



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

April 12, 2013

TO: CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE (COPAC)
PENALTY MATRIX SUBCOMMITTEE

A teleconference meeting of the California Organic Products Advisory Committee Penalty Matrix Subcommittee has been scheduled for the following:

When: Tuesday, April 23, 2013
8:00 a.m. – 11:30 a.m.

Where: Inspection and Compliance Headquarters
2800 Gateway Oaks, Suite 100, Sacramento, CA 95833

Committee members will use the following information to access the conference call:
Dial-in Number: (888) 324-8526
Pass Code: 15216

Any member of the public may join the conference call by going to any of the following locations:

Sherman Business Law, 220 Montgomery St., Ste. 1500, San Francisco, CA 94104
Marin Agricultural Commissioner's Office, 1682 Novato Blvd. Ste. 150-A, Novato, CA 94947
Melody Meyer, 4710 Rodeo Gulch Ln., Soquel, CA 95073
CCH Citrus, 8000 Lincoln Ave., Riverside, CA 92504
CCOF, 2155 Delaware Ave., Ste. 150, Santa Cruz, CA 95060

Notification of committee meetings and their agendas can be found via the Internet at the following website address: <http://www.cdfa.ca.gov/is/meetings.html>

Please find the enclosed agenda. If you have any questions regarding this meeting, please contact me at the number listed below.

Sincerely,

Steve Patton
Branch Chief

Enclosure

cc: Gary Leslie



**California Department of Food and Agriculture (CDFA)
California Organic Products Advisory Committee (COPAC) Meeting**

Tuesday, April 23, 2013

8:00 a.m. – 11:30 a.m.

Teleconference

AGENDA

1. Roll Call/Introductions
2. Penalty Matrix Discussion (Attachments A – H)
3. Penalty Matrix Model Development – Next Steps
4. Identify Subject Matter Experts
5. Distribution of Tasks
6. Public Comment
7. Next Meeting/Agenda Items
8. Adjournment

All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact Susan Shelton at (916) 900-5030. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.

<http://www.cdfa.ca.gov/is/meetings.html>



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

April 12, 2013

TO: CALIFORNIA ORGANIC PRODUCTS ADVISORY COMMITTEE (COPAC) AND
ALL INTERESTED PARTIES

A teleconference meeting of the California Organic Products Advisory Committee Penalty Matrix Subcommittee has been scheduled for the following:

When: Tuesday, April 23, 2013
8:00 a.m. – 11:30 a.m.

Where: Inspection and Compliance Headquarters
2800 Gateway Oaks, Suite 100, Sacramento, CA 95833

Any member of the public may join the conference call by going to any of the following locations:

Sherman Business Law, 220 Montgomery St., Ste. 1500, San Francisco, CA 94104
Marin Agricultural Commissioner's Office, 1682 Novato Blvd. Ste. 150-A, Novato, CA 94947
Melody Meyer, 4710 Rodeo Gulch Ln., Soquel, CA 95073
CCH Citrus, 8000 Lincoln Ave., Riverside, CA 92504
CCOF, 2155 Delaware Ave., Ste. 150, Santa Cruz, CA 95060

Notification of committee meetings and their agendas can be found via the Internet at the following website address: <http://www.cdfa.ca.gov/is/meetings.html>

Please find the enclosed agenda. If you have any questions regarding this meeting, please contact me at the number listed below.

Sincerely,

Steve Patton
Branch Chief

Enclosure

cc: Gary Leslie



**California Department of Food and Agriculture (CDFA)
California Organic Products Advisory Committee (COPAC) Meeting**

**Tuesday, April 23, 2013
8:00 a.m. – 11:30 a.m.**

Teleconference

AGENDA

1. Roll Call/Introductions
2. Penalty Matrix Discussion (Attachments A – H)
3. Penalty Matrix Model Development – Next Steps
4. Identify Subject Matter Experts
5. Distribution of Tasks
6. Public Comment
7. Next Meeting/Agenda Items
8. Adjournment

All meeting facilities are accessible to persons with disabilities. If you need reasonable accommodation as defined by the Americans with Disabilities Act, or if you have questions regarding the public meeting, please contact Susan Shelton at (916) 900-5030. Requests for reasonable accommodation should be made no later than three (3) days before the meeting.

<http://www.cdfa.ca.gov/is/meetings.html>

Revised by Ashby 7/25/12

Code Section	Description of Violation	VIOLATION TYPE		
		MINOR Fine Range \$50 - \$150	MODERATE Fine Range \$151 - \$400	SERIOUS Fine Range \$401-\$1000
Section I	Certified Producer Violations			
<u>Title 7, Code of Federal Regulations §205.102</u>	<u>False or misleading use of the term organic.</u>			
<u>Title 7, Code of Federal Regulations §205.103</u>	<u>Failure to maintain records concerning the production, harvesting, and handling of agricultural products that are or that re intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))."</u>			
<u>Title 7, Code of Federal Regulations §205.105</u>	<u>Usage of synthetic substances, nonsynthetic substances, nonagricultural substances and non organic substances that are prohibited in §§205.600-205.606</u>			
SUBPART C	Organic Production and Handling Requirements			
<u>Title 7, Code of Federal Regulations §205.200</u>	<u>Production practices not maintaining or improve the natural resources of the operation</u>			
<u>Title 7, Code of Federal Regulations §205.201 (a)</u>	<u>Failure to create and implement an organic production or handling system plan including description of practices and procedures, list of substances to be used and its composition, record keeping system</u>			
<u>Title 7, Code of Federal Regulations §205.202 (a)</u>	<u>Failure to manage field or farm parcel in accordance with §§ 205.203-205.206</u>			
<u>Title 7, Code of Federal Regulations §205.202 (b)</u>	<u>Usage of prohibited substances listed in §205.105 in a period of 3 years immediately preceding harvest of the crop.</u>			
<u>Title 7, Code of Federal Regulations §205.202 (c)</u>	<u>No defined boundaries and buffer zones to prevent unintended application of a prohibited substance to the crop or contact with prohibited substances</u>			
<u>Title 7, Code of Federal Regulations §205.203 (a)</u>	<u>Lack of maintaining the physical, chemical, and biological condition of soil and minimize soil erosion through tillage and cultivation practices.</u>			
<u>Title 7, Code of Federal Regulations §205.203 (c)</u>	<u>Lack of management of plant and animal materials that contributes to contamination of crops, soil, or water by plant nutrients, pathogenic, heavy metals, residues of prohibited substances.</u>			
<u>Title 7, Code of Federal Regulations §205.203 (1c)</u>	<u>Application of manure that is not composted and is applied to the soil less than 120 days of crops with edible portions exposed to the soil and less than 90 days for non edible portions exposed to soil.</u>			
<u>Title 7, Code of Federal Regulations §205.203 (d)</u>	<u>Usage of materials that are not on the National List of non synthetic substances for crop nutrient and soil fertility</u>			
<u>Title 7, Code of</u>	<u>Failure to use organically grown seeds, annual seedlings</u>			

<u>Federal Regulations §205.204 a</u>	<u>and planting stock</u>			
<u>Title 7, Code of Federal Regulations §205.204 (a)(1)</u>	<u>Usage of nonorganic seeds for crops when there are organic seeds available for crop</u>			
<u>Title 7, Code of Federal Regulations §205.204 (a)(1)</u>	<u>Failure of edible sprouts not derived organically</u>			
<u>Title 7, Code of Federal Regulations §205.204 (a) (2)</u>	<u>Failure of seeds being treated with a substance that is not on the National List of synthetic substances</u>			
<u>Title 7, Code of Federal Regulations §205.204 (a) (4)</u>	<u>Perennial crops nonorganically produced maintained in organic management for less than a year.</u>			
<u>Title 7, Code of Federal Regulations §205.205</u>	<u>Non implementation of a crop rotation that would maintain or improve soil organic matter, pest management, manage plant nutrients, and control erosion</u>			
<u>Title 7, Code of Federal Regulations §205.206 (a)</u>	<u>No use of management practices to prevent crop pests, weeds, and diseases</u>			
<u>Title 7, Code of Federal Regulations §205.206 (e)</u>	<u>Failure to make documentation in organic system plan when substances that are on the National List of synthetic substances are applied</u>			
<u>Title 7, Code of Federal Regulations §205.207</u>	<u>Failure to have wild crops intended to be labeled and sold as organic to be treated with no substances for a period of 3 years</u>			
<u>Title 7, Code of Federal Regulations §205.236</u>	<u>Failure to provide continuous organic management for livestock</u>			
<u>Title 7, Code of Federal Regulations §205.236 (c)</u>	<u>Failure to main records to preserve the identity of all organically managed animals</u>			
<u>Title 7, Code of Federal Regulations §205.237</u>	<u>Failure to provide livestock with a total feed ration that is organically produced and handled by NOP certified operations.</u>			
<u>Title 7, Code of Federal Regulations §205.237 (b)</u>	<u>Failure to use animal drugs to promote growth and feed supplements in violation of the Federal Food, Drug, and Cosmetic Act</u>			
<u>Title 7, Code of Federal Regulations §205.237</u>	<u>Failure of total feed ration description not including sources and changes</u>			
<u>Title 7, Code of Federal Regulations §205.238</u>	<u>Failure to establish and maintain preventive livestock health care practices</u>			
<u>Title 7, Code of Federal Regulations §205.238 (b)</u>	<u>Failure to administer medications not allowed under §205.603</u>			
<u>Title 7, Code of Federal Regulations</u>	<u>Failure to maintain year round livestock living conditions to accommodate the health and behavior of animals</u>			

<u>§205.239 (a)</u>				
<u>Title 7, Code of Federal Regulations §205.239 a (4)</u>	<u>Failure of shelter of not allowing opportunities to exercise, ventilations, and reduction of potential livestock injury. ,</u>			
<u>Title 7, Code of Federal Regulations §205.239 a (5)</u>	<u>Failure to not have well drained and managed feedlots and laneways to prevent run off of wastes</u>			
<u>Title 7, Code of Federal Regulations §205.239 (d)</u>	<u>Failure to have proper grazing and finishing for slaughterhouse livestock.</u>			
<u>Title 7, Code of Federal Regulations §205.239(e)</u>	<u>Failure to manage manure in a manner that it puts soil and/or water quality at risk.</u>			
<u>Title 7, Code of Federal Regulations §205.240</u>	<u>Failure to not demonstrate through definitive records in organic system plan for management of pasture</u>			
<u>Title 7, Code of Federal Regulations §205.270 (b)</u>	<u>Failure to use nonagricultural substances and nonorganically produced agricultural products that are not listed under §§205.605 and 205.606</u>			
<u>Title 7, Code of Federal Regulations §205.271 (a)</u>	<u>Failure to use management practices to prevent pests</u>			
<u>Title 7, Code of Federal Regulations §205.271 (b)</u>	<u>Failure to manage pests through mechanical or physical controls or through lures and repellants that contain substances that are in violation of the National List</u>			
<u>Title 7, Code of Federal Regulations §205.271 (d)</u>	<u>Failure to notify certifying agent to agree on substance not in accordance of the National List when other methods are ineffective</u>			
<u>Title 7, Code of Federal Regulations §205.271 (e)</u>	<u>Organic handling plan not being updated when substances not listed in the original plan are used.</u>			
<u>Title 7, Code of Federal Regulations §205.272 (a)</u>	<u>Failure to implement measures to prevent commingling of organic and nonorganic products</u>			
<u>Title 7, Code of Federal Regulations §205.272 (b) (1)</u>	<u>Usage of packing materials and storage containers or bins that contain a synthetic fungicide, preservative or fumigant</u>			
<u>Title 7, Code of Federal Regulations §205.272 (b) (2)</u>	<u>The use or reuse of bag or container that has been in contact with substances that can compromise the organic integrity</u>			
<u>Title 7, Code of Federal Regulations §205.290</u>	<u>Temporary Variances must be authorized by the Administrator</u>			
<u>Subpart D.</u>	<u>Labels, Labeling, and Market Information</u>			
<u>Title 7, Code of Federal Regulations §205.300 (a)</u>	<u>Usage of the term "organic" when product or ingredients have been held not in accordance to the regulations of being organic.</u>			

