, Inspection and Compliance Branch and to the agricultural commissioner of the county in which the certified farmers' market is located. In order to ensure the fair and equitable operation of the market, a provision that provides market participants with the right to appeal the imposition of a fine or suspension or expulsion from a certified farmers' market. While the appeal process may be informal, it must provide market participants with the following:~~

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

- ~~(2) A reasonable time period to request an appeal;~~
- ~~(3) If an appeal is requested, an opportunity to dispute the alleged violation and/or the proposed penalty;~~
- ~~(4) A short, written statement of decision.~~

(d) The secretary or a county agricultural commissioner may deny a certificate to any market operator who is determined to be delinquent in the payment of fees or penalties required under Chapter 10.5 of Division 17 of the Food and Agricultural Code or this article.

(e) A certified farmers' market certificate shall be valid for 12 months from the date of issue, and only during the specified months of operation, day of the week and hours of operation listed on the certificate.

(f) If the governing body of a certified farmers' market or the market operator promulgates market rules, the rules shall specify procedural criteria pertaining to:

- (1) Admission of producers to the market(s).
- (2) Admission of agricultural products to the market(s).
- (3) Imposition of a fine or suspension or expulsion of producer(s) from the market(s).
- (4) Allowance of a certified producer selling on behalf of another certified producer as provided in subsection 1392.4(e).
- (5) A clause, which states that the governing body or the market operator shall implement and enforce all rules pertaining to the operation of a certified farmers' market in a fair and equitable manner.
- (6) Procedures for taking action(s) shall include:
  - (i) Written notice to the vendor of the alleged violation(s) by setting forth the factual basis of the proposed penalty;
  - (ii) Market appeal procedure which specifies:
    - (A) A reasonable time period to request an appeal;
    - (B) If an appeal is requested, an opportunity to dispute the alleged violation(s) and/or the proposed penalty; and
    - (C) A short, written statement of the decision.

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47000, 47002, 47003, and 47004, 47020 and 47025, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

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

~~(a) A county agricultural commissioner shall issue a certified producer's certificate upon review of application and determination that the applicant meets the requirements of a certified producer. When issuing the certified producer's certificate, the county agricultural commissioner should:~~

- ~~(1) Consider seasonal production and varieties of the products when listing the products.~~
- ~~(2) Insofar as practicable, include an on-site inspection of the land controlled by the producer.~~

~~(b) A county agricultural commissioner shall issue a certified farmers' market certificate upon review of application and determination that the applicant meets the requirements to operate a certified farmers' market.~~

~~(c) A certified producer's certificate shall be valid for not more than 12 months from the date of issue.~~

~~(d) A certified farmers' market certificate shall be valid for 12 months from the date of issue.~~

~~Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.~~

### **§ 1392.8. Fees.**

The county agricultural commissioner may charge a fee for inspection and issuing, modifying, verifying, or renewing any certificate, including embossed valid photocopies, as set authorized by the board of supervisors of that county.

~~Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47020 and 47021, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 47000 and 47001, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.~~

### **§ 1392.8.1. Certified Farmers' Market Fees.**

(4a) Every operator of every certified farmers' market shall remit to the California Department of Food and Agriculture two dollars (\$2) for each vendor participating and selling goods under the authority and management of the certified farmers' market operator on each market day for the entire previous quarter. This includes each vendor participating and selling goods at the market operator's certified farmers' market or a separate sales activity that is concurrently operated, adjacent to, or contiguous, to the certified farmers' market, which is under the control of the market operator, the authorized representative of the market operator, or an individual or entity that is empowered by the market operator. ~~The fee shall be submitted within 30 days after the end of each quarter with a form containing the following information:~~

(1) Goods shall include tangible, material products.

(i) Distribution of materials with no monetary exchange shall not be considered goods for purposes of this article.

(2) The fee shall be submitted within 30 days after the end of each quarter, and shall be submitted with a form authorized by the secretary, and must contain the following information:

(a) Name of market ~~sponsor~~ operator, as listed on the certified farmers' market certificate;

(b) Market certificate number, as listed on the certified farmers' market certificate;

(c) Name and address of the market, as listed on the certified farmers' market certificate;

(d) Name of market ~~contact person~~ manager, as listed on the certified farmers' market certificate;

(~~ev~~) Market day(s) and hours of operation, as listed on the certified farmers' market certificate;

(~~f~~) Telephone number and fax number through which the market representative can be reached during normal work hours.

