

DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED CHANGES IN THE REGULATIONS
Title 3. California Code of Regulations
Article 6.5 Direct Marketing

INITIAL STATEMENT OF REASONS

DESCRIPTION OF THE PUBLIC PROBLEM, ADMINISTRATION REQUIREMENT, OR OTHER CONDITION OR CIRCUMSTANCE THE REGULATION IS INTENDED TO ADDRESS

The proposed changes are intended to provide consumers and the certified farmers' market community with safe, good quality markets in order to protect the integrity of the industry.

SPECIFIC PURPOSE AND FACTUAL BASIS

Section 1392 of the California Code of Regulations (CCR) expresses the intent of Article 6.5 Direct Marketing regulations. The specific purpose of amending Section 1392 is to further clarify the intent of the article.

Section 1392.2 (a) of the CCR further defines the term "Certified Farmers' Market". It states who may operate a farmers' market. Amending this section adds the word "only" to clarify the options listed are not examples, but the specific entities that may operate the market.

Section 1392.2 (b) of the CCR defines and specifies conditions for valid Certified Farmers' Market certificates. The amendment makes clear that the operator is liable and responsible for the market operation and regulatory compliance as a condition of being issued a certificate.

The specific purpose of amending CCR, Section 1392.2 (u), (v), (w), (x) and (y) is to add definitions of processed agricultural products, and the preservatives, seasonings, flavorings, and food coloring allowed in those products. These definitions will make clarifications to enhance the uniformity of products sold at the markets.

The specific purpose of amending CCR, Section 1392.4 (d) is to add the word "valid" to the requirement that the embossed certificate be present during transportation and at point of sale. Without the word "valid", expired certificates could be used to satisfy this section.

Creating CCR, Section 1392.4 (k) would require the seller of processed products to document compliance with the production requirements referenced in section 1392.2 (k) and to have that documentation available at the point of sale. It limits the quantities of the processed products to be less than the quantities of fresh commodities listed on the

Certified Producers Certificate. Additionally, the included ingredients not of their own production (except sugar and water) must be the last ingredients listed on the label required by the Food and Drug Administration.

The specific purpose of amending CCR, Section 1392.6 (b) is to require that a map identifying the non-certified and/or non-agricultural product areas of the certified farmers' market be included in the operator application.

Amending CCR, Section 1392.6 (f) requires that the certified farmers' market rules and regulations include a provision regarding due process. Additionally, creating CCR, Section 1392.9 (e) will stipulate that the market operator shall provide due process to market participants prior to the imposition of a fine, and further outlines the due process requirements.

The reason to amend Section 1392.9 (b) (1) of the CCR is to require the operators of certified farmers markets keep records of processed products as they currently do with fresh products.

The specific purpose of adding Section 1392.11 (e) to the CCR is to include denial of due process as a reason to appeal to the Director for a hearing.

FACTUAL BASIS FOR THE DEPARTMENT DETERMINING THE NEED FOR THE AMENDMENT OF THESE REGULATIONS:

The Secretary of the Department has proposed these regulation changes based upon recommendations of the Certified Farmers' Market Advisory Committee (CFMAC). The CFMAC is advisory to the Secretary on the amendment, repeal and adoption of legislation and regulations relating to the administration and enforcement of the direct marketing laws. The CFMAC is comprised of 17 members and their alternates who represent certified producers, market managers, two major marketing associations, county agricultural commissioners, and the public.

Current regulations are vague on many definitions and conditions of direct marketing. The areas identified as needing further clarification were:

- Processed products and the ingredients allowed to make such products;
- Production requirements that the seller shall document compliance with;
- Clarify that the certificate must be valid;
- Require the operator of certified farmers markets to include processed products on records they currently maintain for other commodities;
- Further outline due process.

As farmers' markets grow and expand, so does the demand from the consumer for additional products. Prior to these amendments, the producers were very limited in the ingredients they could add to their fresh commodity to create a "value added" product. These changes give producers the flexibility to create additional marketing opportunities. Producers will benefit by expanding their base of products offered for

sale. Having both raw commodities and processed products offered for sale gives the consumer more choices.

These amendments provide enforcement tools to ensure that the processed products were done in compliance with the regulations. Producers must document compliance of their processed products and have those documents available for enforcing officers to review. Operators of farmers markets must keep records of identity of the processed products and quantities sold.

Reasonable due process is an important aspect of enforcement. The amended regulations require this process to be outlined in the certified farmers' market rules and regulations, which each producer is given. It also standardizes and clarifies the process into regulation.

The Department of Food and Agriculture has complied with Section 42682 of the Food and Agricultural Code. The Secretary finds that the Certified Farmers Market Advisory Committee (CFMAC) represents producers, market managers and market associations. The Department of Food and Agriculture concurs with the CFMAC and finds that it is necessary to amend the California Code of Regulations to be consistent with current marketing and industry trends.

DOCUMENTS RELIED UPON

The Department is relying upon the following documents pertaining to the proposed regulation changes:

- Certified Farmers' Market Advisory Committee meeting minutes dated July 12, 2004, September 12, 2005, November 15, 2005, March 13, 2006, May 8, 2006, and March 26, 2007.

ALTERNATIVES

The Department has initially determined that no alternative considered by the Department would be more effective in carrying out the purpose for which these regulations are proposed or would be as effective and less burdensome to affected private persons than the proposed regulations.

ESTIMATED COSTS OR SAVINGS TO PUBLIC AGENCIES OR AFFECTED PRIVATE INDIVIDUALS OR ENTITIES

The Department of Food and Agriculture has initially determined that these proposed regulations do not impose a mandate on local agencies or school districts. The Department has also initially determined that no savings or increased costs to any State agency, no reimbursable costs or savings under "Part 7 (commencing with Section 17500) of Division 4 of the Government Code to local agencies or school districts, no nondiscretionary costs or savings to local agencies or school districts, and no costs or

savings in federal funding to the State will result from the proposed action.

SMALL BUSINESS IMPACT STATEMENT

The Department has initially determined that the proposed changes to the regulations would result in no added costs to small businesses affected by these proposed changes. The proposed changes allow the certified producers increased flexibility in marketing their commodities and will increase the variety of products offered for sale at certified farmers markets.

ECONOMIC IMPACT ON AFFECTED BUSINESSES

The Department has initially determined that the proposed regulations would result in no costs to private businesses or individuals affected by these proposed regulations. This is based on the fact stated in the “SMALL BUSINESSES IMPACT STATEMENT.”