

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

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

**FINAL STATEMENT OF REASONS**

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

**UPDATE TO THE INITIAL STATEMENT OF REASONS**

The California Department of Food and Agriculture made substantive changes to this rulemaking and provided notice of the changes made to all interested persons during a 15-day comment period (March 11, 2020 – March 27, 2020). The substantive changes are detailed below.

**Section 1392.2(t)(1)(iii)** is amended to change the term “rooted plants” to “rooted seedlings” and language was added to stipulate that the seedlings in containers or plugs must be less than 2” in diameter. This change was made based on comments received during the 45-day comment period and will ensure certified producers who sell nursery stock begin with seeds or seedlings, and do not transplant large sized plants and sell the plants at a certified farmers’ market. This change coincides with the requirement that a certified producer practice the agricultural arts on products they produce and sell at a certified farmers’ market.

**Section 1392.4(b)** is amended to add the phrase “per market day” in order to clarify that an authorized representative of a certified producer may only sell on behalf of one certified producer, per market day, unless the producer was operating under subsection 1392.4(e). This change was also updated in Section 1392.10, Table A, #20, which is a synopsis of the full code. This change was made based on comments received during the 45-day comment period and clarifies that an authorized representative may sell on behalf of more than one certified producer, but simply not on the same market day.

**Section 1392.4(m)** is amended to allow each certified producer or his/her authorized representative to submit their itemized product list to the market operator within 48 hours of the conclusion of each market day. This change was made based on comments received during the 45-day comment period and allows an additional 24 hours for a certified producer or his/her authorized representative to submit their

itemized product list to the market operator in order to allow more flexibility, with defined parameters.

Language was moved from **Section 1392.5(b)(1)(i)** and **Section 1392.5(b)(6)** to **Section 1392.5(a)(2)** and **Section 1392.5(a)(3)**. This change was also updated in **Section 1392.10, Table A, #40**, the violation synopsis. CDFA initially included this language as part of a valid Certified Producers Certificate. Commenters recommended that the information be separated as to not require an amendment to the respective certificate every time there was a change in authorized representatives. CDFA determined that the information is still a requirement of a Certified Producer but does not need to be included on the valid Certified Producers Certificate.

Language was moved from **Section 1392.6(b)(1)(i)** to **Section 1392.6(a)(3)**. The language did not change, but now this information is not required to be a part of the Certified Farmers' Market Certificate. This change was also updated in **Section 1392.10, Table B, #4**, the violation synopsis. CDFA determined that moving the language to a different subsection provided more clarity and was more relevant to the subject matter.

**Section 1392.9(b)** is amended to allow a market operator 48 hours from the conclusion of the market day to collect a certified producer or his/her authorized representative's itemized product list to allow more flexibility, with defined parameters. This change was also updated in **Section 1392.10, Table B, #13**, the violation synopsis. This language was changed due to comments received during the 45-day comment period. CDFA initially requested that product lists be turned in at the conclusion of the market day. Commenters requested a longer timeframe to allow a producer to provide products lists to market operators based on their business practices. CDFA extended the timeframe to turn in a product list to 48 hours, which is a timeframe that would accommodate the needs of the market operator, but not hinder an investigation.

**Section 1392.9(b)(2)** is amended to allow a market operator 72 hours to submit a certified producer's itemized load list to an enforcing officer after the request to allow more flexibility, with defined parameters. This change was also updated in **Section 1392.10, Table B, #15**, the violation synopsis. This language was changed due to comments received during the 45-day comment period. CDFA initially requested a turnaround time of 48 hours. Commenters requested a longer timeframe to respond to the enforcing officers' request. CDFA extended the timeframe to respond to a request to 72 hours, which is a timeframe that would accommodate the needs of the market operator, but not hinder an investigation.

Additionally, in the Initial Statement of Reasons, in Table A, #30, the violation for Section 1392.4(e)(10), the violation description should read:

The violation for 3 CCR subsection 1392.4(e)(10) is adopted to provide that a certified producer who sells on behalf of another certified producer and fails to keep the required records for three years constitutes a minor violation because it has minimal adverse

effects on the public or equitable competition in the marketplace. This violation was previously incorporated into the penalty matrix that was repealed in this rulemaking action, and the violation remains in the minor class.

**SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD ENDING JANUARY 21, 2020 AT 5:00 PM**

The code sections referenced below are the correct code sections that are impacted by the submitter's comments. In some instances, the submitter has referenced incorrect page numbers and sections.

**COMMENT 1.1:** Submitter recommended that in Subsection 1392.4(e)(6) there be an exemption to "at the same certified farmers' market, on the same day, the same commodity, variety/type, or product(s)" for farmers who are selling for their immediate family member using a second certificate.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. There is no way to regulate exemptions for farmers who are selling for their immediate family members' farms using a second certificate, nor is there a definition for "immediate family" in the Direct Marketing regulations. The intent of allowing a certified producer to sell on behalf of two other certified producers is to assist farmers in having a larger variety of commodities to offer for sale at a certified farmers' market. Certified producers can still sell for another certified producer at the same certified farmers' market, on the same market day, but simply cannot sell the same commodity, variety/type, or product.

**COMMENT 1.2, 2.1:** Submitters recommended in Table B, Market Operators, #13 (which is an abbreviated version of a violation of Subsection 1392.9(b)) CDFA allow for Market Operators to collect the itemized list (i.e. load lists) up to seven days after the operation of the certified farmers' market, as this is simpler, and often these lists are submitted via email or fax.

**RESPONSE:** CDFA has considered this comment and made changes to the proposed text in Subsection 1392.9(b) and in the corresponding table (Table B, Market Operators, #13). In the initial proposed text, CDFA had proposed that product lists must be submitted to the market operator at the conclusion of each market day. CDFA changed this to allow certified producers or their authorized representative to submit the product list to the market operator within 48 hours of the conclusion of the market day, in an effort to accommodate certified producers. These lists are an enforcement tool and allowing any additional time beyond the 48 hours would hinder enforcement activities, therefore allowing a greater potential for fraud in the marketplace.

**COMMENT 1.3, 2.2, 3.14:** Submitters recommended in Table B, Market Operators, #15 and Subsection 1392.9(b)(2)) allowing additional time for market operators to provide enforcing officers with certified producers itemized product list. In the proposed text,

CDFA had proposed that a market operator must submit an enforcing officer with a product list within 48 hours of the request. Submitter 1.3 and 2.2 recommended that market operators be given five business days to respond to the request and an additional five business days to fulfill the request. Submitter 3.13 recommended that market operators be given seven days to fulfill the request.

**RESPONSE:** CDFA has considered this comment and made changes to the proposed text. In the initial proposed text, CDFA had proposed that market operators provide enforcing officers with the product lists within 48 hours of the request. CDFA changed the timeframe to 72 hours, in an effort to accommodate market operators. However, since these lists are an enforcement tool, allowing any additional time beyond the 72 hours could hinder enforcement activities.

**COMMENT 3.1:** Submitter recommends adding a moderate penalty within Table B, Market Operators, of Subsection 1392.10 for market operators that allow sales outside of the terms of their issued Certified Farmers' Market Certificate. Submitter further states that there should not be a penalty if a market operator fails to operate for one or more dates or hours specified on the Certified Farmers' Market Certificate.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations because there is already a serious penalty in Subsection 1392.9(c) for operating a certified farmers' market without a valid certificate. Certified farmers' market certificates are only valid for the days and times listed on the Certificate. There is no penalty applicable if a market operator chooses not to operate their certified farmers' market for one or more dates or hours specified on their Certificate.

**COMMENT 3.2:** Submitter recommends that in Subsection 1392.5(b)(6) CDFA remove the requirement of a certified producer having to update their certified producer certificate if they have a change in their authorized representative. Submitter further recommended that if a certified producer verifies that an individual is their authorized representative, it is an adequate defense for a market operator and will result in a waiver of any penalty of Subsection 1392.9(a)(1) (which is a penalty under Table B, Market Operators, #7).

**RESPONSE:** CDFA has considered this comment and has incorporated it in the regulations in part. CDFA agrees that it would be burdensome for a certified producer to be required to amend their certificate when there is a change in authorized representatives. To remedy this, CDFA removed the language in Subsection 1392.5(b)(6), which required the list of authorized representatives to be a part of the certified producer's certificate, and incorporated the language in Subsection 1392.5(a)(3), which requires certified producers to simply provide the county agricultural commissioner with a list of all authorized representatives to sell on their behalf, and would therefore not require the certificate to be updated if there was a change in authorized representatives.