<u>Title 7, Code of Federal Regulations §205.300 (c)</u>	<u>Failure of products produced in a foreign country intended for sale in the US to be certified and labeled as organic in accordance to subpart D and E.</u>			
<u>Title 7, Code of Federal Regulations §205.300 (d)</u>	<u>Failure of labeling livestock feeds that are in accordance to §205.306.</u>			
<u>Title 7, Code of Federal Regulations §205.301 (a)</u>	<u>Failure to product to be labeled "100% organic" when product does not contain 100% organic produced ingredients</u>			
<u>Title 7, Code of Federal Regulations §205.301 (b)</u>	<u>Failure of product to be labeled as "organic" when it contains less than 95% organic</u>			
<u>Title 7, Code of Federal Regulations §205.301 (c)</u>	<u>Failure to have at least 70% of ingredients be organic when it is labeled as "made with organic (specified ingredients)"</u>			
<u>Title 7, Code of Federal Regulations §205.301 (e)</u>	<u>Failure to have livestock feed not contain 100% organically produced raw or processed agricultural product</u>		-	-
<u>Title 7, Code of Federal Regulations §205.301 (f)(5)</u>	<u>Failure to have product free of sulfites, nitrates, or nitrites added during the production process</u>			
<u>Title 7, Code of Federal Regulations §205.302 (a)</u>	<u>Failure of calculating weight of organic ingredients in product outlined in steps 1-3 of this section</u>		-	-
<u>Title 7, Code of Federal Regulations §205.302 (c)</u>	<u>Failure of not having the percentage of organic ingredients labeled on the consumer package determined by the handler and verified by the certifying agent</u>		-	-
<u>Title 7, Code of Federal Regulations §205.303 (a)</u>	<u>Failure of using either the term "organic", USDA seal, and certifier identifying mark on packaging and labeling on products that do not fall under the category of §205.201 (a) and (b).</u>		-	-
<u>Title 7, Code of Federal Regulations §205.303 (b) (1)</u>	<u>Failure of providing identification of each organic ingredient on packaging with either an asterisk or the term "organic"</u>		-	-
<u>Title 7, Code of Federal Regulations §205.303 (b) (2)</u>	<u>Not stating the certifying agent that certified the final product on the label.</u>		-	-
<u>Title 7, Code of Federal Regulations §205.304 (a) (1)</u>	<u>Listing more than three organically produced ingredients and/ or food groups on a label for packaged products</u>		-	-
<u>Title 7, Code of Federal Regulations §205.304 (a) (2)</u>	<u>Failures of having the percentage of the organic ingredients in the product exceed one half of the size of the largest ingredient amount.</u>			
<u>Title 7, Code of Federal Regulations §205.305 (a)</u>	<u>Products consisting with less than 70% of organic ingredients must have a reference to which individual ingredients on the label are organic.</u>			
<u>Title 7, Code of Federal Regulations §205.305 (b)</u>	<u>Failure of products containing less than 70% of organic ingredients to display the USDA seal and certifying agent seal/logo</u>			

Title 7, Code of Federal Regulations §205.306 (b)	Livestock feeds that fall under §§205.301 (e)(1) and (e)(2) not labeling handler, distributor, and certifying agent			
Title 7, Code of Federal Regulations §205.307 (c)	Failure of shipping container domestically grown product that is intended for export not being labeled "For Export Only" with the handler not being able to provide proof with recordkeeping requirements under §205.101.			
Title 7, Code of Federal Regulations §205.308 (a)	Using the term "organic" other than as a way to identify organic ingredients ???????			
Title 7, Code of Federal Regulations §205.309 (a)	Failure of using the phrase "made with organic (specified ingredients)" for the modification of the name of the product in retail display, labeling and display containers if the amount of organic ingredients are not 70-95% of the finished product.			
Title 7, Code of Federal Regulations §205.309 (a) (1)	Failure to state more than 3 food groups/ products that are organic on the label			
Title 7, Code of Federal Regulations §205.310 (a) (1)	Failure of agricultural products produced or handled on an exempt/excluded operation displaying the USDA seal or certifying agent's seal			
Title 7, Code of Federal Regulations §205.310 (a) (2)	Failure of representing as a certified organic product or certified organic ingredient to buyers.			
Title 7, Code of Federal Regulations §205.310 (b)	Failure of identifying and/or representing "organic" in a product that is processed by others.			
Title 7, Code of Federal Regulations §205.311	Unlawful representation of the USDA seal			
	Subpart E: Certification			
Title 7, Code of Federal Regulations §205.400	Noncompliance with the Act and applicable organic production and handling regulations			
Title 7, Code of Federal Regulations §205.400 (b)	Failure to establish, implement, and update annually an organic production system plan or handling system plan that is submitted to an accredited certifying agent			
Title 7, Code of Federal Regulations §205.400 (c)	Not permitting on site inspections with complete access to the production or handling operation including noncertified production and handling areas			<i>Not applicable</i>
Title 7, Code of Federal Regulations §205.400 (d)	Failure of maintaining all records applicable to the organic operation			
Title 7, Code of Federal Regulations §205.400 (e)	Failure to submit applicable fees charged by certifying agent			
Title 7, Code of Federal Regulations §205.400 (f) (1)	Failure to immediately notifying the certifying agent of application of prohibited substances			

↓
Drop

Revised 7/24/12

	<u>California Food and Ag Code Sections 45000-46029</u>			
<u>FAC 46013.1 (a)</u>	<u>Failure to register or maintain registration with the State Organic Program</u>			
<u>FAC 46014.1</u>	<u>Failure to make required fee payments</u>			
<u>FAC 46014.2 (a)</u>	<u>Failure to sell products as "organic" when not certified</u>			
<u>FAC 46014.4</u>	<u>Failure to comply with act in order to be registered</u>			
<u>FAC 46020 (a)</u>	<u>Unlawful to sell, label products that violates the NOP</u>			
<u>FAC 46021</u>	<u>Unlawful to make false statements and knowingly make false statement/representation of facts that are required to become certified</u>			
<u>FAC 46022 (a)</u>	<u>Unlawful to produce or handle any product to be sold as organic when it is not registered.</u>			
<u>FAC 46023</u>	<u>Fraudulent acts in pertains to records pursuant to Section 46028</u>			
<u>FAC 46024 (a)</u>	<u>Failure to use and advertise fertilizers and pesticides with prohibited substances</u>			
<u>FAC 46024 (b)</u>	<u>Refusal of inspection</u>			
<u>FAC 46024 (c-f)</u>	<u>Failure to alter or mislabel of any forms, documents, labels that have meaning towards organic.</u>			
<u>FAC 46024 (h)</u>	<u>The usage of the term "transitional organic"</u>			
<u>FAC 46027 (a)</u>	<u>Usage of the term of "organic when available" or practices that leaves doubt if the product is truly organic</u>			
<u>FAC 46028 (a)(1)</u>	<u>Failure to keep records on each field or management unit in terms of harvesting</u>			
<u>FAC 46028 (a)(2)</u>	<u>Failure to keep records on name and addresses for suppliers of livestock, fowl, or fish unless raised or hatched by the producer</u>			
<u>FAC 46028 (a) (3)</u>	<u>Failure to keep records on all substances and quantities that are applied.</u>			
<u>FAC 46028 (a) (4)</u>	<u>Failure to keep records on all substances administered and fed to animal.</u>			
<u>FAC 46028 (a)(5)(A)</u>	<u>Failure to keep records on invoices, bills and other forms for transfer that showcase that the product is organic certified</u>			
<u>FAC 46028 (b) (6)</u>	<u>Failure of not identifying pesticides by brand name</u>			
<u>FAC 46028 (b) (7)</u>	<u>Failure to keep records of product transfer and quantity before reaching the consumer</u>			
<u>FAC 46029</u>	<u>Failure to provide inspection and essential documents upon request</u>			

	<u>California Code of Regulations : Organic Inspection and Sampling Authority</u>			
<u>CCR §1391.1 (a)</u>	<u>Failure to make products and ingredients to be deemed as "organic" & etc to be accessible for examination</u>			
<u>CCR §1391.1 (b)</u>	<u>Failure to allow pre/post harvest testing on products for sampling analysis</u>			
<u>CCR §1391.1 (d)</u>	<u>Failure to permit state and county commissioners the right to inspect documentation and records in pertains to following organic certification guidelines that are used.</u>			
<u>CCR §1391.1 (d) (3)</u>	<u>Failure to submit name and address of suppliers of livestock, fowl, or fish exception: raised by producer</u>			
<u>CCR §1391.1 (d) (4)</u>	<u>Failure of providing information on substances that are used including date, quantity, brand and if possible the source.</u>			
<u>CCR §1391.1 (d) (5)</u>	<u>Failure if not keeping records on the feed and medication given to animals and livestock</u>			
<u>CCR §1391.1 (d) (6)</u>	<u>Failure to not keep records on substances and the areas that they are applied to</u>			
<u>CCR §1391.1 (d) (7)</u>	<u>Failure to keep records of how the product is sold, purchased, transferred to before it reaches to consumer</u>			
<u>CCR §1391.1 (d) (8)</u>	<u>Failure to not provide records or documents inorder to showcase compliance with</u>			
<u>CCR §1391.4</u>	<u>Failure to notify the State Organic Program when changes occur that are not on the reported registration form and may have to pay a fee if the change results in a higher fee.</u>			

HISTORY

1. Amendment and numbering of undesignated introductory paragraph as subsection (a), repealer of remaining paragraphs with new subsections (b)–(e) and NOTE filed 7–26–91; operative 7–26–91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
2. Amendment of subsection (d) and NOTE filed 2–4–2002 as an emergency; operative 2–4–2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6–4–2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (d) and NOTE; refiled 7–3–2002 as an emergency; operative 7–3–2002 (Register 2002, No. 27). A Certificate of Compliance must be transmitted to OAL by 10–31–2002 or emergency language will be repealed by operation of law on the following day.
4. Certificate of Compliance as to 7–3–2002 order transmitted to OAL 10–25–2002 and filed 12–2–2002 (Register 2002, No. 49).
5. Amendment of subsections (a) and (d), new subsection (e), subsection relettering and amendment of newly designated subsection (g) filed 8–18–2011; operative 9–17–2011 (Register 2011, No. 33).

§ 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 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 where agricultural products are sold by the producers directly to 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. 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 share-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.

(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 consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, at a certified farmers' market.

(f) **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.

(g) **Consumer.** A person who purchases and receives agricultural products at a field retail stand or farm stand at or near the point of production or at a certified farmers' market 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(k).

(h) **Direct Marketing. The sale:**

(1) At a certified farmers' market of agricultural products by a certified producer to 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 a consumer or to individuals, organizations, or enti-

ties that subsequently sell or distribute the products directly to end users; or

(3) At a field retail stand or farm stand near the point of production of agricultural products by a producer to a consumer 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 any 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.

(k) **Agricultural Products.** Agricultural products include all certified and noncertifiable agricultural products as defined in section 1392.2(1) and section 1392.2(m).

(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, shell eggs, honey, flowers, and nursery stock.

(m) **Noncertifiable Agricultural Products.**

Noncertifiable agricultural products include all certified agricultural products that have been processed, 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, and fish and shellfish produced under controlled conditions in waters or ponds located in California.

(n) **Nonprofit Organization.** An organization which qualifies for nonprofit status for California income tax purposes.

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

(p) **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.

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

(r) **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.

(s) **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 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.

(t) **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.

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.

(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.

(iii) Names of both certified producers involved.

(10) A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the department 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.

(h) 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, 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.

(i) 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, 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.

(j) 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.

(k) 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 in accordance with Section 47002(e) of the Food and Agricultural Code. The memorandum must list all of the following:

(i) Identity of the producer;

(ii) Address of the producer;

(iii) Identity of the product purchased;

(iv) Quantity of the product purchased.

(l) A certified producer shall not knowingly fail to provide the memorandum so described and under the circumstances set forth in subsection (k) of this section and shall, under any circumstances, issue a memorandum 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.

(m) A seller of processed agricultural products shall 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 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 label required by the Food and Drug Administration (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 861, 47000, 47002, 47003, 47004, 47005 and 47022, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (a) filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
2. Amendment of subsection (a) filed 4-4-79; effective thirtieth day thereafter (Register 79, No. 13).
3. Amendment of subsection (a) filed 2-3-82; effective thirtieth day thereafter (Register 82, No. 6).
4. Amendment of subsection (a), amendment and renumbering of subsections (b) to (e), (c) to (f), with new subsections (b), (c), (d) and (g) filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
5. Amendment of subsections (g)-(g)(3) and amendment of NOTE filed 1-30-97; operative 3-1-97 (Register 97, No. 5).
6. Amendment of subsections (a) and (g), new subsections (g)(1), (g)(3) and (g)(4), subsection renumbering, amendment of subsections (g)(7)-(10) and amendment of NOTE filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
7. Amendment of section and NOTE filed 5-4-2001 as an emergency; operative 5-4-2001 (Register 2001, No. 18). A Certificate of Compliance must be transmitted to OAL by 9-4-2001 or emergency language will be repealed by operation of law on the following day.
8. Reinstatement of section as it existed prior to 5-4-2001 emergency action by operation of Government Code section 11346.1(f) (Register 2001, No. 48).
9. Amendment of section and NOTE filed 11-28-2001; operative 12-28-2001 (Register 2001, No. 48).
10. Amendment of subsections (f) and (f)(3)-(5), new subsection (g) and amendment of NOTE filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.
11. Amendment of subsections (f) and (f)(3)-(5), new subsection (g) and amendment of NOTE filed 7-3-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
12. Certificate of Compliance as to 7-3-2002 order, including further amendment of subsections (f), (f)(3)-(5) and (f)(8)-(10), transmitted to OAL 10-25-2002 and filed 12-2-2002 (Register 2002, No. 49).
13. New subsections (h)-(j) and amendment of NOTE filed 5-9-2005; operative 6-8-2005 (Register 2005, No. 19).
14. Amendment of subsections (a) and (b), new subsections (k)-(m) and amendment of NOTE filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 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-

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. Renumbering and amendment of Section 1400.14 to Section 1400.4 and renumbering and amendment of former Section 1400.4 to Section 1400.5 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23). For history of former Section 1400.4, see Register 75, No. 4.