(~~gvi~~) Quarterly period for which the report is submitted;

(~~hvii~~) A List of each participating certified producer, their certified producer's certificate number and issuing county, the dates the certified producer participated in the market for the quarter, and the total number of days that the certified producer participated for the entire quarter; a list of each participating producer offering for sale non-certifiable agricultural products, the products being sold, the dates the producer participated in the market for the quarter, and the total number of days that the producer participated for the entire quarter; being sold by non-certified producers, certificate number and issuing county of all certificates under which product was presented for sale, and total number of certified producer certificates and other agricultural producers participating on each market day of the entire quarter and the total number of non-agricultural vendors that participated, per market day, for the entire quarter;

(~~iviii~~) Amount of fees submitted; and

(~~jix~~) Signature of market operator or the authorized representative of the market operator authorized market representative.

(~~2b~~) Any operator who fails to pay the required fee within thirty (30) days after the end of the quarter in which it is due shall pay interest at the rate of one and one half (1 1/2) percent per month on the entire unpaid balance including any late penalty fees that may apply, until payment is received in full.

(~~3c~~) In addition to monthly interest charges referenced in Section 1392.8.1(~~2b~~), any operator who fails to pay the required fee within sixty (60) days after the end of the quarter in which it is due, shall pay a late penalty fee of one hundred dollars (\$100), and an additional one hundred dollars (\$100) for every thirty (30) days thereafter, until payment is received in full or the certificate expires.

Note: Authority cited: Sections 407, 47000, 47001, 47003, 47011 and 47021, Food and Agricultural Code. Reference: Sections 47002, 47003, 47004, 47011 and 47021, Food and Agricultural Code.

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

(a) The operator of a certified farmers' market shall ensure that each person participating in the sale of agricultural products in the defined marketing area where only agricultural products may be sold ~~area designated as a certified farmers' market:~~

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

(2) Sells only certified and noncertifiable agricultural products.



- (3) Has in his or her possession, in the case of certifiable agricultural products, a valid certificate that is posted at the point of sale.
- (4) Has each certifiable agricultural product in his or her possession listed on the certified producer's current, valid certificate.
- (5) ~~Sells, w~~When selling noncertifiable agricultural products, sells only those products which were produced in accordance with the certified farmers' market's rules and regulations produced in accordance with subsection 1392.4.
- (6) ~~When a certified producer is representing another certified producer, under an additional certificate sells in accordance with subsection 1392.4(e), separates and identifies the items listed on each respective certificate, and that the name of the certified producer he or she is selling for appears on both of the certificates.~~
- (7) ~~Issues dated memorandum(s), bill(s) of sale, or a container label(s) of sale in compliance with subsections 1392.4 (j) and (i).~~
- (8) Is in compliance with applicable signage requirements under subsection 1392.4 (k).

(b) ~~The operator of a certified farmers' market shall obtain from each certified producer or the authorized representative of the certified producer person participating in the sale of agricultural products, in the defined marketing area where only agricultural products may be sold, in the area designated as a certified farmers' market an itemized list of all products sold, per subsection 1392.4(m), at the certified farmers' market within 48 hours of the conclusion of each market day.~~

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

(2) ~~The market operator shall keep the list of products sold for a period of not less than eighteen months. Upon the request of an enforcing officer, the market operator shall, within 72 hours, submit the itemized product list for inspection.~~

...

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

Note: Authority cited: Sections 407, 47000, 47002, 47003, 47004 and 47005, Food and Agricultural Code. Reference: Sections 47000, 47002, 47003, 47004, 47005 and 47022, Food and Agricultural Code.