CDFA did not incorporate language to waive a market operator's penalty under Subsection 1392.9(a)(1). This requirement has been incorporated into the regulations for several years. The term previously used was "a member of the producer's immediate family, or an employee", which has now been replaced throughout this rulemaking with "an authorized representative of the certified producer." The market operator is responsible for all aspects of their certified farmers' markets, including ensuring that each person participating in the sale of agricultural products at a certified farmers' market is authorized to do so.

**COMMENT 3.3:** Submitter recommends that language be added to the definition in Subsection 1392.2(o) of a Market Operator, which would require a certified producer, when operating a certified farmers' market, to be present at the market and sell their own product.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Food and Agricultural Code Section 47000(g), (h), and (i) mandate CDFA to promote the purchase and consumption of California-grown produce; to promote access to California-produced agricultural products; to develop a regulatory scheme that provides the flexibility that will make direct marketing a viable marketing system; and to assist producers in organizing certified farmers' markets. In an effort to conduct these mandated activities, CDFA does not believe establishing more stringent restrictions for a certified producer who operates a certified farmers' market is beneficial to the industry.

**COMMENT 3.4:** Submitter recommends that language be added to the definition in Subsection 1392.2(p) of an Authorized Representative of the Market Operator to disallow an authorized representative of a market operator from representing multiple certified farmers' markets because they would be circumventing the requirements of becoming a nonprofit organization, and therefore would be able to avoid the additional scrutiny and obligations of community benefit that are required of nonprofit organizations.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Although CDFA administers the Direct Marketing Program, it is not in CDFA's purview to determine who an individual is able to be employed by, therefore hindering an individual's employment opportunities.

**COMMENT 3.5:** Submitter recommends adding the language "per market day" in Subsection 1392.4(b) to allow an authorized representative to sell on behalf of more than one certified producer at the same market, but not on the same market day.

**RESPONSE:** CDFA has considered this recommendation and has incorporated this recommendation into the regulation. CDFA agrees that this language could potentially limit employment opportunities for an authorized representative, who sells on behalf of a certified producer at certified farmers' markets.

**COMMENT 3.6:** Submitter recommends that CDFR work closely with county agricultural commissioners to develop clear guidelines regarding the implementation of Subsection 1392.4(e)(6) and agrees with the intent of this section. This section stipulates that a certified producer selling on behalf of another certified producer, at the same certified farmers' market, on the same day, cannot sell the same commodity, variety/type, or product.

**RESPONSE:** CDFR has reviewed this comment and did not incorporate it into the regulations. County agricultural commissioners are required to inspect every certified farmers' market in their respective county every six months of operation. Certified producers are required to post their certified producers' certificate and the certified producer's certificate they are selling on behalf of. When inspecting the market, inspectors would see that the two producers were selling the same commodity, variety/type, or product, and a violation would be issued. CDFR will also encourage market operators to inform the certified producers who sell in their respective markets that this is prohibited.

**COMMENT 3.7:** Submitter recommends that additional flexibility be allowed in Subsection 1392.4(m) to allow certified producers to turn in their product list at the conclusion of each market day "or as required by the market rules".

**RESPONSE:** CDFR has considered this comment and made changes to the proposed text. In the initial proposed text, CDFR had proposed that certified producers must submit product lists to the market operator at the conclusion of each market day. CDFR changed this to allow certified producers or their authorized representative to submit the product list to the market operator within 48 hours of the conclusion of the market day, in an effort to accommodate certified producers. These lists are an enforcement tool and allowing any additional time beyond the 48 hours would hinder enforcement activities, therefore allowing a greater potential for fraud in the marketplace. Additionally, Subsection 1392.2(r), the definition of Market Rules, stipulates that market rules may be more stringent than established state regulations, provided they do not violate or conflict with any state law or regulation governing their activities.

**COMMENT 3.8:** Submitter recommends adding a new section into the regulations, Subsection 1392.6(f)(7), which would state, "The process and deadline by which certified producers must provide load lists in compliance with Subsection 1392.4(m), as long as the stated deadline is not more than 96 hours following the end of the market day of a certified farmers' market."