§ 1400.5. Apples, Minimum Maturity Standards. [Repealed]

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Renumbering and amendment of Section 1400.4 to Section 1400.5 and renumbering and amendment of former Section 1400.5 to Section 1400.11 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Repealer filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.6. Apples, Maturity Exemptions.

The maturity provisions of this article do not apply to apples that are shipped into this state from outside of the state. Such apples shall, however, be properly matured as required in Section 1400.4 of this article or shall be accompanied by an official certificate that states such apples, at the time of harvest, met the maturity requirements of the state of origin.

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Repealer of Section 1400.6 and renumbering and amendment of Section 1400.7 to Section 1400.6 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Amendment filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.7. Apples, Overripe Defined.

"Overripe" means that the apple has attained that degree of maturity where the condition of the flesh is very mealy or soft, having passed the last stages of firmness for commercial use.

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. Renumbering and amendment of Section 1400.18 to Section 1400.7 and renumbering and amendment of former Section 1400.7 to Section 1400.6 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23). For history of former Section 1400.7, see Register 75, No. 4.

§ 1400.8. Apples, Maturity Standards for Gravensteins.

Gravenstein apples shall be considered properly matured when a composite sample of the juice taken from the representative portion of each of 10 representative apples in any lot, tests not less than 10.5 percent soluble solids as shown by a standard hand refractometer instrument.

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Repealer of Section 1400.8 and renumbering and amendment of Section 1400.16 to Section 1400.8 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23). For history of former Section 1400.16, see Registers 75, No. 4, and 71, No. 2.

§ 1400.9. Apples, Maturity Standards for Designated Varieties.

(a) Standard Tests. The commissioner shall consider apples properly matured if each variety listed in Column A at least complies with the standard maturity tests specified in Column B or the alternative sliding scale application of these tests as provided in subsection (b) below:

Column A

Apple Variety
 Red Delicious
 Golden Delicious
 Jonathan
 Rome
 Newtown Pippin
 McIntosh

Column B

<i>Soluble Solids</i>	<i>Pressure</i>
11%	18 lbs. ¹
12%	18 lbs. ²
12%	19 lbs.
12.5%	21 lbs. ³
11%	23 lbs.
11.5%	19 lbs.

1. No pressure test required. However, any decrease in pressure below 18 lbs. may be applied as provided in subsection (b) "Sliding Scale Test." Above the elevation of 1,900 feet in El Dorado County, any decrease in pressure below 19 lbs. may be applied.
2. 20 lbs. for San Joaquin Valley area of Kern County; 19 lbs. above the elevation of 1,900 feet in El Dorado County.
3. 23 lbs. for San Bernardino County GTP the Tehachapi-Cummings Valley area of Kern County, and above the elevation of 1,900 feet in El Dorado County.
 (b) Sliding Scale Test. The soluble solids test and the pressure test may be applied on the basis that a 1/2 percent increase of soluble solids will compensate for a one-pound increase in pressure test, or a one-pound decrease in pressure will compensate for 1/2 percent decrease in soluble solids, or other amounts of change that are proportional to this rate of change.

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Repealer of Section 1400.9 and renumbering and amendment of Section 1400.17 to Section 1400.9 filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23). For history of former Section 1400.17, see Registers 78, No. 34; 76, No. 47; 76, No. 32; and 75, No. 4.

§ 1400.9.1. Apples, Granny Smith Maturity, Sampling and Testing Procedures. [Repealed]

NOTE: Authority cited: Section 14, 407, 42681 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 5-8-92; operative 6-8-92 (Register 92, No. 19).
2. Repealer filed 7-28-2011; operative 7-28-2011 pursuant to Government Code section 11343.4 (Register 2011, No. 30).

§ 1400.10. Apples, Maturity: Release Dates Established by Commissioners.

Dates of maturity may be established prior to the harvesting season by the commissioners for areas, counties, or districts within counties. The commissioner may take into consideration location, climatic conditions, or other factors that are known to produce apples that vary as to the time they reach maturity. Testing shall be based on representative orchards in each area, county, or district. The maturity dates shall be set when such tests generally indicate that the apples are, or will be, properly matured. These dates of maturity shall be announced by the commissioner. The commissioner shall prepare records, based on the factors of maturity that are used each year.

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Amendment filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).

§ 1400.10.1. Apples, Certification Prior to Release Date.

The county agricultural commissioner may, upon request, sample apples intended for shipment prior to the release date. If the fruits meet minimum maturity requirements and all other provisions of this article, they may be certified by placing an official stamp on each container. The county involved may, pursuant to Section 42793 of the Food and Agricultural Code, establish a fee for such certification.

NOTE: Authority cited: Sections 407, 42681 and 42684, Food and Agricultural Code. Reference: Sections 42941 and 42793, Food and Agricultural Code.

HISTORY

1. New section filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
2. Amendment filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

nated as a certified farmers' market an itemized list of all products sold at the certified farmers' market 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.

(2) The market operator shall keep the list of products sold for a period of not less than eighteen months.

(c) No person shall operate a certified farmers' market unless he or she has in his or her possession a current, valid certified farmers' market certificate issued by the county agricultural commissioner for that market.

(d) The operator of a certified farmers' market shall, upon the request of an enforcement officer, provide for review his or her current, valid certified farmers' market certificate at any time during the operation of a certified farmers' market.

(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.

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50). For prior history, see Register 91, No. 47.
2. New subsections (c) and (d) and amendment of NOTE filed 5-9-2005; operative 6-8-2005 (Register 2005, No. 19).
3. Amendment of subsections (a)(1) and (a)(3)-(6), new subsection (a)(7), amendment of subsection (b)(1) and new subsection (e) filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 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(s), 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 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 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. 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.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, all parties listed on the certificate shall:

(1) Have entered into the agreement prior to planting of annual and biannual crops; and

(2) Have entered into the agreement 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) Have entered into the agreement prior to bloom of tree and vine crops; and

(4) Be engaged in agricultural production upon the land which is the subject of 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 copies of certificates issued to the partnership shall be surrendered to the issuing 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.

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
2. Amendment of subsection (a), new subsection (a)(5) and amendment of NOTE filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.
3. Amendment of subsection (a), new subsection (a)(5) and amendment of NOTE refiled 7-3-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
4. Editorial correction of History 3 (Register 2002, No. 49).
5. Certificate of Compliance as to 7-3-2002 order, including further amendment of subsections (a)(1) and (a)(5), transmitted to OAL 10-25-2002 and filed 12-2-2002 (Register 2002, No. 49).

§ 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 agricultural commissioner, at the time of application, with a copy of the current written lease agreement which 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. The notarized signatures on the agreement of all executing the agreement.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, the person applying for the certificate shall:

(1) Assume all financial risks associated with producing agricultural products; and

(2) Enter into the agreement prior to planting of annual and biannual crops; and

(3) Enter into the agreement 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 price to cut back of artichokes), and

(4) Enter into the agreement prior to bloom of tree and vine crops, and

(5) Perform agricultural production upon the land which is the subject of 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 copies of certificates issued to the partnership shall be surrendered to the issuing agricultural commissioner.

Code Section	Description of Violation	VIOLATION TYPE		
		MINOR	MODERATE	SERIOUS
		Fine Range \$50-\$150	Fine Range \$151-\$400	Fine Range \$401-\$1000
Section II. Market Operator Violations				
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.

HISTORY

1. New section filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 1392.5. Producer Certification Procedures.

(a) A producer may become certified by applying to the agricultural commissioner of the county where the producer's farm is located. 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.

(b) The certificate and application shall be on a form authorized by the director and include an agreement signed by the applicant that the applicant will comply with the terms of this article.

(c) Any producer shall provide, upon request by an enforcing officer or market manager, certificates, documentation, information, or any other identification that may be reasonably required to show that the conditions of this article are being met.

(d) The county agricultural commissioner 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 issue an embossed photocopy 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 embossed photocopies of the original certificate to comply with the provisions of this article.

(f) The issuing county agricultural commissioner shall send a photocopy of the original certificate to each destination county listed on the certified producer's certificate.

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.

HISTORY

1. Amendment of heading, amendment and numbering of first three undesignated paragraphs as subsections (a)-(c), with repealer of remaining undesignated paragraphs, and new subsections (d)-(f) and NOTE filed 7-26-91; operative

7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§ 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. The certificate shall indicate that the marketplace is 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.

(c) The county agricultural commissioner shall not issue a certificate for a certified farmers' market when notified that a permit for the operation of such market has been denied by an agency of local government.

(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.

Code Section	Description of Violation	Moderate Violation	Serious or Subsequent Violation
		\$100-\$250	Initial: \$251-\$500 Subsequent: \$251-\$5,000
4. FAC 44984	Failure to allow inspection of records required to be kept pursuant to FAC 44982		X
5. FAC 45031	Failure to possess a record of proof of ownership for avocados	X	
6. FAC 45034	Falsification of any information in a record intended to show proof of ownership for avocados		X
7. FAC 45035	Failure to retain a copy of the proof of ownership record for avocados for one year after sale	X	

NOTE: Authority cited: Sections 407 and 42681, Food and Agricultural Code. Reference: Sections 401, 861, 862, 864, 865, 42792.1, 42884, 42885, 42886, 42941, 42942, 42943, 42944, 42945, 42946, 42947, 42948, 42949, 42950, 42951, 43033, 43331, 43332, 43333, 44971, 44972, 44973, 44974, 44982, 44983, 44984, 44986, 45031, 45034 and 45035, Food and Agricultural Code.

HISTORY

1. New section filed 3-15-2007; operative 4-14-2007 (Register 2007, No. 11).

HISTORY

1. New Sections 1386, 1386.1 through 1386.19 filed 1-4-71 as an emergency, effective upon filing. Certificate of Compliance included (Register 71, No. 2).
2. Renumbering from Section 1386 filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4)

Article 3. Definitions

§ 1375. Definitions.

NOTE: Authority cited: Sections 407, 42681, 42682 and 42684, Food and Agricultural Code. Reference: Sections 42941 and 42501, Food and Agricultural Code.

[The next page is 117.]

<i>Code Section</i>	<i>Description of Violation</i>	<i>Minor Violation</i> \$50-\$150	<i>Moderate or Subsequent Violation</i> \$151-\$500	<i>Serious or Subsequent Violation</i> \$501-\$1,000
6. FAC 42884	Delivery of fruits, nuts or vegetables under disposal order to other than designated destination		X	
7. FAC 42885	Disposal of fruits, nuts or vegetables under disposal order prior to release		X	
8. FAC 42886	Disposal of fruits, nuts or vegetables under disposal order in a manner or for a purpose other than as ordered		X	
9. FAC 42941	Failure of fruits, nuts or vegetables to conform to provisions of this division or regulations promulgated thereto	X *Second violation of same regulation		
CCR 1359	Container labeling: no declaration of responsibility		X	
10. FAC 42942	Deceptive pack, lot load or display of fresh or dried fruits, nuts or vegetables	X		
11. FAC 42943	Mislabeling or misleading statement on container or label	X		
12. FAC 42944	Deceptive or misleading statements in any manner	X		
13. FAC 42946	Failure to pack the same numerical count in each layer	X		
14. FAC 42947	Failure to ensure that the contents of lower layers are of same kind, quality and proportion as top or exposed layers	X		
15. FAC 42950	Failure of 90% to be free of insect injury, worms, mold or decay (specific standards not otherwise established)	X		
16. FAC 43033	Removal of tag or notice from lot under abatement		X	
17. FAC 43331	Use or disposal of fruits, nuts or vegetables under permit other than by the manner or for the purpose permitted		X	
18. FAC 43332	Failure of permit to accompany fruits, nuts or vegetables transported under permit	X		
19. FAC 43333	Selling or offering fruits, nuts or vegetables failing to meet standards to person requiring permit who has no permit	X		

Section II — Provisions of Division 17 Separately Specified
For a first violation, a fine of not more than \$3,000

<i>Code Section</i>	<i>Description of Violation</i>	<i>Moderate Violation</i> \$250-\$1,000	<i>Serious or Subsequent Violation</i> \$1,001-\$3,000
1. FAC 42945	Unlawful removal or disposal of fruits, nuts or vegetables with warning tag or notice attached or removal of tag or notice without written permission or under direction of enforcing officer	X	
2. FAC 42948	Refusal to submit fruits, nuts or vegetables to inspection of enforcing officer	X	
3. FAC 42949	Alteration of certificate of inspection, notice of violation, report, statement, or other document issued by an enforcing officer		X
4. FAC 42951	Adulteration of any solution or chemical or alteration of any instrument or device provided to an enforcing officer for use in determining compliance with this division		X

(b) The state, county agricultural commissioner, or the operation's accredited certifying agent may require preharvest or postharvest testing of any agricultural product, ingredient, or input to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food groups)." Sampling for analysis shall be conducted by the state, county agricultural commissioner, or the operation's accredited certifying agent.

(c) The state, county agricultural commissioner, or the operation's accredited certifying agent may enter, inspect, and sample any of the following or related areas and items to determine compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations:

(1) Fields, areas, structures, and greenhouses where products or inputs may be produced, processed, handled, or stored.

