



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary



DIRECT MARKETING PROGRAM

REGULATION UPDATES 1-1-2021

Certified Farmers' Market Program

- Established in 1977
- Provides California farmers the opportunity to market their products directly to the public
- Exempts certified producers from minimum size, labeling, standard pack, and container requirements

Regulation Timeline

- 45-day Public Comment (12/6/2019 – 1/21/2020)
- 15-day Public Comment (3/11/2020 – 3/27/2020)
- Approved on 09/08/2020
- Effective 01/01/2021

General Changes

- The term “consumers” was changed to “the public”.
- The term “employee or immediate family member” was changed to “authorized representative”.
- The title “director” was changed to “secretary”.
- The term “approved outlet or location” was added to the definition of where direct marketing can occur.
- There are numbering changes throughout the rulemaking.
- The code has been reorganized for ease of interpretation.

CFM Certification

- CFM certificate is only valid during the specified times, dates, months, etc. on the certificate
- When applying for a CFM certificate, the below items must be included with the application:
 - A map that clearly locates and identifies the defined marketing area where only agricultural products may be sold .
 - Documentation that demonstrates how you qualify to operate a market
- Market operators must notify ag. Commissioner within 30 days if there is a change to operator's mailing address
- Market rules – optional. If implemented, must include specific requirements

Quarterly Remittances

- \$2 per vendor, per market day (payable quarterly) to CDFA
- Every vendor under the authority and management of the market operator (includes certified producers, producers, and vendors of non-agricultural products)
- CDFA has authority to issue Notices of Noncompliance and propose administrative civil penalties to market operators who are not in compliance

MO Responsibilities

- An authorized representative of a CP can only sell on behalf of one CP per CFM, per market day (unless selling for second cert.)
- CPC must be embossed or have the county seal affixed to it
- CPC and sign/banner must be posted (farm/ranch name, DBA (if applicable) production county, we grow what we sell phrase) for all CPs selling (even second certificates)
- CPs selling for another CP (2nd cert.) cannot sell the same product/commodity/variety at the same CFM on the same day
- CPs can only sell certifiable products for another CP – not processed products
- Second certs – Must be cross referenced and have a documented agreement in place before sales commence

MO Responsibilities Cont'd.

- CPs must provide market manager an itemized product list (load list) within **48 hours of the conclusion of the market day**; list must contain: Producer name as listed on CPC; CPC #; market name and date; quantity of each commodity, including variety/type of products being sold, and any processed products being offered for sale
- Provide enforcing officer with requested product lists within **72 hours of the request**
- The Secretary or ag. commissioner may deny the issuance of a certificate to a CP or MO who is delinquent in payment of fees or penalties

Conditions of Direct Marketing

- Direct marketing can occur at: A CFM; a field retail stand or a farm stand at or near the point of production; or an approved outlet or location
- Authorized representative – Can only sell for a CP at a CFM
- All ag. products sold in ag. section at a CFM must be produced by producer, including processed products (aside from exceptions listed in 1392.2(w))
- Certifiable products must be listed on CPC
- Non-ag. products cannot be sold in ag. section at a CFM

Conditions of Direct Marketing Cont'd.

- Buying and reselling between CPs is not allowed
- CP selling for another CP must keep records for a minimum of 3 years, including name of both CPs, the amount of product, count, etc., transferred, as listed on the CPC
- CPs selling to an individual, organization, or entity that intends to sell the product under the exemption to end users must provide a memo, bill of sale, or container label that contains identity and address of producer; identity and quantity of product purchased; date transaction occurred

Producer Certification

- CPC is good for up to 1 year from issue date
- Ag. commissioner will conduct an inspection of your production site(s) and storage location(s) (if applicable) before issuing your initial certificate
- If you are leasing the property to be farmed, you must provide the ag. commissioner with a copy of your lease
- CPs must notify ag. commissioner within 30 days if there is a change to producer's business address
- CPs must provide ag. commissioner with a list of all authorized representatives who are authorized to sell on their behalf

Farm Leases for CPs

- Must be entered into prior to the commencement of ag. production,
 - A clear and concise accurate description of the leased property
 - Present use of the property, dimensions and location of property
 - Purchase price of the lease
 - Date of the agreement and signatures of all parties involved (notarized)
- Changes to the terms of the lease invalidate the CPC and must be reported immediately
- All photocopies of CPCs must be surrendered to ag. commissioner at that time

Definition Changes – CCR 1392.2

- CFM certificate – clarifies that the certificate is only valid for the specific months, days of the week, and hours of operation listed on certificate
- Land which the producer/certified producer controls – incorporated language to clarify that the producer must have possession of the land prior to planting, bloom, etc. to obtain a certificate for that season
- Redefined producer – clarifies that if a producer only possesses the right to the property during the harvest season, the producer does not qualify to obtain a certificate
- Certified producer – Added language to allow a certified producer to sell at an outlet or location

Definition Changes Cont'd.

- Authorized representative of the certified producer – a person approved by the CP to conduct business on behalf of the CP, only at a CFM
- Direct Marketing, The Sale – added outlet or location to where direct marketing can take place
- Agricultural products – clarifies the definition by listing all non-certifiable and certifiable ag. products

Definition Changes Cont'd..