**RESPONSE:** CDFR has considered this comment and made changes to the proposed text in Subsection 1392.4(m) instead of adding a new section. In the initial proposed text, CDFR had proposed that product lists must be submitted to the market operator at

the conclusion of each market day. CDFA changed this to allow certified producers or their authorized representative to submit the product list to the market operator within 48 hours of the conclusion of the market day, in an effort to accommodate certified producers. These lists are an enforcement tool and allowing any additional time beyond the 48 hours would hinder enforcement activities, therefore allowing a greater potential for fraud in the marketplace.

**COMMENT 3.9:** Submitter recommends adding language to Subsection 1392.9(b) to allow a market operator to collect the product list from each certified producer at the conclusion of each market day, or as required in the market rules of the certified farmers' market.

**RESPONSE:** CDFA has considered this comment and made changes to the proposed text in Subsection 1392.9(b). In the initial proposed text, CDFA had proposed that product lists must be submitted to the market operator at the conclusion of each market day. CDFA changed this to allow certified producers or their authorized representative to submit the product list to the market operator within 48 hours of the conclusion of the market day, in an effort to accommodate certified producers. These lists are an enforcement tool and allowing any additional time beyond the 48 hours would hinder enforcement activities, therefore allowing a greater potential for fraud in the marketplace.

**COMMENT 3.10:** Submitter recommends amending the language in Subsection 1392.4(m)(1) regarding the information listed by certified producers on product lists. Submitter states these detailed requirements are not reasonable or workable in a farmers' market environment, especially the requirement that the commodity/variety/type, and quantity of each product sold must be listed in the same unit of measurement or count as it appears on the valid certified producer certificate. Submitter further recommends that CDFA develop a form for certified producer certificates that supports the goals described in the Initial Statement of Reasons for these proposed regulations.

**RESPONSE:** CDFA has considered this comment and did not incorporate any changes into the regulations. The detailed requirements for product lists did not change in this rulemaking. The requirement was simply moved from Subsection 1392.9(b)(1) to Subsection 1392.4(m)(1) where it is appropriately aligned.

**COMMENT 3.11:** Submitter recommends that Subsection 1392.5(b)(5) be deleted to allow certified producers to sell in any California county, without listing the specific counties on the respective certified producers certificate.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the

regulations. Certified producers are allowed to sell in any California county. There is not an approval process to be able to sell in any specific county. The requirement of a certified producer listing the counties that the certified producer plans to sell in greatly assists with enforcement activities. When CDFA receives a complaint, we must determine which counties the producer sells in to investigate the complaint.

**COMMENT 3.12:** Submitter recommends removing the requirement of providing the contact information for authorized representatives selling on behalf of a certified producer in Subsection 1392.5(b)(6).

**RESPONSE:** CDFA has considered this comment and made changes to the proposed text. CDFA removed the requirement of a certified producer having to provide their authorized representative's contact information. CDFA also moved the requirement for a certified producer to provide a list of authorized representatives to Subsection 1392.5(a)(3), where it is better aligned. By moving this language, the list of authorized representatives does not have to be part of the certified producer certificate; it is now a standalone document.

**COMMENT 3.13:** Submitter recommends removing the inclusion of the phrase "per market day" in Subsection 1392.8.1(a)(2)(vii). Submitter recommends removing this phrase because CDFA does not need to collect the detailed information for non-agricultural vendors.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. CDFA agrees the Department does not need detailed information regarding non-agricultural vendors. However, this section does not require changes, as this section simply requires every market operator to report a total number of non-agricultural vendors for the quarter, but the section clarifies that the fee is paid based on total number of market days any one vendor participates. The requirement does not include listing the number of non-agricultural vendors per market day. The language included is meant to explain to market operators that a \$2.00 fee must be paid to CDFA for the total number of non-agricultural vendors whose products were presented for sale, per market day, for the entire quarter.

**COMMENT 3.15:** Submitter recommends adding language into Subsection 1392.10 to clarify that if a violation is escalated to the next violation class, due to a repeat violation of the same code section within a two-year period, it should only be escalated from the "stated" violation to the next violation class.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. A violation in the minor class shall be escalated to the moderate class, if a repeat violation of the same code section occurred within a two-year period, that had resulted in a penalty. Therefore, if a third violation occurred within a two-year period of the last violation, which had already been escalated to the moderate violation class, this violation would be escalated to the serious violation class.