(2) Equipment, including protective clothing and equipment, used to store, produce, process, transport, or handle commodities.

(3) Dressing areas and other facilities used by employees.

(d) The state and county agricultural commissioners shall have the right to inspect documentation and records pertaining to the production, processing, storage, transportation, or handling of commodities identified as "100 percent organic," "organic," and "made with organic (specified ingredients or food groups)." Such records may include and are not limited to the following:

(1) Organic systems plan(s), if applicable.

(2) The quantity harvested from each field or management unit, the size of the field management unit, the field number, and the date of harvest.

(3) Unless the livestock, fowl, or fish was raised or hatched by the producer, the name and address of all suppliers of livestock, fowl, or fish and the date of the transaction.

(4) For each field or management unit, all substances applied to the crop, soil, growing medium, growing area, irrigation or post harvest wash or rinse water, or seed, the quantity of each substance applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(5) All substances administered and fed to the animal, including all feed, medication and drugs, and all substances applied in any area in which the animal, milk, or eggs are kept, including the quantity administered or applied, and the date of each application. All substances shall be identified by brand name, if any, and by source.

(6) All substances applied to the product or used in or around any area where product is kept including the quantity applied and the date of each application. All pesticide chemicals shall be identified by brand name, if any, and by source.

(7) Except when sold to the consumer, the name and address of all persons, to whom or from whom the product is sold, purchased or otherwise transferred, the quantity of product sold or otherwise transferred, and the date of the transaction.

(8) Any other records or documents deemed necessary to demonstrate compliance with the provisions of the California Organic Products Act of 2003, federal Organic Foods Production Act of 1990, National Organic Program regulations, and state regulations.

(e) When laboratory test results indicate a specific agricultural product contains substances or environmental contaminants that exceed state or federal regulatory tolerances, the state, county agricultural commissioner, or the operation's accredited certifying agent shall report such data to the state and federal agency whose regulatory tolerance or action level has been exceeded.

NOTE: Authority cited: Sections 407, 46000, 46001, 46002 and 46018.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

HISTORY

1. New section filed 9-10-2007; section operative upon approval by the Secretary of the U.S. Department of Agriculture (Register 2007, No. 37).

2. Change without regulatory effect amending section, and attaching letter by the Secretary of the U.S. Department of Agriculture approving the State Organic

Program appeal procedures effective 11-5-2007, filed 1-24-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 4).
3. Renumbering of former section 1391.1 to new section 1391.6 and new section 1391.1 filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

§ 1391.2. Sample Collection for Laboratory Analysis.

(a) All samples for laboratory testing shall be collected by the state, county agricultural commissioner, or the operation's accredited certifying agent for the purpose of testing under this article.

(b) The state may determine which samples shall be collected, including, but not limited to the type, amount, size, or volume.

(c) A duplication of each sample may be taken.

(d) Each sample collected shall include an identifying number, the date and time collected, the name of the individual collecting the sample, the address where collected, a detailed description of the product, its location on the premises, and any other identifying information determined to be necessary.

(e) Individual samples shall be enclosed in containers appropriate for the type of sample collected utilizing methods that prevent direct contact with contaminants.

NOTE: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

HISTORY

1. New section filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

§ 1391.3. Complaint Investigations.

(a) Any person may file a complaint with the Department concerning suspected noncompliance with the California Organic Products Act of 2003, National Organic Program regulations, or the federal Organic Foods Production Act of 1990.

(b) The Department shall commence a complaint investigation within three working days after receiving a complaint regarding fresh food, and within seven working days for other products. Upon conclusion of a complaint investigation, the Department shall provide a report of findings and enforcement action taken, if any, to the complainant within 60 days, if the complainant makes his or her identity available.

(c) The Department may refer cases to the National Organic Program under these or other conditions:

(1) Inability to resolve a case.

(2) Lack of expertise to resolve a case.

(3) Lack of resources or authority to pursue a civil action.

(4) If the case concerns issues outside the Department's jurisdiction.

(5) Inputs not currently addressed by California state law.

(6) Issues involving National Organic Program policy issues.

(d) The county agricultural commissioner or the operation's accredited certifying agent shall provide a final report of inspection to the Department upon completion of an assigned investigation. If an accredited certifying agent fails to initiate appropriate action, the complaint and the agent's actions or inactions shall be referred to the National Organic Program.

NOTE: Authority cited: Sections 407, 46000, 46001, 46002 and 46016.1, Food and Agricultural Code. Reference: Section 401, Food and Agricultural Code.

HISTORY

1. New section filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

§ 1391.4. Amended Registrations.

A registrant shall notify the Department of any change in the information reported on the registration form within 14 days or prior to the sale of additional product and shall pay any additional fee owed if that change results in a higher fee owed than previously paid.

NOTE: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46013.2(c), Food and Agricultural Code.

HISTORY

1. New section filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

§ 1391.5. Appeal of Denial, Suspension or Revocation of Organic Certification.

(a) A certification agent or the Secretary may propose denial, suspension or revocation of the organic certification of agricultural production

Code Section	Description of Violation	Moderate Violation	Serious or Subsequent Violation
		\$250-\$1,000	\$1,001-\$3,000
AVOCADOS			
5. FAC 44971(b)	Failure to certify avocados as complying with maturity and quality provisions established by regulation	X	
6. FAC 44972	Unlawful shipment or sale of any container of avocados which does not bear the official stamp required by law and regulation	X	
7. FAC 44974(c)	Failure to comply with the inspection and certification requirements of FAC Chapter 9, Avocados	X	
8. FAC 44986	Unlawful use of avocado container certification stamp; refusal to surrender certification stamp to director's authorized agent; counterfeit or alter or use any altered certification stamp		X

Section III — Provisions of Division 17 Separately Specified — Avocados Only
 Avocados Worth \$500 or More
 For a first violation involving avocados worth \$500 or more, or
 For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

Code Section	Description of Violation	Moderate Violation	Serious or Subsequent Violation
		\$250-\$1,000	\$1,000-\$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	X	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	X	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		X
4. FAC 44984	Failure to allow inspection of records required to be kept pursuant to FAC 44982		X
5. FAC 45031	Failure to possess a record of proof of ownership for avocados	X	
6. FAC 45034	Falsification of any information in a record intended to show proof of ownership for avocados		X
7. FAC 45035	Failure to retain a copy of the proof of ownership record for avocados for one year after sale	X	

Section III — Provisions of Division 17 Separately Specified — Avocados Only
 Avocados Worth Less than \$500
 For a first violation for avocados worth less than \$500, a fine of not more than \$500
 For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

Code Section	Description of Violation	Moderate Violation	Serious or Subsequent Violation
		\$100-\$250	Initial: \$251-\$500 Subsequent: \$251-\$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	X	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	X	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		X

<i>Code Section</i>	<i>Description of Violation</i>	<i>Minor Violation</i> \$50-\$150	<i>Moderate or Subsequent Violation</i> \$151-\$500	<i>Serious or Subsequent Violation</i> \$501-\$1,000
6. FAC 42884	Delivery of fruits, nuts or vegetables under disposal order to other than designated destination		X	
7. FAC 42885	Disposal of fruits, nuts or vegetables under disposal order prior to release		X	
8. FAC 42886	Disposal of fruits, nuts or vegetables under disposal order in a manner or for a purpose other than as ordered		X	
9. FAC 42941	Failure of fruits, nuts or vegetables to conform to provisions of this division or regulations promulgated thereto	X *Second violation of same regulation		
CCR 1359	Container labeling: no declaration of responsibility		X	
10. FAC 42942	Deceptive pack, lot load or display of fresh or dried fruits, nuts or vegetables	X		
11. FAC 42943	Mislabeled or misleading statement on container or label	X		
12. FAC 42944	Deceptive or misleading statements in any manner	X		
13. FAC 42946	Failure to pack the same numerical count in each layer	X		
14. FAC 42947	Failure to ensure that the contents of lower layers are of same kind, quality and proportion as top or exposed layers	X		
15. FAC 42950	Failure of 90% to be free of insect injury, worms, mold or decay (specific standards not otherwise established)	X		
16. FAC 43033	Removal of tag or notice from lot under abatement		X	
17. FAC 43331	Use or disposal of fruits, nuts or vegetables under permit other than by the manner or for the purpose permitted		X	
18. FAC 43332	Failure of permit to accompany fruits, nuts or vegetables transported under permit	X		
19. FAC 43333	Selling or offering fruits, nuts or vegetables failing to meet standards to person requiring permit who has no permit	X		

Section II — Provisions of Division 17 Separately Specified
For a first violation, a fine of not more than \$3,000

<i>Code Section</i>	<i>Description of Violation</i>	<i>Moderate Violation</i> \$250-\$1,000	<i>Serious or Subsequent Violation</i> \$1,001-\$3,000
1. FAC 42945	Unlawful removal or disposal of fruits, nuts or vegetables with warning tag or notice attached or removal of tag or notice without written permission or under direction of enforcing officer	X	
2. FAC 42948	Refusal to submit fruits, nuts or vegetables to inspection of enforcing officer	X	
3. FAC 42949	Alteration of certificate of inspection, notice of violation, report, statement, or other document issued by an enforcing officer		X
4. FAC 42951	Adulteration of any solution or chemical or alteration of any instrument or device provided to an enforcing officer for use in determining compliance with this division		X

and handling operations consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.662.

(b) An applicant for certification may appeal a certification agent's or Secretary's notice of denial of certification, and a certified operation may appeal a certification agent's or Secretary's notification of the proposed suspension or revocation, to the Secretary consistent with the provisions of Title 7, Code of Federal Regulations, Section 205.681.

(c) Upon receipt of the appeal, the Secretary will evaluate the proposal of the certification agent or Secretary to deny, suspend or revoke a certification in order to determine if there is sufficient evidence to proceed to initiate formal administrative action to do so.

(1) A decision by the Secretary to decline to initiate a formal administrative proceeding shall be deemed a granting of the appeal, and the Secretary shall communicate the decision in writing to the appellant and the certification agent.

(2) A decision by the Secretary to proceed to initiate a formal administrative proceeding shall be deemed a denial of the appeal, and the service of the accusation shall be construed as the communication of the denial to the appellant and the certification agent.

(d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq. NOTE: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.

HISTORY

1. Renumbering of former section 1391 to new section 1391.5 filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

§ 1391.6. Mediation of Denial, Suspension or Revocation of Organic Certification.

(a) If a certification agent proposes the denial, suspension or revocation of the organic certification of an agricultural production or handling operation, pursuant to 1391.5(a), they may voluntarily participate in mediation prior to the filing of a formal administrative proceeding by the Secretary. If they enter into mediation after the filing of an appeal with the Secretary, but before the commencement of a formal administrative proceeding, pursuant to 1391.5(c), they shall inform the Secretary of their decision to do so. Upon the conclusion of a mediation session, they have 30 days to reach a settlement agreement. Mediation process must be consistent with Title 7, Code of Federal Regulations, Section 205.663.

(1) Any settlement agreement shall be in compliance with the requirements of the State Organic Program.

(2) The parties shall submit any proposed settlement agreement to the Secretary for review.

(3) Upon receipt, the Secretary shall review proposed settlements for conformity with the requirements of the State Organic Program, and reject any agreement or provision that does not comply with the requirements of the Program. If the Secretary rejects a provision or provisions of the proposed settlement, the parties must affirmatively agree to accept the settlement in the form as approved by the Secretary.

(b) The Secretary may establish a list of qualified mediators, but the certification agent and the certified operation or applicant for certification may voluntarily agree upon the choice of a mediator that is not on the list.

(c) Compensation of the mediator, if other than the County Agricultural Commissioners or Secretary, and any other associated costs shall be the responsibility of the certification agent and the certified operation or applicant for certification. The mediator, the certification agent and the certified operation or applicant for certification shall enter into a written agreement regarding compensation and costs before the commencement of mediation. County Agricultural Commissioners may be reimbursed for expenses incurred in conducting mediation by the Secretary as agreed to within the organic program contract or memorandum of understanding.

(d) Formal administrative proceedings shall be conducted in accordance with the provisions of Government Code, Section 11500 et seq. NOTE: Authority cited: Sections 407, 46000, 46001 and 46002, Food and Agricultural Code. Reference: Sections 401 and 46016.5, Food and Agricultural Code.

HISTORY

1. Renumbering and amendment of former section 1391.1 to new section 1391.6 filed 10-6-2010; operative 11-5-2010 (Register 2010, No. 41).

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 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, Food and Agricultural Code. Reference: Sections 821, 42941, 58101, 58101.5, 58102, 58103, and 58104, Food and Agricultural Code.

HISTORY

1. New article 6.5 (sections 1392-1392.11) filed 3-31-77; effective thirtieth day thereafter (Register 77, No. 14).
2. Amendment filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
3. Amendment of section filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
4. Amendment of section and NOTE filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 1392.1. Direct Marketing Authorized.

(a) Notwithstanding other provisions of this 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 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 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 at a stand at a certified farmers' market; or

(2) The producer of the agricultural products at a field retail stand or farm stand located at or near the point of production.

(e) 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, except as provided in subsection 1392.4(k).

(f) 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.

(g) 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.