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

(a) Every person or entity that enters into a partnership as defined in Section 1392.2(su), sharecropping, or similar contractual agreement with another person(s) or entity and that applies for a certified producer's certificate under such agreement shall

provide the issuing county agricultural commissioner, at the time of application, with proof of partnership as defined in the United States and California Tax Codes, or the Partnership's Federal Tax Identification Number and a copy of their current written agreement, which must be entered into prior to the commencement of agricultural production, and shall contain the following:

- (1) A clear, concise and accurate description of the property to be farmed. The description shall include the present use of the property, the dimensions, and the location of the property; and
- (2) Partners shall demonstrate equitable risk by submitting a description of each party's financial and material resource input, which shall include the degree of involvement each party has in agricultural production; and
- (3) The date of the agreement and the signatures of all parties involved; and
- (4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties, and, ~~the~~ notarized signatures on the agreement of all parties executing the agreement.
- (5) A statement of verification that the property or properties to be farmed by the partnership or producers cooperating under a similar contractual agreement are under the exclusive control of the partnership as a separate entity from its individual members.

...

(d) Any change in the terms of this agreement shall invalidate a certified producer's certificate issued under such terms. Any such change shall be reported immediately and all ~~embossed~~ valid photocopies of certificates issued to the partnership shall be surrendered to the issuing county agricultural commissioner.

Note: Authority cited: Sections 407, 42682, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001 and 47003, Food and Agricultural Code.

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

(a) Every person or entity who enters into a farm lease with another person(s) or entity and who applies for a certified producer's certificate under such agreement shall provide the issuing county agricultural commissioner, at the time of application, with a copy of the current written lease agreement, which must be entered into prior to the commencement of agricultural production, and shall contain the following:

- (1) A clear and concise accurate description of the leased property. The description shall include the present use of the property, the dimensions of the leased property and the location; and
- (2) The purchase price (cost) of the lease; and
- (3) The date of the agreement and the signatures of all parties involved; and
- (4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties, and, ~~the~~ notarized signatures on the agreement of all executing the agreement.

...

(d) Any change in the terms of this agreement shall invalidate a certified producer's certificate issued under such terms. Any such change shall be reported immediately and all ~~embossed valid photocopies of certificates issued to the partnership~~ shall be surrendered to the issuing county agricultural commissioner.

Note: Authority cited: Sections 407, 42682, 47000, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

**~~§ 1392.10. Penalties.~~**

~~(a) Any county agricultural commissioner may, at any time, initiate a notice and hearing process to determine whether a violation of these provisions has occurred. The hearing process may review the actions of:~~

~~(1) The certificate holder; or~~

~~(2) A family member, employee, or another certified producer acting on behalf of the certificate holder; or~~

~~(3) Any other person whose actions may have resulted in the violation.~~

~~(b) The notice of hearing shall be on a form approved by the director and contain:~~

~~(1) Specific provisions violated; and~~

~~(2) A warning to cease such violations; and~~

~~(3) A hearing date to determine if the certificate(s) involved in the violations or participation privileges should be revoked.~~

~~(c) The county agricultural commissioner, upon determination that a violation has been made in accordance with (a), above, may:~~

~~(1) Suspend and/or refuse, for a period of up to 18 months, to issue a certificate to the violator; and/or~~

~~(2) Suspend, for a period of up to 18 months, the privilege of participation, under the provisions of this article, of any person whose action resulted in the violation.~~

~~Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.~~

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

When taking enforcement action pursuant to Section 47025 of the California Food and Agricultural Code, the secretary and county agricultural commissioners shall use the provisions of this section to determine the violation class and amount of the penalty and/or the length of the suspension. 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.

(a) For the purposes of this article, violation classes are designated as "Serious," "Moderate," and "Minor" using the following definitions:

(1) "Serious". For the purposes of this article, 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. Serious violations include but are not limited to: all repeated moderate 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; selling agricultural products not of own production in the defined marketing area where only agricultural products may be sold; falsifying or altering documents or making false statements; refusing inspection by an enforcing officer; buying and reselling agricultural products between certified producers or producers of noncertifiable agricultural products; operating without a valid certificate; and failure to submit quarterly forms and fees to the California Department of Food and Agriculture.

(i) Serious violations are punishable by an administrative civil penalty of not less than four hundred and one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(ii) Serious violations are punishable by suspension of certification for a period of not less than six months and not more than 18 months per action.