**COMMENT 4.1:** Submitter recommends revising the definition of Practice of the Agricultural Arts in Subsection 1392.2(t)(1)(iii) regarding nursery stock; the recommendation is to change the word “plants” to “seedlings” and to stipulate that nursery stock containers or plugs must be less than 2” in diameter when planting or transplanting.

**RESPONSE:** CDFA has considered this comment and made changes to the proposed text. CDFA agrees that the definition for practicing the agricultural arts for nursery stock was lacking guidance. Incorporating a minimum container/plug requirement provides the required guidance and will ensure consistency to the industry throughout the State.

**COMMENT 4.2:** Submitter recommends adding language to Subsection 1392.4(a) which stipulates that a producer or certified producer may only sell or offer to sale at a certified farmers’ market “in a county in which the producer is authorized to sell as listed on the certified producer’s certificate.”

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Certified producers are allowed to sell in any California county. There is not an approval process to be able to sell in any specific county. The requirement of a certified producer listing the counties that the certified producer plans to sell in is to assist with enforcement activities and so that when a complaint is received, CDFA is able to determine which counties the producer sells in to investigate the complaint.

**COMMENT 4.3:** Submitter recommends adding Subsection 1392.4(a)(7) to stipulate that no person shall sell fresh whole fruits, nuts or vegetables, cultivated mushrooms, herbs, or cut flowers in the area adjacent to the defined certified area and under control of a certified farmers’ market.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Food and Agricultural Code Section 47004(e) stipulates that an operator of a certified farmers’ market that also operates, manages, or otherwise controls a separate sales activity or vending event or marketing area in close proximity, adjacent, or contiguous to the operator’s certified farmers’ market shall not allow the sale or distribution of fresh whole fruits, nuts, vegetables, cultivated mushrooms, herbs, and flowers by vendors selling within those sales activity or vending event or marketing areas.

**COMMENT 4.4:** Submitter recommends adding language into Subsection 1392.4(k)(2) that requires a certified producer’s legible sign or banner to be at least two feet by three feet, with the lettering of not less than two inches in height.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. CDFA does not want to cause an undue burden on certified producer’s by requiring them to have a specific type of sign or banner. If a certified producer writes the required information on a piece of paper or a piece of cardboard, and it is conspicuously

posted, this meets the requirement of having a legible sign or banner posted.

**COMMENT 4.5:** Submitter recommends adding language into Subsection 1392.4(m)(1) that stipulates that products sold as organic must be listed as organic on the product list that each certified producer must submit to the market operator for each day that the certified producer offers products for sale at a certified farmers' market.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. CDFA does not want to cause an undue burden on certified producer's by requiring them to specify on the product lists which products that they offered for sale were organic. If a certified producer is selling any product as organic, Subsection 1392.4(f) requires the certified producer to conspicuously post 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, documentation of his or her organic certification. Requesting certified producers to provide this information would be collecting information that is not required of certified producer's for CDFA's Direct Marketing Program. CDFA does have a State Organic Program, which may require different paperwork from certified producers, but those requirements are not part of this Program.

**COMMENT 4.6:** Submitter recommends adding Subsection 1392.4(m)(2) into the regulations that would require a certified producer to maintain their own product list for a period of not less than 18 months.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Subsection 1392.9(b)(1) requires the market operator to maintain the certified producer's itemized product list for a minimum of 18 months. Since market operators are the first line of enforcement, and CDFA uses these product lists for enforcement purposes, it is more appropriate for the market operator to maintain these lists.

**COMMENT 4.7:** Submitter recommends adding Subsection 1392.4(m)(3) into the regulations that would require a certified producer, upon the request of an enforcing office, to submit their itemized list within 48 hours to the officer.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Since CDFA rejected the submitter's recommendation in Comment 4.6 above, certified producers are not responsible for maintaining their own itemized product list, therefore this addition is not feasible. Subsection 1392.9(b)(1) requires the market operator to maintain the certified producer's itemized product list for a minimum of 18 months. Subsection 1392.9(b)(2) requires market operators to provide the itemized list to an enforcing officer within 72 hours of the request.