(h) 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 and 47003, Food and Agricultural Code. Reference: Sections 42941, 47002 and 47003, Food and Agricultural Code.

period. Sodium hydroxide solutions do not keep as well but tend to become weaker as they age. They should be checked with the standard acid as frequently as necessary to assure the operator that their strength is known.

HISTORY

- 1. New section filed 7-7-55; effective thirtieth day thereafter (Register 55, No. 10)
- 2. Renumbering from Section 1382 filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).

Article 2.1. Administrative Civil Penalty Guidelines

§ 1371. Notice of Proposed Action and Disposition.

(a) Before a civil penalty is levied pursuant to Section 43003 or Section 885 of the California Food and Agricultural Code, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and the amount of the proposed penalty. The person shall be allowed to review any evidence related to the matter that is in the possession or control of the county agricultural commissioner or the Department of Food and Agriculture. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice may be served to the person charged by certified mail to the address provided on the person's licensing, registration, and/or certification on file with the county agricultural commissioner or the Department of Food and Agriculture. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the commissioner's hearing and the person shall be allowed to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(1) The hearing shall be conducted by an unbiased hearing officer who has not served as an investigator, prosecutor or advocate regarding the proposed action.

(2) A record shall be made of the proceedings.

(3) A decision shall be rendered by the City Agricultural Commissioner and shall be based only upon evidence presented to the hearing officer during the hearing.

(b) If a respondent in an administrative action agrees to pay the proposed penalty, a signed stipulation with the payment of the proposed administrative penalty shall be returned to the county agricultural commissioner within 45 days of the postmark of the notice of proposed action.

(c) If an administrative hearing is requested, a final decision and order shall be made by a hearing officer within 60 days of the conclusion of the hearing. This order will be mailed to the address provided by the respondent. Any penalty imposed shall be due and payable within 45 days of the postmark of such order, unless the respondent timely files a written appeal to the secretary.

NOTE: Authority cited: Sections 407 and 42681, Food and Agricultural Code Reference: Sections 401, 885 and 43003, Food and Agricultural Code.

HISTORY

- 1. New article 2.1 (sections 1371-1371.2) and section filed 3-15-2007; operative 4-14-2007 (Register 2007, No. 11).

§ 1371.1. Penalty Guidelines.

In applying Section 885 and Section 43003 of the California Food and Agricultural Code, 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 repeat violations of sub-paragraph (2) that occurred within a two-year period and which resulted in an action and subsequent penalty.

(2) "Moderate". Violations which undermine enforcement, or those in which there is a potential for intermediate level of consumer or competitive harm; or repeat violations of sub-paragraph (3) that occurred within a two-year period and which resulted in an action and subsequent penalty.

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

(b) 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 1, Chapter 8, Agriculture Theft Prevention; and Division 17, Fruit, Nut and Vegetable Standards.

NOTE: Authority cited: Sections 407 and 42681, Food and Agricultural Code. Reference: Sections 401, 885 and 43003, Food and Agricultural Code.

HISTORY

- 1. New section filed 3-15-2007; operative 4-14-2007 (Register 2007, No. 11).

§ 1371.2. Administrative Civil Penalties for Food and Agriculture Violations.

Table A

Section I – Provisions of Division 1 and of Division 17 Not Separately Specified
 For a first violation, a fine of not more than \$500.
 For a second or subsequent violation, a fine not less than \$100 or more than \$1,000

Code Section	Description of Violation	Minor Violation	Moderate or Subsequent Violation	Serious or Subsequent Violation
		\$50-\$150	\$151-\$500	\$501-\$1,000
1. FAC 861	Failure of seller to provide, buyer to obtain, or transporter to possess a record showing proof of ownership		X	
2. FAC 862	Failure to make proof of ownership available for inspection; failure to include required information in the record		X	
3. FAC 864	Falsification of any information in a record intended to show proof of ownership		X	
4. FAC 865	Failure to retain a copy of the record for a period of 60 days after delivery	X		
5. FAC 42792.1	Unlawful use of a county certification stamp or device			X

<i>Code Section</i>	<i>Description of Violation</i>	<i>Moderate Violation</i> \$250-\$1,000	<i>Serious or Subsequent Violation</i> \$1,001-\$3,000
AVOCADOS			
5. FAC 44971(b)	Failure to certify avocados as complying with maturity and quality provisions established by regulation	X	
6. FAC 44972	Unlawful shipment or sale of any container of avocados which does not bear the official stamp required by law and regulation	X	
7. FAC 44974(c)	Failure to comply with the inspection and certification requirements of FAC Chapter 9. Avocados	X	
8. FAC 44986	Unlawful use of avocado container certification stamp; refusal to surrender certification stamp to director's authorized agent; counterfeit or alter or use any altered certification stamp		X

Section III — Provisions of Division 17 Separately Specified — Avocados Only
 Avocados Worth \$500 or More
 For a first violation involving avocados worth \$500 or more, or
 For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<i>Code Section</i>	<i>Description of Violation</i>	<i>Moderate Violation</i> \$250-\$1,000	<i>Serious or Subsequent Violation</i> \$1,000-\$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	X	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	X	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		X
4. FAC 44984	Failure to allow inspection of records required to be kept pursuant to FAC 44982		X
5. FAC 45031	Failure to possess a record of proof of ownership for avocados	X	
6. FAC 45034	Falsification of any information in a record intended to show proof of ownership for avocados		X
7. FAC 45035	Failure to retain a copy of the proof of ownership record for avocados for one year after sale	X	

Section III — Provisions of Division 17 Separately Specified — Avocados Only
 Avocados Worth Less than \$500
 For a first violation for avocados worth less than \$500, a fine of not more than \$500
 For a second or subsequent violation, a fine not less than \$250 or more than \$5,000

<i>Code Section</i>	<i>Description of Violation</i>	<i>Moderate Violation</i> \$100-\$250	<i>Serious or Subsequent Violation</i> Initial: \$251-\$500 Subsequent: \$251-\$5,000
1. FAC 44973	Packing, handling or selling any lot of avocados not in compliance with maturity and quality standards established by regulation	X	
2. FAC 44982	Failure of avocado handler to prepare and retain for two years up-to-date records of daily transactions; failure to include required information in records	X	
3. FAC 44983	Falsification of record or information required to be kept pursuant to FAC 44982		X

Code Section	Description of Violation	VIOLATION TYPE		
		MINOR Fine Range \$50-\$150	MODERATE Fine Range \$151-\$400	SERIOUS Fine Range \$401-\$1000
Section I				
Certified Producer Violations				
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 certificate of the person for whom the certified producer is selling	—	X	
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	—	—	X
29. CCR 1392.4(f)(9)	When selling on behalf of another producer, failure to keep required records for a period of three years	X		
30. CCR 1392.4(f)(10)	Failure to produce records for inspection upon demand	X		
31. CCR 1392.4(h)	Failure to post organic registration and/or documentation of organic certification when representing product as organic	X		
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	X		
33. CCR 1392.4(j)	Sale of sprouts with less than 50% having emerged	X		
34. CCR 1392.4(k) (f)	Not providing memorandum with required information		X	
35. CCR 1392.4(m)	Does not have required documentation on processed products		X	
36. CCR 1392.5(c)	Refusing to provide documentation	—	—	X
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 CAC	—	X	
Section II.				
Market Operator Violations				
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	—	—

(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.

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

HISTORY

1. Amendment of heading, repealer of undesignated 1st, 3rd and 4th paragraphs, amendment and numbering of undesignated second paragraph as subsections (b) and (c), and new subsections (a), (d)-(g) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

2. New subsection (d)(4) and amendment of NOTE filed 1-30-97; operative 3-1-97 (Register 97, No. 5).

3. Amendment of subsections (b), (f) and (g), new subsections (f)(1) and (g)(1)-(4) and amendment of NOTE filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 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.

HISTORY

1. Amendment of subsection (a), amendment and renumbering of subsection (b) to (c), and new subsections (b) and (d), and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§ 1392.8. Fees.

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

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.

HISTORY

1. Amendment of heading and section with new NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§ 1392.8.1. Certified Farmers' Market Fees.

(1) Every operator of every certified farmers' market shall remit to the Department of Food and Agriculture sixty cents (\$.60) for each certified

producer represented by each certified producer's certificate and other agricultural producers participating in the market(s) on each market day for the entire quarter. The fee shall be submitted within 30 days after the end of each quarter with a form containing the following information:

(a) Name of market sponsor

(b) Market certificate number

(c) Name and address of the market

(d) Name of market contact person

(e) Market day(s) and hours of operation

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

(g) Quarterly period for which the report is submitted.

(h) List of each participating producer, a list of products 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.

(i) Amount of fees submitted.

(j) Signature of authorized market representative.

(2) 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.

(3) In addition to monthly interest charges referenced in Section 1392.8.1(2), 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 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.

HISTORY

1. New section filed 12-30-99 as an emergency; operative 1-1-2000 (Register 99, No. 53). A Certificate of Compliance must be transmitted to OAL by 5-1-2000 or emergency language will be repealed by operation of law on the following day.

2. Certificate of Compliance as to 12-30-99 order transmitted to OAL 4-19-2000 and filed 5-17-2000 (Register 2000, No. 20).

3. Amendment of subsection (2), new subsection (3) and amendment of NOTE filed 3-7-2005; operative 4-6-2005 (Register 2005, No. 10).

4. Amendment of subsection (h) filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 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 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 of the 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, when selling noncertifiable agricultural products, only those products which were produced in accordance with the certified farmers' market's rules and regulations.

(6) When representing another certified producer under an additional certificate, 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 memorandums of sale in compliance with subsections 1392.4 (k) and (l).

(b) The operator of a certified farmers' market shall obtain from each person participating in the sale of agricultural products in the area design-

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

HISTORY

1. New section filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).

§ 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.

HISTORY

1. Repealer with new subsections (a)-(c) and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§ 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.

HISTORY

1. Repealer with new undesignated introductory paragraph, subsections (a)-(d), and undesignated final paragraph and NOTE filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
2. New subsection (e) and amendment of NOTE filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 1392.12. Emergency Declaration.

(a) The director may, on an as needed, case by case basis, waive or modify specific restrictions within this Article on the direct marketing of agricultural products, including, but not limited to, restrictions or limitations on production acreage and commodities, as well as certification requirements, if a declared plant, pest or animal quarantine, or a declared state of emergency, as defined by Government Code Section 8558, interferes with the normal operative effect of the rules.

(b) Any waivers or modifications shall be consistent with any quarantine, and the response to any declared state of emergency as defined by Government Code Section 8558.

(c) Prior to the utilization of any waivers or modifications, certified producers and certified farmers' markets shall enter into compliance agreements with California Department of Agriculture through the county agricultural commissioner in the county in which their certificates have been issued.

NOTE: Authority cited: Sections 407, 47000, 47001, 47002, 47003, 47004, 47005, 47005.1 and 47020, Food and Agricultural Code. Reference: Sections 47000, 47001, 47002, 47003, 47022, 47022.3 and 47022.6, Food and Agricultural Code.

HISTORY

1. New section filed 12-24-2002 as an emergency; operative 12-24-2002 (Register 2002, No. 52). A Certificate of Compliance must be transmitted to OAL by 4-23-2003 or emergency language will be repealed by operation of law on the following day.
2. Certificate of Compliance as to 12-24-2002 order, including amendment of subsections (a) and (b), transmitted to OAL 4-15-2003 and filed 5-28-2003 (Register 2003, No. 22).

Article 7. Apples

§ 1400. Apples, Standards. [Repealed]

NOTE: Authority cited: Sections 407, 42682, and 42684, Food and Agricultural Code. Reference: Sections 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Amendment filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Editorial correction (Register 81, No. 34).
4. Repealer filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.1. Apples, Exceptions for By-Product Use. [Repealed]

NOTE: Authority cited: Sections 407, 42682, and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Amendment filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Repealer filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.2. Apples, Permit By-Product Use. [Repealed]

NOTE: Authority cited: Sections 407 and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Amendment filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Editorial correction (Register 81, No. 34).
4. Repealer filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.3. Apples, Exceptions.

Except for maturity, grade, and labeling requirements, Lady and crab apples are exempt from the requirements of this article.

NOTE: Authority cited: Sections 407, 42682, and 42684, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

HISTORY

1. New section filed 1-21-75; effective thirtieth day thereafter (Register 75, No. 4).
2. Repealer and new section filed 6-5-81; effective thirtieth day thereafter (Register 81, No. 23).
3. Amendment filed 2-22-85; effective thirtieth day thereafter (Register 85, No. 8).

§ 1400.4. Apples, Properly Matured Defined.

"Properly matured" means that the apple, at the time it was taken from the tree, had reached that stage of minimum maturity, based upon the known and defined factors of maturity, which ensures palatability and proper completion of the ripening process.

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.

Table A

Code Section	Description of Violation	VIOLATION TYPE		
		MINOR Fine Range \$50-\$150	MODERATE Fine Range \$151-\$400	SERIOUS Fine Range \$401-\$1000
Section I				
Certified Producer Violations				
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 month		
21. CCR 1392.4(e)	Failure to use approved scale or sealed scale	—	X	

(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 the following granulated or powdered salts or spices: chili powder, 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.

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

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.