- Non-agricultural products – clarified that services, arts, crafts, bakery, candy, soap, balm, perfumes, cosmetics, pottery, clothing, fabric, pasta, compost, fertilizer, candles, ceramics, FORAGED FOODS, and types of ware are not ag. products
 - A product that combines a non-ag. product with an ag. product that materially increases the purchase price of the product disqualifies the product from being sold as an ag. product for purposes of this Chapter.
- Certified ag. products – added herbs, cultivated mushrooms, “cut” flowers, and unprocessed grains to the definition as being certifiable

Definition Changes Cont'd...

- Noncertifiable ag. products – clarifies that any products that are produced from trees, vines, or plants of a certified ag. product (including flowers and processed products) are non-certifiable, as well as dairy, pollen, unprocessed beeswax, propolis, royal jelly, raw sheared wool, livestock meats, poultry meats, rabbit meats
- Market operator – defined as the financially responsible party who operates a CFM (one or more CPs, a nonprofit organization, or a local government agency). All actions will be brought against the MO, not the MM. If the MO is a nonprofit organization or a local government entity, must designate an authorized representative and an agent for service of process

Definition Changes Cont'd....

- Authorized representative of the MO – defined as a person under the authority and management of the MO, who is designated to conduct business on the MO's behalf (could be the MM, the agent for service of process of the MO, an employee of the MO, etc.)
- Market manager – clarifies the MM is empowered by the MO
- Practice of the ag. arts – Incorporated language for nursery stock, specifying that the rooted seedlings in containers/plugs must be less than 2" in diameter
- Spice – clarifies spices are granulated or powdered (reworded)
- Outlet or location – Defined as an approved location that is regulated pursuant to the DM Chapter, that is operated by a CP, and only the CP can market their products at an outlet or location (no authorized representatives can sell at an outlet or location)

Civil Penalties

- Three violation classes: serious, moderate, minor
- Table A (Certified Producers)
- Table B (Market Operators)
- There is no longer the violation class of “2nd NC in 12 months”
- Violation class can be escalated for repeat violations of the same code section within a 2-year period, if the NOPA is adjudicated and a fine was assessed

Civil Penalties Cont'd.

- Certified Producer Violation Class Changes:
- Selling ag. products combined with non-ag. products (materially increases price) – minor violation (CCR Section 1392.2(k)(1))
- Selling certifiable ag. products without a CPC – serious violation (CCR section 1392.4(a))
- Selling certifiable product not of own production – serious (CCR Section 1392.4(a)(3))
- Selling certifiable product not listed on CPC – minor violation (CCR Section 1392.4(a)(4))

Civil Penalties Cont'd..

- Certified Producer Violation Class Changes:
- Selling non-certifiable ag. products not of own production in ag. section – serious violation (CCR Section 1392.4(a)(5))
- Selling non- ag. products in ag. section – moderate violation (CCR Section 1392.4(a)(6))
- Authorized rep. selling on behalf of more than one CP per CFM, per day – moderate violation (CCR Section 1392.4(b))
- CP offering for sale same commodity as second cert – minor violation (CCR Section 1392.4(e)(6))

Civil Penalties Cont'd...

- Certified Producer Violation Class Changes:
- Signage violations (i.e. “We grow what we sell, farm or ranch name, and production county) – minor violation (CCR Sections 1392.4(k)(2), (k)(2)(i), (k)(2)(ii), (k)(2)(iii))
- CP failing to report changes in business address to ag. commissioner within 30 days – moderate violation (CCR Section 1392.5(b)(1)(i))
- CP failing to report changes in partnership to ag. commissioner – moderate violation (CCR Section 1392.9.1(d))
- CP failing to report changes in farm lease – moderate violation (CCR Section 1392.9.2(d))

Civil Penalties Cont'd....

- Market Operator Violation Class Changes:
- Allowing sale of fresh whole fruits, nuts, vegetables, cultivated mushrooms, herbs, or flowers in ancillary section of market – serious violation (FAC Section 47004(e))
- Failure to report change of mailing address to ag. commissioner within 30 days – moderate violation (CCR Section 1392.6(b)(1)(i))
- Failure to submit quarterly remittance forms or fees – serious violation (CCR Section 1392.8.1)
- Failure to provide enforcing officer with load list within 72 hours of request – minor violation (CCR Section 1392.9(b)(2))

Complaint Process

- CDFA follows up on all complaints received.
- CDFA keeps complainant information confidential
- Complaint Form found on CDFA website:
https://www.cdfa.ca.gov/is/i_&_c/cfm.html
- Mail to cfm@cdfa.ca.gov

**Use this form to communicate complaints
regarding Certified Farmers' Markets or Certified
Producers**

File a Complaint >

On right side of webpage
(scroll down to middle of the page)

Certified Farmers' Market Advisory Committee (CFMAC)

- Advises the secretary of agriculture on issues related to the direct marketing of agriculture products at certified farmers' markets
- Current vacancies – Market Operator and Producer members
- 2-year Term of Office
- No Compensation
- Travel Expenses Paid
- Mitchell.King@cdfa.ca.gov
- 916-900-5030

Questions?

Email cfm@cdfa.ca.gov