(2) "Moderate". For the purposes of this article, moderate violations are repeat violations or those which undermine enforcement. Moderate violations include but are not limited to: all repeated minor 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; deceptively packing products; mislabeling products; selling nonagricultural products in the defined marketing area where only agricultural products may be sold; using an unapproved scale; failure to meet certification requirements when certified producers are selling on each other's behalf, failure to provide memorandums; and failure to report changes in address, leases, or partnerships to county agricultural commissioner.

(i) Moderate violations are punishable by an administrative civil penalty of not less than one hundred and fifty-one dollars (\$151) and up to a maximum of four hundred dollars (\$400) per violation.

(3) "Minor". For the purposes of this article, minor violations have minimal adverse effects on the public or equitable competition in the marketplace. Minor violations include but are not limited to: transporting, packing, or selling products that do not meet maturity, quality, or labeling standards, selling an agricultural product combined with a nonagricultural product which materially increases the price of the product in the defined marketing area where only agricultural products may be sold; selling certifiable agricultural products not listed on the certificate, failure to conspicuously post or have in possession the required certificate/registration/signage; and market rules not in compliance, failure to complete product list requirements, and failure to meet market sales and record keeping requirements when certified producers are selling on each other's behalf.

(i) Minor violations are punishable by an administrative civil penalty of not less than fifty dollars (\$50) and up to a maximum of one hundred and fifty dollars (\$150) per violation.

(b) 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. The Description of Violation column in Tables A and B are an abbreviated description of the corresponding section in the California Food and Agricultural Code, Division 17. Fruit, Nut and Vegetable Standards; and Title 3, Article 6.5. Direct Marketing, California Code of Regulations.

**Table A (Certified Producers)**

For additional information regarding assessing administrative civil penalties,  
refer to section 1392.10

<u>FAC Code Section</u>	<u>CCR Code Section</u>	<u>Description of Violation</u>	<u>Minor Violation Class</u>	<u>Moderate Violation Class</u>	<u>Serious Violation Class</u>	<u>Penalty/ Suspension</u>
<u>1. FAC §47002</u>	:	<u>Transport, pack, or sell products that do not meet maturity or quality standards; or closed consumer container requirements (IRQ)</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>2. FAC §47022</u>	:	<u>Prepare, pack, place, deliver for shipment, load, ship, transport or sell any products that do not conform to the provisions of this chapter or the regulations adopted thereunder</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>3. FAC §47022.1</u>	:	<u>Deceptively prepare, pack, place, deliver for shipment, load, ship, transport or sell any products</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>4. FAC §47022.2</u>	:	<u>Mislabeling products; false/misleading statements on products</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>5. FAC §47022.3</u>	:	<u>Falsify documents or make false statements regarding size, maturity, condition, or quality of</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>

		<u>products offered for sale</u>				
<u>6. FAC §47022.4</u>	-	<u>Unlawfully removing warning tag/notice from product/container affixed by enforcing officer</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>7. FAC §47022.5</u>	-	<u>Refusing to submit any container/load/products for inspection or refuse to stop any vehicle for inspection</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>8. FAC §47022.6</u>	-	<u>Refusing to allow inspection of property used in sales/storage/production of agricultural products</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>9. FAC §47022.7</u>	-	<u>Altering any document referred to in this chapter issued by an enforcing officer</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>10.FAC §47002</u>	<u>3 CCR §1392.1(b)</u>	<u>Selling product exempt from size, standard pack, container, and labeling requirements: at a certified farmers' market without being the certified producer or the authorized representative of the certified producer; at an outlet or location without being the certified producer;</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>

		<u>at a field retail stand/farm stand without being the producer</u>				
<u>11. FAC §47002</u>	<u>3 CCR §1392.1(c)</u>	<u>Fresh fruits, nuts, vegetables sold for commercial resale that do not comply with all regulations regarding applicable size, standard pack, standard container, and labeling requirements</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>12. FAC §47002(a)</u>	<u>3 CCR §1392.1(d)</u>	<u>Fresh fruits, nuts, vegetables sold that do not comply with regulations regarding maturity, quality, and consumer package labeling.</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>13. FAC §47002</u>	<u>3 CCR §1392.1(e)</u>	<u>Selling agricultural products that do not comply with applicable laws and regulations</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>14. FAC §47000.5(a)(2)</u>	<u>3 CCR §1392.2(k)(1)</u>	<u>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</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>