HISTORY

1. Amendment of subsection (a) filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
2. Amendment of undesignated paragraph and subsection (a), amendment and renumbering of subsections (k) to (c), (b) to (d), (c) to (e), (f) to (f), (d) to (g), (e) to (h), (g) to (i), (f) to (j), (h) to (m) and (j) to (n), with new subsections (b), (k), (l), (o), (p) and (q) filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
3. New subsection (r) and amendment of NOTE filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
4. Amendment of subsections (d) and (f), new subsection (s) and amendment of NOTE filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (d) and (f), new subsection (s) and amendment of NOTE refiled 7-3-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-3-2002 order, including amendment of subsection (s), transmitted to OAL 10-25-2002 and filed 12-2-2002 (Register 2002, No. 49).
7. New subsection (i) and amendment of NOTE filed 5-9-2005; operative 6-8-2005 (Register 2005, No. 19).
8. Amendment of subsections (a), (b), (e), (g)-(h)(3), (j) and (s) and new subsections (u)-(z) filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

§ 1392.3. Where Direct Marketing Permitted. [Repealed]

HISTORY

1. Repealer filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

§ 1392.4. Conditions of Direct Marketing.

(a) Except as provided in subsection (f) 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, only agricultural products which he or she

produced to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. 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.

(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.

(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 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 Department of Food and Agriculture, and shall be tested and sealed for use by the county sealer-director of weights and measures.

(f) 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 valid certificate 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 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 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.

(7) Commission sales and buying and selling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall not be related to the volume or value of the products sold.

(8) 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.

(9) A certified producer who sells certified agricultural products on behalf of another certified producer or whose products are sold by another certified producer at a certified farmers' market shall keep for a period

Excerpt from DRAFT

1) COUNTY CIVIL PENALTY MATRIX

Need to insert the penalty matrix with other related documents
California Department of Food and Agriculture and the California Agricultural
Commissioners
and Sealers Association

Administrative Levy of Civil Penalties Policy
Pursuant To Division 17, Chapter 10 of The Food and Agricultural Code

→ Organic Foods
46000-46029

It is unlawful for any person to refuse to comply with the California Organic Foods Act of 1990 or regulation established to carry out the provisions of the Food and Agricultural Code and the Health and Safety Code. In addition to any other applicable penalties, any person who violates any specified requirements of Division 17 of the Food and Agricultural Code, Division 21 of the Health and Safety Code, or any regulation adopted pursuant to those Divisions, may be prosecuted civilly in any appropriate court in this state. In lieu of civil action, the Department or commissioner may levy a civil penalty not to exceed \$ for each violation.

A mutual objective of CDFA and the California Agricultural Commissioners and Sealers Association is the fair and equitable enforcement of all laws for which each agency is responsible. This memorandum of understanding will serve as a policy and set of guidelines for administrative levy of civil penalties.

The following guidelines categorize, by severity, the unlawful sections of the Food and Agricultural Code, which promote uniformity in the assessment of penalties for California Organic Foods Act of 1990 violations. They do not preempt the need for State officials or individual Counties to analyze organic food violations on an individual basis and to levy civil penalties deemed appropriate as determined by the facts of the case.

I. AUTHORITY

A summary of applicable authority for the administration of civil penalties can be found in the following cited sections of the Food and Agricultural Code. For purposes of enforcement, in all civil actions, the provisions of the Code shall be liberally (Food and Agricultural Code, Section 3). Due process provisions from Sections 46007(d) and (e) must be followed.

Division 17 of the Food and Agricultural Code authorizes the imposing of an administrative civil penalty up to \$5,000 for any violation of any requirement of Division 21 as provided in Article 4.5 (commencing with Section 26569.20) of Chapter 5.

Those Sections which specifically provide for civil penalties are:

1. Section 46007(a) - Maximum administrative civil penalty up to \$5,000, based upon the nature of the violation and the seriousness of the effect of the violation.
2. Section 46007(b) - Maximum administrative civil penalty up to \$2,500 for nonintentional violations.

II. VIOLATION CATEGORIES

The degree of Aseriousness@ of any offense shall be determined based on the nature of the violation, and the seriousness of the purposes and provisions of the California Organic Foods Act of 1990. Violations may be adjudged to be minor, moderate or serious. This MOU defines and gives examples of each of these categories. However, the final decision on the severity of any unlawful action must be made on a case-by-case basis.

a) Minor Violations are those violations which are primarily procedural and result in no significant adverse impact on enforcement and/or public health. The appropriate penalty range is \$50 to \$1,000.

Minor Violation Example: First time violations of a procedural nature from someone with little or no experience with organic laws.

Section 46002(b)	Incorrect registration forms used.
Section 46002(c) (1-4)	Registration form incomplete.
Section 46002(d)	Failure to supply Apublic information sheet.@

b) Moderate Violations may be repeated minor violations, or those which cause significant damage, undermine enforcement, or pose a reasonable possibility of harming the agricultural industry, environment, and/or public health. The appropriate penalty range is \$1,000 to \$2,500.

Moderate Violation Example: Repeat minor violations or first time violations which might have an impact on the agricultural industry, environment, and/or public health.

Section 46002(a)	Failure to register (Initially or annually).
Section 46002(e)	Failure to pay registration fees.
Section 26569.28(a)(b)(1-4)	Failure to keep accurate records.
Section 26569.28(c)	Handler fails to keep accurate records.
Section 26569.28(c)(1-4)	Retailer fails to keep accurate records.
Section 26569.28(f)	Failure to maintain records for two years.
Section 26569.31	Certification organization fails to inspect premises.

c) Serious Violations may be repeated moderate violations, which preclude enforcement, or cause major harm to the agricultural industry environment and/or public health. The appropriate penalty range is \$2,500 to \$5,000. However, there may be causes where criminal and/or civil prosecution may be more appropriate. The decision as to how proceed should be made jointly by CDFA and the Commissioner.

Serious Violation Example: Repeat moderate violations, making false statements,

distributing organic food containing prohibited materials, and deliberate circumvention of organic laws.

These might include violations of the following sections:

Section 46002(c)(5)	Failure to maintain records of material applied.
Section 26569.28(a)(1-3)	Producer fails to keep accurate records.
Section 26569.39	Unlawful certification of organic food.
Section 26569.40(b)	Willfully making false statements.
Section 26569.41	Failure to disclose records.
Sections 26569.42	Distributing organic food containing prohibited materials.

FOOD AND AGRICULTURAL CODE
SECTION 43001-43004

*Div. 17 Fruits, Nuts &
Vegetables STOS*
Chapter 2, Article 13, Civil Penalties

43001. Any person that violates any provision of this division shall, in addition to any penalty which is otherwise provided, be liable civilly, in an action brought by the director, for a penalty in an amount which is equal to the value which the fruits, nuts, or vegetables involved in the violation would have if they conformed to the requirements of this division.

The value of such noncomplying fruits, nuts, and vegetables shall be the current market value of the lowest priced grade of a marketable commodity of like kind and nature at the time and place of the violation. Any money which is recovered under this section shall be paid into the Department of Agriculture Fund.

43002. The director may bring an action to enjoin the second or other repeated violation, or threatened second or other repeated violation, of any provision of this division in the superior court in and for the county in which the violation occurred or is about to occur.

Any proceeding pursuant to this section shall conform to the requirements of Chapter 3 (commencing with Section 525), Title 7, Part 2 of the Code of Civil Procedure. The director is not, however, required to allege facts necessary to show or which tend to show lack of adequate remedy at law or which show or tend to show irreparable damage or loss.

43003. (a) In lieu of civil prosecution, the secretary or the commissioner may levy a civil penalty against any person violating this division or any regulation adopted pursuant to its provisions. Except as provided in subdivisions (b) and (c), the civil penalty for each violation shall be, for a first violation, a fine of not more than five hundred dollars (\$500). For a second or subsequent violation, the fine shall be not less than one hundred dollars (\$100), nor more than one thousand dollars (\$1,000).

(b) The secretary or the commissioner may, for a first violation, levy a civil penalty not to exceed three thousand dollars (\$3,000) for each violation of Section 42945, 42948, 42949, 42951, subdivision (b) of Section 44971, Section 44972, subdivision (c) of Section 44974, or Section 44986.

(c) The secretary or the commissioner may, for a first violation, levy a civil penalty not to exceed five hundred dollars (\$500) for each violation of Section 44973, 44982, 44983, 44984, 45031, 45034, or 45035. For a second or subsequent violation, or for a violation involving avocados worth five hundred dollars (\$500) or more, the fine shall be not less than two hundred fifty dollars (\$250) nor more than five thousand dollars (\$5,000).

(d) Before a civil penalty is levied, the person charged with the violation shall receive notice of the nature of the violation and shall be given an opportunity to be heard. This shall include the right to review the evidence and a right to present evidence on his or her own behalf.

(e) The person fined may appeal to the secretary within 10 days of the date of receiving notification of the fine. The following procedures apply to the appeal:

(1) The appeal need not be formal, but it shall be in writing and signed by the appellant or his or her authorized agent, and shall state the grounds for the appeal.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, present written evidence and a written argument to

the secretary.

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

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set therefor. The times may be altered by mutual agreement.

(5) The secretary shall decide the appeal on any oral or written argument, briefs, and evidence that he or she has received.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments.

(7) On an appeal pursuant to this section, the secretary may sustain, modify by reducing the amount of the fine, or reverse the decision of the commissioner. A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Review of the decision of the secretary may be sought by the appellant pursuant to Section 1094.5 of the Code of Civil Procedure.

43004. Any action for any civil penalty or other civil remedy which is provided for under this division shall be commenced within three years from the date of the alleged violation.

CALIFORNIA AGRICULTURAL
COMMISSIONERS AND
SEALERS ASSOCIATION
ORGANIC FOOD
SUBCOMMITTEE REPORT

ON

ORGANIC FOOD ACT
ADMINISTRATIVE CIVIL
PENALTY GUIDELINES



COUNTY OF SUTTER

STACY K. CARLSEN
Agricultural Commissioner
Director of Weights and Measures
Air Pollution Control Officer

Department of Agriculture
142 Garden Highway
Yuba City, California 95991
(916)741-7500

November 19, 1992

MEMO: CALIFORNIA ORGANIC FOOD ADVISORY BOARD
FROM: STACY CARLSEN, AGRICULTURAL COMMISSIONER
SUBJECT: ORGANIC FOOD SUBCOMMITTEE REPORT-- ORGANIC FOOD ACT
ADMINISTRATIVE CIVIL PENALTY GUIDELINES-DRAFT

RECOMMENDATION: That the Organic Food Advisory Board accept the California Agricultural Commissioner/Sealer Association (CACASA) Subcommittee Report on Administrative Civil Penalty Guidelines and recommend CACASA develop a Memorandum of Understanding with the California Department of Food and Agriculture regarding Division 17, Chapter 10 Agricultural Code and Division 21 Chapter 5 of the Health and Safety Code violations and assessment of civil penalties.

BACKGROUND: The California Organic Food Advisory Board, at the last regularly scheduled meeting, requested I work with our association subcommittee to prepare a report addressing uniform enforcement guidelines and segregate violations into categories relative to the "seriousness" of the violation. This report contains "unlawful" type code sections, violation categories (minor, moderate, serious), and rationale for developing such categories. Also, attached is a draft MOU (attachment 4) between our association (CACASA) and CDFA, addressing the administrative levy of civil penalties policy. I feel comfortable with the MOU, but it will have to be formally adopted by our association and Director Voss prior to implementation.

REPORT ON ORGANIC FOOD ACT
ADMINISTRATIVE CIVIL PENALTY GUIDELINES

November 18, 1991

As you know, our mission was to prepare guidelines that would categorize violations by severity. These categories would then provide some uniformity to our administrative penalty assessment and help Commissioners assess violations depending on the degree of "seriousness." The intent of the guidelines is to promote uniformity but flexibility in individual circumstances.

The following guidelines do not try to deflate county enforcement goals or make unlawful violations of the agricultural code appear less than serious but to try to identify categories of "seriousness."

During this process practically all unlawful sections were reviewed that pertained to organic food.

The basis for establishing what category a violation falls was dependent on answers to a series of questions (see attachment 1). This list is non-exhaustive but is reflective of the kinds of questions one would ask when investigating code violations. An affirmative response to questions 1 through 9 triggered a serious violation category, whereas a yes to questions 10 through 12 triggers a moderate violation category, and finally if yes to questions 13 through 18 then it triggered a minor violation category. Generally, when these questions are asked when investigating code violations the answer(s) along with other on-site information could be used to determine what category a violation would fall. We have found that the answers to the questions and on-site information would help identify the appropriate violation categories (see attachment 2).

VIOLATION CATEGORIES DEFINED

Minor Violation

An individual unknowingly violates rules of a procedural nature and/or has little background or understanding of organic laws.

Moderate Violation

An individual who unknowingly violates a law that could have an impact on program integrity, economy and public welfare.

Serious Violation

A. An individual who knowingly violates organic laws which directly impacts the agricultural economy and/or impacts public welfare.

B. An individual who knowingly violates or repeatedly violates organic food law pertaining to legal documents, i.e., keep accurate records, distribute organic food containing prohibited material, alters or defaces documents, or one who makes claims or represents organic commodities.