**COMMENT 4.8:** Submitter recommends that language be changed in Subsection 1392.5(e) to require a county agricultural commissioner to conduct an on-site inspection

of each property listed on each new producer's initial application within the first six months of issuing the producer's certificate, which would replace the current requirement of conducting an on-site inspection prior to issuing the certified producer's certificate.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. It is important for the respective county agricultural commissioner to conduct an initial inspection before issuing a certified producer's certificate to ensure that land is being farmed by the producer, and to verify crop production. Additional inspections can be conducted at any time during the certificate period to verify production.

**COMMENT 4.9:** Submitter recommends revising the abbreviated language in Subsection 1392.10, Table A, #22, regarding a Certified Producer Violation of Subsection 1392.4(d). Submitter recommends striking the phrase "approved scale" and solely use the phrase "sealed scale" for the violation of failure to use approved or sealed scale.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Subsection 1392.10(b) clarifies that the Description of Violation column in Tables A and B are abbreviated descriptions of the corresponding sections 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. Subsection 1392.4(d) stipulates that 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. Therefore, the abbreviated description in Table B is correct as written.

**COMMENT 4.10:** Submitter recommends correcting an error in Table B, Market Operator Violations, #15, Section 47004(f), by adding in the number 7 to the code section referenced. Submitter further recommends changing the penalty level from Minor to Serious for failure to submit a producer's itemized product list upon request of an enforcing officer in Subsection 1392.9(b)(2).

**RESPONSE:** CDFA has considered this comment and has incorporated it in the regulations in part. CDFA added the number "7" into 47004(f), which is the code section referenced.

CDFA did not incorporate language to change the violation class of this penalty. Based on Subsection 1392.10(a)(1), serious violations are repeat or intentional violations, which preclude or interfere with enforcement, or cause false, misleading or deceptive business practices. Based on Subsection 1392.10(a)(3), minor violations have minimal adverse effects on the public or equitable competition in the marketplace. Based on this guidance, a violation of Subsection 1392.9(b)(2) is more appropriately aligned in the Minor violation class.

**COMMENT 5.1:** Submitter recommends deleting Subsection 1392.1(d) because Food and Agricultural Code Section 47002(c) already provides guidance related to closed consumer containers or submitter recommends referencing NIST directly in this Section.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Subsection 1392.4(d) is clarifying Food and Agricultural Code Section 47002(c) by stipulating the requirements of closed containers specifically for when fresh fruits, nuts, and vegetables 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. Referencing the National Institute of Standards and Technology (NIST) is not necessary, as referencing 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 is more appropriate.

**COMMENT 5.2:** Submitter recommends amending the definition of an Authorized Representative of the Certified Producer in Subsection 1392.2(f) to include additional language that would require the authorized representative to possess the certified producer's banner and certificate at a certified farmers' market.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. This additional language is unnecessary as Subsection 1392.4(k) already stipulates that every person selling certifiable agricultural products within a certified farmers' market shall, at the point of sale conspicuously post a valid certified producer certificate and a legible sign or banner.

**COMMENT 5.3:** Submitter recommends revising the definition of Practice of the Agricultural Arts in Subsection 1392.2(t) regarding agricultural animal products, by adding in a timeframe of 30 days.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. CDFA does not want to put an undue burden on direct marketing producers, as putting a timeframe on practicing the agricultural arts for one commodity would be unfair. Different agricultural products require different timeframes for production; therefore, this requirement is not feasible.

**COMMENT 5.4:** Submitter asked what an outlet or location is, as mentioned in Subsection 1392.4(a) and inquired if the intent is to allow CPCs to sell anywhere. Submitter further recommends adding language into this Section to stipulate that a producer or certified producer may only sell or offer to sale at a certified farmers' market "in a county in which the producer is authorized to sell as listed on the certified producer's certificate."

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. An outlet or location is defined in this rulemaking in Subsection 1392.2(y), which defines an outlet or location as 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. Subsection 1392.1(b)(1), (b)(2), and (b)(3) clarify where certified producers and producers may sell or offer for sale their products. Furthermore, certified producers are allowed to sell in any California county. There is not an approval process to be able to sell in any specific county. The requirement of a certified producer listing the counties that the certified producer plans to sell in is to assist with enforcement activities and so that when a complaint is received, CDFA is able to determine which counties the producer sells in to investigate the complaint.