<u>15. FAC §47020(c)(1)(A)</u>	<u>3 CCR §1392.4(a)</u>	<u>Producer selling certifiable agricultural product(s) at a certified farmers' market/outlet or location without obtaining a valid certified producer's certificate</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>16. FAC §47002</u>	<u>3 CCR §1392.4(a)(3)</u>	<u>Certified producer selling certifiable agricultural product(s) at a certified farmers' market/outlet or location they did not produce</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>17. FAC §47020(c)(2)</u>	<u>3 CCR §1392.4(a)(4)</u>	<u>Certified producer selling product(s) not listed on their Certified Producer's Certificate</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>18. FAC §47002</u>	<u>3 CCR §1392.4(a)(5)</u>	<u>Selling noncertifiable agricultural products producer did not produce, within the defined marketing area where only agricultural products may be sold</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>19. FAC §47004(b)</u>	<u>3 CCR §1392.4(a)(6)</u>	<u>Selling nonagricultural products in the defined marketing area where only agricultural products may be sold</u>			<u>x</u>	<u>\$151 - \$400 penalty</u>

<u>20. FAC §47004(b)</u>	<u>3 CCR §1392.4(b)</u>	<u>Authorized representative of the certified producer selling on behalf of more than one certified producer per certified farmers' market, per market day</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>21. FAC §47002</u>	<u>3 CCR §1392.4(c)</u>	<u>Certified producer not having a valid Certified Producer's Certificate in possession while selling and transporting certifiable agricultural products</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>
<u>22. FAC §47003</u>	<u>3 CCR §1392.4(d)</u>	<u>Failure to use approved scale or sealed scale</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>23. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(e)(1)</u>	<u>Certified producer selling on behalf of more than two other certified producers in a 12-month period</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>24. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(e)(2)</u>	<u>Failure to separate and identify, at the point of sale, one's own products from that of another certified producer for whom one is selling, and conspicuously posting each certified producer's valid certified producer's certificate and signage at a</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>

		<u>certified farmers' market</u>				
<u>25. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(e)(3)</u>	<u>Failure to list (on certified producer's certificate) name of the certified producer for whom the certified producer is conducting sales for</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>26. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(e)(4)</u>	<u>Failure to list (on certified producer's certificate) the name of the certified producer who is authorized to conduct sales on their behalf</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>27. FAC §47004(c)(1)</u>	<u>3 CCR § 1392.4(e)(5)</u>	<u>Certified producer selling/offering for sale product for another certified producer in greater volume than the certified producer is offering for sale</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>
<u>28. FAC §47004(c)(1)</u>	<u>3 CCR § 1392.4(e)(6)</u>	<u>Certified producer selling/offering for sale the same commodity as another certified producer when selling on their behalf (at same certified farmers' market, on the same day)</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>
<u>29. FAC §47004(b)</u>	<u>3 CCR §1392.4(e)(8)</u>	<u>Buying and reselling agricultural products between certified producers</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>

		<u>(when selling on behalf of another certified producer)</u>				
<u>30. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(e)(10)</u>	<u>Failure to keep required records for a period of not less than three years: when selling certified agricultural products on behalf of another certified producer; or whose certified agricultural products are sold by another certified producer</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>31. FAC §47020(c)(2)</u>	<u>3 CCR §1392.4(e)(11)</u>	<u>Failure to produce for inspection records upon demand of an enforcing officer</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>32. FAC §47004(c)(3)</u>	<u>3 CCR §1392.4(f)</u>	<u>Failure to post organic registration and/or documentation of organic certification when representing product as organic</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>33. FAC §47004(c)(3)</u>	<u>3 CCR §1392.4(g)</u>	<u>Failure to post organic registration and/or documentation of organic certification when selling for another certified producer representing product as organic</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>34. FAC §47002(a)</u>	<u>3 CCR §1392.4(h)</u>	<u>Sale of sprouts with less than 50% of</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>