An edited summary of the unlawful sections with recommended violation categories are attached (see attachment 3). Each section was put to the question and answer test as described above. There is room to move between violation categories (up or down) but the listed categories/code sections represent the subcommittee's recommended guidelines.

QUESTIONS

-
1. Was it a repeated violation?
2. Was the individual registered, certified, professional or other business qualifications?
3. Did the individual refuse to comply?
4. Was there problems with maintaining records.
- "Serious" 5. Did the individual alter, deface, misuse documents?
6. Was there fraudulent activities?
7. Did a health hazard result from violating law?
8. Did the violation result in an urgency response.
9. What is the local enforcement history?
-
10. Is there a statewide industry problem or lack of a standard?
- "Moderate" 11. Is the person non-professional, unregistered, non-certified?
12. Did the violation result from the lack of proper documentation or lost documentation?
-
13. Are there alternatives to solve the problem-administrative, procedural?
14. Was this a first time violation?
15. Was the violation unknowingly committed?
- "Minor" 16. Was the violation of a "general" procedural nature?
17. Was there a procedural violation?
18. Are there any circumstances that would mitigate the problem?
-

Attachment 2

- "Serious" - Violations are repeated violations
Violations by individuals understanding the law,
i.e., registered, certified
Individuals who refuse to register
Individuals who alter, deface, misuse records
Individuals who refuse to surrender records upon
request or conceal records
Individuals who refuse to comply after being
notified
Individuals who move plant materials under hold
order, or under a compliance agreement
Individuals who create an actual health hazard
e.g., selling, producing organic food treated with
a prohibited material
- "Moderate" - Violators are first time violations
Violation committed by unregistered, noncertified
individuals, non-professionals
Violations resulting from or lack of proper
documentation
- "Minor" - Violations committed unknowingly
Violations of procedural rules
Violations which are procedural educational issue

Division 17, Chapter 10 Food and Agricultural Code
Division 21, Chapter 5 Health and Safety Code

Category

46002(a)	mod-ser	fail to register
46002(b)	minor	incorrect forms used to register
46002(c)(1-4)	minor	incomplete registration
46002(c)(5)	serious	fail to maintain records of materials applied
46002(d)	minor	fail to supply "public information sheet"
46002(e)(1)	moderate	fail to pay registration fee
26569.28(a)(b)(1-4)	mod-ser	producer failed to keep accurate records
26569.28(c)	mod-ser	handler fail to keep accurate records
26569.28(e)(1-4)	mod-ser	retailer fail to keep accurate records
26569.28(f)	mod-ser	fail to maintain records 2 yrs
26569.31	moderate	certifying organization fail to inspect premises
26569.40(b)	serious	willfully make false statements
26569.41	serious	fail to disclose records
26569.42	serious	distribute organic food containing prohibited materials

MEMORANDUM OF UNDERSTANDING

California Department of Food and Agriculture
and the
California Agricultural Commissioners
and Sealers Association .

ADMINISTRATIVE LEVY OF CIVIL PENALTIES POLICY
PURSUANT TO DIVISION 17, CHAPTER 10 OF
THE FOOD AND AGRICULTURAL CODE

It is unlawful for any person to refuse to comply with the California Organic Foods Act or Regulation established to carry out the provisions of the Food and Agricultural and Health and Safety Code. In addition to any other applicable penalties, any person who violates any specified requirements of Division 17 of the Food and Agricultural Code, and specified requirements of Division 21 of the Health and Safety Code, or any regulation adopted pursuant to those Divisions, may be prosecuted civilly in any appropriate court in this State. In lieu of civil action, the director or the commissioner may levy a civil penalty not to exceed \$5,000 for each violation.

A mutual objective of the California Department of Food and Agriculture and the California Agricultural Commissioners and Sealers Association is the fair and equitable enforcement of all laws for which each agency is responsible. This memorandum of understanding (MOU) will serve as a policy and set of guidelines for the administrative levy of civil penalties.

The following guidelines categorize, by severity, the unlawful sections of the Food and Agricultural Code. They are provided to promote uniformity in the assessment of penalties for Organic Food Act violations. They do not preempt the need for state officials or individual counties to analyze organic food violations on an individual basis and to levy civil penalties deemed appropriate as determined by the facts of the case.

I. AUTHORITY

A summary of applicable authority for the administration of civil penalties can be found in the following cited sections of the Food and Agricultural Code. For purposes of enforcement, in all civil actions, the provisions of the code shall be liberally interpreted (Food and Agricultural Code, Section 3). Due process provisions (Sections 46007(d) and (e)) must be followed.

- A. Division 17 of the Food and Agricultural Code. Authority exists to levy a civil penalty administratively up to \$5,000 for any violation of any requirement of Division 21 as provided in Article 4.5 (commencing with Section 26569.20) of Chapter 5.

Those sections which specifically provide for civil penalties are:

1. Section 46007(a) - Maximum administrative civil penalty up to \$5,000 based upon the nature of the violation and the seriousness of the effect of the violation.
2. Section 46007(b) - Maximum administrative civil penalty up to \$2,500 for non-intentional violations.

II. VIOLATION CATEGORIES

The degree of "seriousness" of any offense shall be determined based on the nature of the violation, the seriousness of the effect of the violation upon the effectuation of the purposes and provisions of the Organic Food Act. Violations may be adjudged to be minor, moderate or serious. This MOU defines each of these categories and gives examples for each. However, the final decision on the severity of any unlawful action must be made on a case-by-case basis.

- A. Minor Violations - Minor violations are those violations which primarily are procedural and result in no significant adverse impact on enforcement, on the agricultural industry, environment, and/or public health. The appropriate penalty range is \$50 to \$1,000.

Examples of minor violations include: first time violations of a procedural nature from someone with little or no experience with organic laws.

Section 46002(b)	Incorrect registration forms used
Section 46002(c)(1-4)	Registration form incomplete
Section 46002(d)	Failure to supply "public information sheet"

- B. Moderate Violations - Violations may be repeat minor violations, or those which cause significant damage, undermine enforcement, or pose a reasonable possibility of harming the agricultural industry, environment, and/or public health. The appropriate penalty range is \$1,000 to \$2,500.

Examples of moderate violations include: repeat minor violations or first time violations which might have an impact on the agricultural industry, environment, and/or public health.

Section 46002(a)	Failure to register (initial or annual)
Section 46002(e)(1)	Failure to pay registration fee
Section 26569.28(a)(b)(1-4)	Failure to keep accurate records
Section 26569.28(c)	Handler fails to keep accurate records
Section 26569.28(c)(1-4)	Retailer fails to keep accurate records
Section 26569.28(f)	Failure to maintain records for 2 years
Section 26569.31	Certification organization fails to inspect premises

- C. Serious Violations - Violations may be repeat moderate violations, those which preclude enforcement, or those which cause major harm to the agricultural industry, environment, and/or public health. The appropriate penalty range is \$2,500 to \$5,000. However, there may be cases where criminal and/or civil prosecution may be more appropriate. The decision as to how to proceed should be made jointly by the Director and the Commissioner.

Examples of serious violations include: repeat moderate violations, making false statements, distributing organic food containing prohibited materials, and deliberate circumvention of organic laws. These might include violations of the following sections:

Section 46002(c)(5)	Failure to maintain records of materials applied
Section 26569.28(a)(1-3)	Producer fails to keep accurate records
Section 26569.39	Unlawful certification of organic food
Section 26569.40(b)	Willfully make false statements
Section 26569.41	Fail to disclose records
Section 26569.42	Distribute organic food containing prohibited materials

PENALTY MATRIX COMPARISONS OF NOP, CCR TITLE 3 DIV. 3 ECONOMICS- Article 2.1, COPA(SOP) AND DRAFT ORGANIC PENALTIES 1992

CATEGORIES

NOP CCR OCPG	MINOR * #	MAJOR MODERATE* #	SERIOUS* #	WILLFUL	LEVYING OF CIVIL PENALTIES	
NOP	A violation that is correctable, does not affect the integrity of the organic system or the organic product, and does not preclude the certification or continued certification of an otherwise qualified organic producer or handler. Examples: include failure to submit information on time, failure to update the organic system plan, inadequate record keeping.	A violation of organic standards that affects the integrity of the organic system or the organic product and precludes the certification or continued certification of a producer or handler. Examples: include the application of a prohibited substance, the commingling of organic with nonorganic products, the contamination of organic products with prohibited substances, and the failure to correct a minor noncompliance.		Intentional violation of the Act or plain indifference to its requirements.		In addition to suspension or revocation, any certified operation that knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$11,000 per violation. (205.662(g))
CCR* STDZN	Violations that have minimal adverse effect on consumers or equitable competition in the market place. Table A shall be used as a guide to establish the level of severity of a particular violation and the corresponding penalty range for "Serious", "Moderate", and "Minor" violation classes.	Violations which undermine enforcement, or those in which there is a potential for intermediate level of consumer or competitive harm; or repeat violations of sub-paragraph (3) that occurred within a two year period and which resulted in an action and subsequent penalty.	Violations which preclude or significantly interfere with enforcement, or those which cause significant false, misleading or deceptive business practices; or repeat violations of sub-paragraph (2) that occurred within a two year period and which resulted in an action and subsequent penalty.			Except where specific violation parameters are provided, the Table A is an abbreviated description of the corresponding section in California Food and Agriculture Code, Division 1, Chapter 8 Agriculture Theft Prevention; and Division 17, Fruit, Nut and Vegetable Standards. Provisions of Division 1 and of Division 17 Not Separately Specified For a first violation, a fine of not more than \$500. For a second or subsequent violation, a fine not less than \$100 or more than \$1000. General application of penalties per category; Minor Violations \$50-\$150, Major/Moderate Violations \$151-\$500, Serious Violations \$501-\$1000, Willful Violations \$5000, for first time offenses. Subsequent offenses/Violations of the same nature, fines are doubled.
SOP/ COPA	Notice of noncompliance is issued. Warning of possible adverse action if repeated. Follow up by inspectors to verify compliance.	46017(b); a violation which is determined to be not intentional may carry a fine of not more than \$2,500 per violation.	46017(a); maximum penalty for any violation of the Act is \$5,000. The amount of the penalty assessed for each violation shall be based upon the nature, seriousness and effect of the violation upon the public and industry.			
OCFG# Draft Organic Admin. Civil Penalty Guide 1992	An individual unknowingly violates rules of a procedural nature and/or has little understanding of organic laws.	An individual who unknowingly violates a law that could have an impact on program integrity, economic or public welfare.	A. An individual who knowingly violates organic laws which directly impacts the agricultural economy and/or impacts public welfare B. An individual who knowingly violates or repeatedly violates organic food laws pertaining to legal documents, i.e., keep accurate records, sell organic food containing prohibited substances, alters or defaces official documents, or one who makes false claims or represents nonorganic commodities as organic.			Administrative Levy of Civil Penalties Policy, Pursuant to Division 17, Chapter 10 of the Food and Agriculture Code.



Instruction

National Organic Program Enforcement

1. Purpose

This instruction provides policy and procedural guidelines for taking enforcement actions against violations of the National Organic Program (NOP) (7 CFR Part 205) and the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. 6501 et seq.). Its purpose is to establish appropriate and consistent sanction guidelines for instances where evidence confirms that noncompliances have occurred.

2. Scope

This procedure applies to NOP and all accredited certifying agents and certified operations.

3. Background

The National Organic Program (NOP) was established as a result of the OFPA. The NOP develops, implements, and administers national production, handling, and labeling standards for organic agricultural products. It accredits certifying agents (foreign and domestic) who inspect organic production and handling operations to certify that they meet USDA standards. It enforces organic production, handling, and labeling standards.

In carrying out its mission, the NOP and its accredited certifying agents take a variety of actions to enforce compliance with the Act and its related regulations.

4. Policy

4.1 General

NOP enforcement actions include the following:

1. Notice of Denial
2. Combined Notice of Noncompliance and Denial
3. Notice of Noncompliance
4. Notice of Proposed Suspension or Revocation
5. Combined Notice of Noncompliance and Proposed Suspension/Revocation
6. Notice of Suspension or Revocation
7. Consent Decree or Settlement Agreement
8. Cease-and-Desist Letter
9. Civil Penalty

Generally, the recipients of enforcement actions fall into three groups: (1) certified operations (including new and renewal applicants); (2) accredited certifying agents; and (3) uncertified



operations (not applicants). The following table illustrates the enforcement actions as they apply to the three groups.

	Notice of Noncompliance	Notice of Denial	Notice of Proposed Suspension/Revocation	Combined Notice	Notice of Suspension/Revocation	Consent Decree or Settlement Agreement	Cease-and-Desist Letter	Civil Penalty
Applicant for Certification	X	X		X				X
Certified Operation	X		X	X	X	X		X
Accredited Certifying Agents	X		X	X	X	X		
Uncertified Operation						X	X	X

4.2 Definition and Categorization of Violations

Any deviation from the regulation is a violation and requires the initiation of an appropriate enforcement action to address the noncompliance. In practice, the NOP recognizes that violations have various degrees of severity, incur different consequences, and are treated differently. The following definitions and distinctions provide guidelines for the NOP in determining the different types of enforcement actions to take under different circumstances.