**COMMENT 5.5:** Submitter recommends adding language into the definition of an outlet or location in Subsection 1392.2(y) that would require an approved location to be registered with the local county agricultural commissioner's office.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. This would be an unfunded mandate and registering a location that a certified producer is allowed to sell their products at may not be in the jurisdiction of a county agricultural commissioner.

**COMMENT 5.6:** Submitter questioned why there is no (c) in Subsection 1392.5.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. There is a Subsection 1392.5(c) in regulation. However, no changes were made to this section. Therefore, three dots (...) were included in the proposed text to show the reader there were no changes being made in this rulemaking.

**COMMENT 5.7:** Submitter recommends removing the requirement for a county agricultural commissioner who issues a certified producer certificate in Subsection 1395.5(h) to send a photocopy to all destination counties and recommends solely sending a photocopy of the certificate to CDFA.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. This requirement was already in the regulations in this Section; the change was simply to stipulate that the issuing county agricultural commissioner also send CDFA a copy of the certificate, in addition to each destination county. Since certified producers can sell in any California county, it is best practice to ensure the respective county agricultural commissioner is aware of which certified producers plan to sell in each county.

**COMMENT 5.8:** Submitter recommends the following:

Table A (Certified Producers) {We see the following listed violations, frequently. Most of them are first time offenses and the person didn't know the requirements. We see these producers several times in a year. If they don't fix the problem, we would fine them the next time we see them. By writing an NOV instead of a NOPA the first interaction we have with them, we can develop a working relationship with these vendors.}

1. FAC §47002                      2nd violation within 2 years / Minor
  
14. FAC §47000.5(a)(2)  
& 3CCR§ 1392.2(k)(1)        2nd violation within 2 years / Minor
  
17. FAC §47020(c)(2)  
& 3CCR §1392.4(a)(4)        2nd violation within 2 years / Minor
  
40. FAC §47020(c)(2)  
& 3CCR §1392.5(b)(1)(i)    Minor

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Based on Subsection 1392.10(a)(3), minor violations have minimal adverse effects on the public or equitable competition in the marketplace. Based on Subsection 1392.10(a)(2), moderate violations are repeat violations or those which undermine enforcement. Based on this guidance, the violations above are in the appropriate violation class.

**COMMENT 5.9:** Submitter recommends the following:

Table B (Market Operators)

10. FAC 47003 & 3CCR1392.9(a)(4) 2nd violation within 12 months. Some of the bigger markets have a hard time with a product or two here and there. Fine the first time seems a bit harsh.

**RESPONSE:** CDFA has considered this comment and did not incorporate it into the regulations. Based on Subsection 1392.10(a)(3), minor violations have minimal adverse effects on the public or equitable competition in the marketplace. Based on this guidance, the violations above are in the appropriate violation class.

**SUMMARY AND RESPONSE TO WRITTEN COMMENTS RECEIVED DURING THE 15-DAY PUBLIC COMMENT PERIOD ENDING MARCH 27, 2020 AT 5:00 PM**

No comments were received during this comment period.

**LOCAL MANDATE DETERMINATION**

The proposed regulations do not impose any mandate on local agencies or school

districts.

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

The proposed regulatory changes are based upon feedback from the Certified Farmers' Market Advisory Committee (CFMAC) and Assembly Bill (AB) 1871 (Dickinson) (Chapter 579, Statutes of 2014). The Department relied upon the CFMAC meeting minutes dated May 4, 2017 and AB 1871, which has now become law. These documents are included as part of the rulemaking record; no other documentation is included for the proposed amendments to the regulations.

### **REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE DEPARTMENT'S REASONS FOR REJECTING THOSE ALTERNATIVES**

The Department determined that no reasonable alternative considered by the agency would be more effective in carrying out the purpose for which the action is proposed, would be as effective and less burdensome to affected private persons than the proposed action, or would be more cost effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The current regulations do not align with the mandates proscribed under AB 1871 (Dickinson) (Chapter 579, Statutes of 2014). As such, not taking any action was not a suitable alternative.

### **INCORPORATION BY REFERENCE**

7 CFR, Section 205.101 is being incorporated by reference in this rulemaking.

It would be unduly burdensome and cumbersome to print this document in the CCR. Additionally, this document was made available during this rulemaking.

### **AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Maria Tenorio.