		<u>seeds/legumes/nuts having emerged</u>				
<u>35. FAC §47002(e)</u>	<u>3 CCR §1392.4(i)</u>	<u>Not providing memorandum with required information</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>36. FAC §47002(e)</u>	<u>3 CCR §1392.4(j)</u>	<u>Failure to provide memorandum, bill of sale, or container label when a certified producer sells a single agricultural commodity in excess of 25 lbs.</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>37. FAC §47020(c)(1)(A)</u>	<u>3 CCR §1392.4(k)(1)</u>	<u>Failure to conspicuously post valid certified producer's certificate at point of sale</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>
<u>38. FAC §47004(c)(1)</u>	<u>3 CCR §1392.4(k)(2)(i), (k)(2)(ii), (k)(2)(iii)</u>	<u>Failure to clearly and conspicuously post signage stating: farm/ranch name as listed on valid certified producer's certificate and dba (if applicable) as listed on valid certified producer's certificate; production county as listed on valid certified producer's certificate; "We Grow What We Sell" or similar phrase</u>		<u>x</u>		<u>\$50 - \$150 penalty</u>

<u>39. FAC</u> <u>§47004(c)(2)</u>	<u>3 CCR</u> <u>§1392.4(l)</u>	<u>Does not have required documentation on processed products</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>40. FAC</u> <u>§47020(c)(2)</u>	<u>3 CCR</u> <u>§1392.5(a)(2)</u>	<u>Failure to report to county agricultural commissioner change in business address within 30 days</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>41. FAC</u> <u>§47022.6</u>	<u>3 CCR</u> <u>§1392.5(c)</u>	<u>Refusing to provide documentation upon request of an enforcing officer or market manager</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>42. FAC</u> <u>§47020(c)(2)</u>	<u>3 CCR</u> <u>§1392.9.1(d)</u>	<u>Failure to immediately report to county agricultural commissioner any change in Partnership Agreement and/or surrender invalid certificates to issuing county agricultural commissioner</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>
<u>43. FAC</u> <u>§47020(c)(2)</u>	<u>3 CCR</u> <u>§1392.9.2(d)</u>	<u>Failure to immediately report to county agricultural commissioner any change in Farm Lease Agreement and/or surrender invalid certificates to issuing county</u>		<u>x</u>		<u>\$151 - \$400 penalty</u>

		<u>agricultural</u> <u>commissioner</u>				
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**Table B (Market Operators)**

For additional information regarding assessing administrative civil penalties, refer to section 1392.10

<u>FAC Code Section</u>	<u>CCR Code Section</u>	<u>Description of Violation</u>	<u>Minor Violation Class</u>	<u>Moderate Violation Class</u>	<u>Serious Violation Class</u>	<u>Penalty/ Suspension</u>
<u>1. FAC §47004(e)</u>	-	<u>Allowing the sale/distribution of fresh whole fruit, nuts, vegetables, cultivated mushrooms, herbs, or flowers by vendors selling in the separate sales activity that is concurrently operated, adjacent to, or contiguous, to the certified farmers' market</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>2. FAC §47022.6</u>	-	<u>Refusing to allow inspection of property used in sales of agricultural products</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>3. FAC §47022.7</u>	-	<u>Altering any document referred to in this chapter issued by an enforcing officer</u>			x	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>



<p><u>4. FAC §47020(a)</u></p>	<p><u>3 CCR §1392.6(a)(3)</u></p>	<p><u>Failure to report to county agricultural commissioner change in mailing address within 30 days</u></p>		<p><u>x</u></p>		<p><u>\$151 - \$400 penalty</u></p>
<p><u>5. FAC §47004(g)</u></p>	<p><u>3 CCR §1392.6(f)</u></p>	<p><u>Market rules not in compliance (if rules were established)</u></p>	<p><u>x</u></p>			<p><u>\$50 - \$150 penalty</u></p>
<p><u>6. FAC §47004(f); §47021(a)</u></p>	<p><u>3 CCR §1392.8.1.</u></p>	<p><u>Failure to remit quarterly forms and/or fees or failure to remit quarterly forms with required information</u></p>		<p><u>x</u></p>		<p><u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u></p>
<p><u>7. FAC §47004(b)</u></p>	<p><u>3 CCR §1392.9(a)(1)</u></p>	<p><u>Failure to ensure each seller of agricultural products is a producer, a certified producer, or an authorized representative of the certified producer</u></p>	<p><u>x</u></p>			<p><u>\$50 - \$150 penalty</u></p>
<p><u>8. FAC §47004(b)</u></p>	<p><u>3 CCR §1392.9(a)(2)</u></p>	<p><u>Allowing the sale of nonagricultural products in the defined marketing area where only agricultural</u></p>		<p><u>x</u></p>		<p><u>\$151 - \$400 penalty</u></p>