1. **Willful violation:** An intentional violation of the Act or plain indifference to its requirements.
2. **Minor Noncompliance:** A violation that is correctable, does not affect the integrity of the organic system or the organic product, and does not preclude the certification or continued certification of an otherwise qualified organic producer or handler. Examples of a "minor noncompliance" include failure to submit information on time, failure to update the organic system plan, and inadequate record-keeping.
3. **Major Noncompliance:** A violation of organic standards that affects the integrity of the organic system or the organic product and precludes the certification or continued certification of a producer or handler. Examples of a "major noncompliance" include the application of a prohibited substance, the commingling of organic with nonorganic products, the contamination of organic products with prohibited substances, and the failure to correct a minor noncompliance.
4. **Organic integrity:** The qualities of an organic product or production or handling system which are obtained through compliance with NOP requirements and which must be maintained from production through handling to the point of final sale in order for the final product to be labeled and/or marketed as organic.



The distinction between “minor” and “major” noncompliance is particularly relevant in the assessment of civil penalties.

5. Procedure

5.1 Enforcement Actions towards Applicants for Organic Certification: Issuance of Notices

§ 205.405 specifies procedures for denial of certification for applicants for organic certification.

§ 205.681(a) specifies certification appeals procedures.

All notices (noncompliance, denial, combined notice) issued to applicants for certification shall follow procedures specified in § 205.405 and § 205.681(a). The written notification must be sent through certified mail or other service that provides for a signed receipt.

1. Notice of Noncompliance (NONC)

§ 205.405(a) specifies that when a certifying agency has reason to believe that an applicant for certification is not able to comply or is not in compliance with the requirements of the regulations, the certifying agent must provide a written notification of noncompliance to the applicant. The NONC shall include:

- a. A description of each noncompliance;
- b. The facts upon which the NONC is based; and
- c. The date by which the applicant must rebut or correct each noncompliance and submit supporting documentation of each such correction when correction is possible.

The response to the NONC is evaluated. When the corrective action or rebuttal is sufficient for the applicant to qualify for certification, an approval of certification is issued. When the corrective action or rebuttal is not sufficient, a written notice of denial of certification is issued.

2. Notice of Denial of Certification

§ 205.405(d) specifies that a notice of denial of certification must state:

- a. The reason(s) for denial; and
- b. The applicant’s right to:
 - i. Reapply for certification pursuant to §§ 205.401 and 205.405(e);
 - ii. Request mediation pursuant to § 205.663 or if applicable, pursuant to a State organic program; or
 - iii. File an appeal of the denial of certification pursuant to § 205.681 or, if applicable, to a State organic program.

3. Combined Notice of Noncompliance and Denial of Certification

If a certifying agent has reason to believe that an applicant for certification has willfully made a false statement or otherwise purposefully misrepresented the applicant’s operation or its compliance with certification requirements, a combined notice of noncompliance and denial of certification may be issued without first issuing a NONC.



5.2 Enforcement Actions towards Certified Operations: Issuances of Notices

All notices (noncompliance, proposed suspension or revocation, combined notice, and notice of suspension/revocation) issued to certified operations shall follow the Compliance and Appeals procedures specified in § 205.660 – 205.662, and 205.681(a). When a noncompliance is identified, written notification must be sent through certified mail or other service that provides for a signed receipt.

1. Notice of Noncompliance (NONC)

§ 204.662(a) specifies that when any noncompliance with the Act or regulations is found, a written notification of the noncompliance shall be sent to the certified operation. The NONC should include:

- a. A description of each noncompliance.
- b. The facts upon which the NONC is based and the relevant sections of the National Organic Standards, 7 CFR Part 205, that are in violation.
- c. A statement that a written response must be received that either corrects the violation or rebuts the alleged violation.
- d. The timeline for responding to the NONC. Generally, a response is due within 30 days of receipt of the NONC. The timeline for responding can be changed under exceptional circumstances such as when organic integrity is threatened.
- e. Notification that if a written response is not received within the required time period further action, including proposed suspension or revocation of certification may ensue.

The response to the NONC is evaluated. Proposed corrective actions are evaluated to determine if they will correct the violation. Additional documentation and/or inspections may be required to verify that the corrective actions have been implemented. Rebuttals are evaluated to determine if adequate information is provided to reconsider the issuance of the NONC. In the case of rebuttals, additional documentation and/or inspections may be required to verify that no violation has occurred.

When it has been verified that the violation has been corrected (or the rebuttal verifies that no violation occurred), a written notification of noncompliance resolution is sent to the certified operation.

2. Notice of Proposed Suspension (NOPS) or Revocation (NOPR) of Certification

Following the issuance of a NONC, when rebuttal is unsuccessful or correction of the noncompliance is not completed within the prescribed time period, a written notice of proposed suspension or revocation shall be sent.

Generally speaking, a NOPS should be issued when the noncompliance is still deemed correctable. The intention of a NOPS is to give the operation some time to work on the noncompliance, achieve compliance, and be reinstated. On the other hand, a NOPR should be used when the noncompliance is deemed not correctable, due to the willful and



egregious nature of the violation and/or subsequent impact on the organic integrity of the operation.

The NOPS and NOPR include:

- a. The reasons for the proposed suspension or revocation;
 - b. The facts upon which the Notice (NOPS or NOPR) is based and the relevant sections of the regulation, 7 CFR Part 205 that are in violation;
 - c. The proposed effective date of the Suspension or Revocation of Certification (minimum of 30 days from the date of the proposed notice plus reasonable mail time);
 - d. The proposed length of the suspension for NOPS;
 - e. The impact of suspension or revocation on future eligibility for certification; and
 - f. The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to § 205.681, timeline for the request, and contact information.
3. Combined Notice of Noncompliance and Proposed Suspension or Revocation (§ 205.662(c))
A combined NONC and NOPS or NOPR may be issued when correction of a noncompliance is not possible, or when the violations are egregious or willful. Examples of such violations include sale of conventional products as organic, use of prohibited substances, use of conventional feed, and denial of access to pasture. A combined notice should include the following:
- a. A description of the noncompliance;
 - b. The reasons for the proposed suspension or revocation;
 - c. The facts upon which the Notice (NOPS or NOPR) is based and the relevant sections of the National Organic Standards, 7 CFR Part 205 that are in violation;
 - d. The proposed effective date of the Suspension or Revocation of Certification (minimum of 30 days from the date of the proposed notice plus reasonable mail time);
 - e. The proposed length of the suspension for NOPS;
 - f. The impact of suspension or revocation on future eligibility for certification; and
 - g. The right to request mediation pursuant to § 205.663 or to file an appeal pursuant to § 205.681, timeline for the request, and contact information.
4. Notice of Proposed Suspension or Revocation – Willful Violations (§ 205.662(d))
When evidence of willful violation is found, a notification of proposed suspension or revocation can be issued directly without an initial notice of noncompliance. The content



of the notice should be similar to the items listed in the previous subsection (Combined Notice of Noncompliance and Proposed Suspension or Revocation).

5. Partial Suspension or Partial Revocation – Willful Violations or Unsuccessful Rebuttal or Correction (§ 205.662 (c) and (d))

A partial suspension may be issued by the certifying agent or State Organic Program’s governing official to suspend a portion of an operation, as applicable to the noncompliance. As an example, a partial suspension may be applicable when an operation is certified for two or more areas of operation (crops, wild crops, livestock, and handling) and when one area of the operation has committed an uncorrectable violation or an unsuccessful rebuttal or correction to a noncompliance.

A partial revocation may be issued as a result of a willful violation or making a false statement under the Act to the Secretary, a State organic program’s governing State official, or a certifying agent (§ 205.662 (g)). A partial revocation is rarely applicable and certifying agents should consult with the NOP prior to issuing a proposed partial revocation. There are very few circumstances that would warrant a partial revocation and each case should be determined on an individual basis.

6. Notice of Suspension or Revocation (§ 205.662(e))

A written notification of suspension or revocation shall be sent when a certified operation fails to respond to the NOPS or NOPR, or Combined Notice, through request for mediation or appeal.

5.3 Appeals § 205.681

An applicant for certification may appeal a certifying agent’s notice of denial of certification, and a certified operation may appeal a certifying agent’s notice of proposed suspension or revocation of certification to the Agricultural Marketing Service (AMS) Administrator. When the applicant or certified operation is subject to an approved State Organic Program, the appeal must be made to the State Organic Program.

1. Dismissed Appeals

Appeals are dismissed when they are untimely filed, or the issues are not appealable.

2. Sustained Appeals

If the Administrator or State Organic Program sustains (agrees with) a certification applicant’s or certified operation’s appeal of a certifying agent’s decision, the applicant will be issued organic certification, or the certified operation will continue its certification, as applicable.

3. Denied Appeals

If the Administrator or State Organic Program denies (does not agree with) an appeal, the certifying agent’s decision remains effective.

4. Formal Administrative Proceeding (§ 205.681(a)(2))



Following a denial of appeal, a formal administrative proceeding will be initiated to suspend or revoke the certification. Such proceeding shall be pursuant to the U.S. Department of Agriculture's Uniform Rules of Practice or the State organic program's rules of procedures.

5. Appeal Closures without a Decision

Sometimes, appeals are closed without a decision. For example, an appeal can be closed via a stipulated agreement in lieu of issuing a decision.

(Refer to the Compliance and Analysis NOP Appeals Procedures in the NOP Program Handbook or at www.ams.usda.gov/NOPAppealsProcess for further details on the appeals process.)

5.4 Levying of Civil Penalties (§ 205.662(g))

In addition to suspension or revocation, any certified operation that knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than \$11,000 per violation.

1. The NOP will consider pursuing civil penalties when there is clear and convincing evidence that a noncompliance is both willful and major.
2. Accredited certifying agents shall refer such noncompliances to the NOP Compliance and Enforcement Division (C&E) for review and action. The referral should be accompanied with supporting documentation and should be submitted within 30 days of the verification of willful and major noncompliance.
3. The C&E will conduct review of such referrals, based on documentation submitted by the accredited certifying agents and/or appeal decisions and files. The NOP will recommend civil penalties against operations that have willful or major violations of the OFPA or the NOP regulations.

5.5 Enforcement Actions towards Accredited Certifying Agents

§ 205.665 specifies noncompliance procedures for certifying agents.

§ 205.681(b) specifies accreditation appeals procedures.

When an accredited certifying agent is found to be in noncompliance with the Act, a written notification of noncompliance shall be sent to the certifying agent. All notices (noncompliance, proposed suspension or revocation, combined notice, and notice of suspension/revocation) issued to certifying agents shall follow the Compliance and Appeals procedures specified in § 205.660, 205.665, and 205.681(b). The options and progression in issuing the various notices are similar to those specified in Section 5.2.

5.6 Enforcement Actions towards Uncertified Operations

§ 205.100 What has to be certified.

§ 205.102 and § 205.300 Use of the term, "Organic."



NOP regulations require that operations or portions of operations that produce or handle agricultural products that are intended to be sold, labeled, or represented as "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s)) be certified by accredited certifying agents. Producers and handling operations that sell less than \$5,000 a year in organic agricultural products are exempt from certification. They may label their products organic if they abide by the standards, but they cannot display the USDA Organic seal.

The term, "organic," may only be used on labels and in labeling of raw or processed agricultural products, including ingredients, that have been produced and handled in accordance with the NOP regulations.

1. Issuance of Cease-and-Desist Letters:

Uncertified operations found in violation of the NOP Regulations are issued cease-and-desist letters that stop the violation and warn against future relapse.

2. Levying of Civil Penalties (§ 205.100) & 7 CFR § 3.91

§ 205.100 (c) Any operation that:

(1) Knowingly sells or labels a product as organic, except in accordance with the Act, shall be subject to a civil penalty of not more than §3.91(b)(1)(xxxvii) of this title (7 CFR Subtitle A Subpart I - Adjusted Civil Monetary Penalties) per violation.

§ 3.91 (xxxvii) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified at 7 U.S.C. 6519(a), has a maximum of \$11,000.

The NOP will levy civil penalties against uncertified operations found in willful and major violations of NOP regulations. Major violations include, but are not limited to, selling conventional products as organic, selling, labeling, and representing products as organic without certification while not exempt or excluded, falsely claiming to be certified, and using USDA seal in websites and advertisements.

6. References

Organic Foods Productions Act (1990 as amended)

7 U.S.C. Sec.6519, Violations of Title.

(a) Misuse of Label

NOP Regulations (as amended to date)

7 CFR § 205.100 What has to be certified.

7 CFR § 205.401 Application for certification.

7 CFR § 205.405 Denial of certification....

(d) A notice of denial of certification must state the reason(s) for denial and the applicant's right to;

(e) An applicant for certification who has received a written notification of noncompliance or a written notice of denial of certification...



7 CFR § 205.660 General.

7 CFR § 205.661 Investigation of certified operations.

7 CFR § 205.662 Noncompliance procedure for certified operations.

7 CFR § 205.663 Mediation.

7 CFR § 205.681 Appeals.

(a) Certification appeals.

Other Laws and Regulations

7 CFR §3.91 Adjusted civil monetary penalties

Approved on July 22, 2011