

**TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE**  
**ARTICLE 6.5 DIRECT MARKETING**  
(Notice published June 15, 2007)

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend, Title 3, Article 6.5 of the California Code of Regulations (CCR) Sections 1392, 1392.2(a), 1392.2(b), 1392.4(d), 1392.6(b), and 1392.6 (f). The Department also proposes to add the following subsections: 1392.2(u), (v), (w), (x), (y); 1392.4(k); 1392.6(f)(1), (2); 1392.9(e); and 1392.11(e).

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comment relevant to the proposed regulatory action to the Department. The written comment period closes at 5:00 p.m. on July 30, 2007. The Department will consider only comments received at the Department offices by that time. Submit comments to:

Rick S. Jensen, Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street  
Sacramento, CA 95814

**AUTHORITY AND REFERENCE**

Notice is hereby given that the Department of Food and Agriculture, pursuant to the authority vested by Sections 401, 407, 42681, 42682, 42684, 47000, 47001, 47002, 47003, 47004, 47020 and 47022 of the Food and Agricultural Code, and to implement, interpret, or make specific Sections 821, 42681, 47000, 47002, 47003, 47004, and 47004.1 of the Food and Agricultural Code, proposes to amend regulations in Title 3 of the California Code of Regulations.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

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” which clarifies that 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.

Existing Section 1392.2, of the CCR establishes definitions governing the construction of the language in this article. 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.

Existing Section 1392.4 of the California Code of Regulations establishes conditions of direct marketing. The specific purpose of amending 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. This will ensure expired certificates cannot be used to comply with this section.

The specific purpose of amending Section 1392.4 (k) is to require the seller of processed products to document compliance with production requirements referenced in section 1392.2 (k) and to have that documentation available at the point of sale. It would restrict the quantities of the processed products to be less than the amount of fresh commodities listed on the certificate. It would require that the included ingredients not of their own production (other than sugar and water) must be the last ingredients listed on the label required by the Food and Drug Administration.

CCR Section 1392.6 lists the certification requirements of a certified farmers’ market. 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.

Section 1392.9 lists the compliance requirements for the certified farmers’ market operator. Amending Section 1392.9 (b) (1) of the CCR is to require the operator of certified farmers markets to keep records of processed products as they currently do for fresh products. Creating CCR 1392.9 (g) 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 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.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code Sections 17500 through 17630: None.

Other nondiscretionary cost or saving imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any significant cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action:

Adoption of these regulations will not:

1. Create or eliminate jobs within California;
2. Create new businesses or eliminate existing businesses within California; or
3. Affect the expansion of businesses currently doing business within California.

Significant effect on housing costs: None.

### **EFFECT ON SMALL BUSINESS**

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.

### **CONSIDERATION OF ALTERNATIVES**

The Department has initially determined that no reasonable alternative considered by the Department, or that has otherwise been identified and brought to the attention of the Department, would be more effective in carrying out the purpose for which these

regulations are proposed, or would be as effective and less burdensome to affected private persons than the proposed regulations.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Rick S. Jensen, Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

The backup contact person for these inquiries is:

Susan Shelton, Staff Services Analyst  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 445-2180; Fax: (916) 445-2427

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Ms. Shelton at the above address.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at 560 J Street, Sacramento, CA 95814. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice, the proposed text of the regulations, the initial statement of reasons, and minutes to various Certified Farmers' Market Advisory Committee meetings. Copies may be obtained by contacting Susan Shelton at the address or phone number listed above.

### **AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may adopt the proposed regulations substantially as described in this notice. If the Department makes modifications which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Susan Shelton at the address indicated above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

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

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Ms. Shelton at the above address.

### **AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through our website at: [www.cdfa.ca.gov/is/regulation.htm](http://www.cdfa.ca.gov/is/regulation.htm)

DEPARTMENT OF FOOD AND AGRICULTURE

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Date

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Valerie Brown, Deputy Secretary

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

**Title 3. California Code of Regulations  
Article 6.5 Direct Marketing**

Amend Section 1392 to read:

Section 1392. Intent.

It is the intent of this article to encourage a 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 ~~The intent of this article is to facilitate~~ facilitating the sale of agricultural products from producers and certified producers within the state directly to consumers 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, Food and Agricultural Code. Reference: Sections 821, 42941, 58101, 58101.5, 58102, 58103, and 58104, Food and Agricultural Code.

Amend Section 1392.2 to read:

Section 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 consumers. 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 where agricultural products are sold by the producers directly to consumers. The certificate is valid only when bearing the original signatures of the county agricultural commissioner and the authorized representative of the certified farmers' market. 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.

...

(u) 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.

(v) 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) Seasoning. Seasoning shall be defined as salt or spice used in food preparation.

(1) Spice. Spice shall be defined as any of various aromatic plant products used in food preparation. Spices include, but are not limited to: chili powder, whole or ground black pepper, ginger, garlic, onion, jalapeno, cinnamon and nutmeg.

(x) 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.

(y) 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.

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

Amend Section 1392.4 to read:

Section 1392.4. Conditions of Direct Marketing.

...

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

...

(k) A seller of processed agricultural products shall document compliance with the production requirements referenced in Section 1392.2(k) with documents such as but not limited to a health department certificate for the processing facility, written agreement or bill for rent from a certified kitchen, or a written agreement or bill for work accomplished from a person or entity that processed the product. He or she shall have a copy of the documentation in his or her possession at the point of sale, and shall make this documentation available upon request of an enforcing officer. The quantities

of certifiable agricultural product processed and sold shall not exceed the quantities listed on the seller's Certified Producer's Certificate.

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

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

Amend Section 1392.6 to read:

Section 1392.6. Certification Requirements of a Certified Farmers' Market.

...

(b) Application shall be made by the proposed operator(s) of a certified farmers' market 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.

...

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

(1) a 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.

(2) A provision that sets forth the due process and appeal rights set forth in these regulations that a market participant shall receive prior to the imposition of a fine, suspension or expulsion from a certified farmers' market.

...

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

Amend Section 1392.9 to read:

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

...

(b)

(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.

...



(e) The operator of a certified farmers' market shall provide reasonable due process to certified farmers' market participant prior to an imposition of a fine, suspension or expulsion from a certified farmers' market. A market participant shall receive a written Notice of Intent to Take an Action if the action includes a fine, suspension or expulsion from the market. The Notice shall state the specific reasons for the proposed action. The Notice shall be delivered in person or mailed to the market participant prior to an imposition of a fine, suspension or expulsion from the market unless an immediate suspension is necessary to protect the public health, safety or welfare. The Notice shall advise the participant that he or she has fifteen calendar days to submit a written appeal of the proposed action. If an appeal is submitted in a timely manner, the governing board or its designee shall arrange a date and time for the appellant to appear before the governing board or its designee for an administrative hearing. The administrative hearing shall provide the participant with an opportunity to present evidence and argument regarding the reasons stated in the proposed action and the appropriateness of the proposed action. The administrative hearing shall result in a written decision upholding, reversing or modifying the proposed action. The decision shall be issued within fifteen calendar days of the conclusion of the hearing.

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.

Amend Section 1392.11 to read:

Section 1392.11 Appeals.

...

(e) Denial of due process in the manner required by these regulations.

...

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.