		<u>products may be sold</u>				
<u>9. FAC §47003</u>	<u>3 CCR §1392.9(a)(3)</u>	<u>Failure to ensure the certified producer has in the certified producer's possession a valid certified producer's certificate that is posted at the point of sale</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>10. FAC §47003</u>	<u>3 CCR §1392.9(a)(4)</u>	<u>Failure to ensure each certifiable agricultural product in possession of the certified producer is listed on the certified producer's valid Certified Producer's Certificate</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>11. FAC §47002; §47004(c)(2)</u>	<u>3 CCR §1392.9(a)(5)</u>	<u>Failure to ensure producers are selling only noncertifiable agricultural products produced in accordance with section 1392.4</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>12. FAC §47004(c)(1)</u>	<u>3 CCR §1392.9(a)(6)</u>	<u>Failure to ensure that (when a</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>

		<u>certified producer is selling on behalf of another certified producer) the certified producer separates and identifies, at the point of sale, each certified producer's products, and conspicuously posts each certified producer's valid certified producer's certificate and signage at a certified farmers' market</u>				
<u>13. FAC §47004(f)</u>	<u>3 CCR §1392.9(b)</u>	<u>Failure to collect itemized list of all products sold from each certified producer or the authorized representative of the certified producer within 48 hours of the conclusion of each market day</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>14. FAC §47004(f)</u>	<u>3 CCR §1392.9(b)(1)</u>	<u>Failure to keep itemized list of all products</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>

		<u>sold (from certified producer) for not less than 18 months</u>				
<u>15. FAC §47004(f)</u>	<u>3 CCR §1392.9(b)(2)</u>	<u>Failure to submit a certified producer's itemized product list for inspection upon the request of an enforcing officer within 72 hours</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>
<u>16. FAC §47020(a)</u>	<u>3 CCR §1392.9(c)</u>	<u>Operating a certified farmers' market without possession of a current, valid Certified Farmers' Market Certificate</u>			<u>x</u>	<u>\$401 - \$1,000 penalty and 6 - 18 months suspension</u>
<u>17. FAC §47022.6</u>	<u>3 CCR §1392.9(d)</u>	<u>Failure to present, upon request of an enforcing officer, a current, valid Certified Farmers' Market Certificate for review during operation of a certified farmers' market</u>	<u>x</u>			<u>\$50 - \$150 penalty</u>

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code. Reference: Sections 42651, 43003 and 47025, Food and Agricultural Code.

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

(a) The secretary may, at any time, issue a written notice of proposed action which shall include the nature of the violation and if applicable the amount of the proposed penalty and/or length of the proposed suspension in accordance with Food and Agricultural Code section 47025(c).

(b) A notice of proposed action shall be sent by certified mail, or a mail delivery service that tracks the delivery, to the last known address on file with the Department, of the person charged. The notice shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(c) The person charged may appeal a notice of proposed action, including an administrative civil penalty or suspension, for any violation, within 20 calendar days after receiving the notice of proposed action, by submitting a written request to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, as provided in the notice of proposed action. Any objection to the California Department of Food and Agriculture'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.

(d) Failure to submit a timely request for a hearing constitutes a waiver of the appellant's right to contest the notice of proposed.

(e) At least 10 business days before the hearing, the California Department of Food and Agriculture shall provide a notice of the informal hearing to the appellant providing the date, location, and time of the informal hearing.

(f) A notice of informal hearing which is sent to the last known address, on file with the Department, of the appellant, shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(g) Any documents to be considered by the hearing officer shall be received by the Legal Office of Hearings and Appeals at least 3 business days prior to the scheduled informal hearing. Any documents not timely submitted may be considered at the discretion of the hearing officer.

(h) Informal hearings shall be conducted as follows:

(1) The informal hearing shall be presided over and conducted by a hearing officer designated by the secretary.

(2) 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.

(3) A teleconference line shall be made available.

(4) Hearings shall be recorded by the California Department of Food and Agriculture. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(i) The decision of the hearing officer shall be in writing, issued within 30 calendar days after the conclusion of the hearing, and shall be effective immediately.

(j) Review of the secretary's decision may be sought by the appellant within 30 calendar days of the date of the decision and order, pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) In addition to the administrative civil penalties set forth in Food and Agricultural Code section 47025(b), or a suspension imposed pursuant to Food and Agricultural Code section 47025, the appellant may be required to cover the cost of the administrative hearing, unless the decision of the secretary or county agricultural commissioner is overturned.

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Section 47025, Food and Agricultural Code; Sections 11445.20 and 11445.30, Government Code; and Section 115, Evidence Code.

**§ 1392.10.2. Appeal of a County Agricultural Commissioner's Decision.**

(a) A person, upon whom the county agricultural commissioner imposed an administrative civil penalty or suspension, who requested and appeared at a hearing, may appeal the county agricultural commissioner's decision to the secretary by submitting a written appeal request within 30 calendar days of the date of receiving a copy of the county agricultural commissioner's decision to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, 1220 N Street, Suite 315, Sacramento, California 95814.

(b) The appellant shall file a copy of the appeal with the county agricultural commissioner at the same time it is filed with the secretary.

(c) The appeal request shall:

(1) Be in writing;

(2) Be signed by the appellant or his or her authorized agent;

(3) State the grounds for the appeal; and

(4) Include a copy of the county agricultural commissioner's decision.

(d) Both the appellant and the county agricultural commissioner, at the time of filing the appeal or within 10 calendar days thereafter, may submit the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing

the county agricultural commissioner's decision. All documents must be submitted to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, 1220 N Street, Suite 315, Sacramento, California 95814.

(e) The appellant or the county agricultural commissioner, or both, may request oral argument and such request must be made at the time written arguments are filed as set forth above.

(f) The secretary may grant or deny oral arguments upon application made at the time written arguments are filed.

(g) If an application to present an oral argument is granted, the California Department of Food and Agriculture shall provide written notice of the time and place for the oral argument and shall be given at least 10 calendar days before the date set. The times of oral argument may be altered by agreement of the parties.

(h) If an application to present an oral argument is denied, the California Department of Food and Agriculture shall provide written notice of the denial and state the reasons why it was denied.

(i) A notice of oral argument, which is sent to the last known address, on file with the Department, of the appellant, shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(j) The secretary shall:

(1) Decide the appeal on the record of the county agricultural commissioner's hearing, the written evidence, and the written argument submitted as described in (d) above.

(2) Affirm, modify or reverse the county agricultural commissioner's decision.

(3) Affirm the county agricultural commissioner's decision if the secretary finds substantial evidence in the record to support the county agricultural commissioner's decision. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(4) Render a written decision within 45 calendar days of the date the appeal is received by the California Department of Food and Agriculture's Legal Office of Hearings and Appeals or within 15 calendar days of the date of oral arguments or as soon thereafter as practicable.

(5) Deliver or mail a copy of the decision and order to the appellant and the county agricultural commissioner.

(k) Review of the secretary's decision may be sought by the appellant within 30 calendar days of the date of the decision and order pursuant to Section 1094.5 of the Code of Civil Procedure.

(l) In addition to administrative civil penalties or a suspension imposed, the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Section 47025, Food and Agricultural Code.

**~~§ 1392.11. Appeals.~~**

~~Any person may appeal to the director for a hearing if aggrieved by any one of the following actions or decisions:~~

~~(a) Denial of any certificate.~~

~~(b) Suspension of any certificate.~~

~~(c) Suspension of participation privileges.~~

~~(d) Adoption of more stringent rules or regulations pertaining to the operation of certified farmers' markets.~~

~~In all cases, the appeal must be submitted to the director in writing within 30 days of the date the action or decision was made. The director's proceeding shall, insofar as practicable, comply with the provisions of the Administrative Procedure Act (Government Code, Section 11500, et seq.), except that a department hearing officer may be used.~~

~~(e) Denial of the right to an appeal as provided in section 1392.6(g) by a certified farmers' market or the operator of a certified farmers' market.~~

~~Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47004.1, 58101.5 and 58104, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.~~