

**INITIAL STATEMENT OF REASONS  
CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE  
CALIFORNIA CODE OF REGULATIONS**

**TITLE 3. FOOD AND AGRICULTURE  
DIVISION 3. ECONOMICS  
CHAPTER 1. FRUIT AND VEGETABLE STANDARDIZATION  
SUBCHAPTER 4. FRESH FRUITS, NUTS AND VEGETABLES  
ARTICLE 6.5 DIRECT MARKETING**

**SPECIFIC PURPOSE AND NECESSITY OF EACH REGULATORY CHANGE**

This regulatory action is intended to implement the provisions of Assembly Bill (AB) 2168 (Ch. 447, Stats. of 2008) and ameliorate enforcement mechanisms for the Certified Farmers' Market Program. AB 2168 amended the Food and Agricultural Code (FAC) related to the direct marketing of agricultural products and authorized the Secretary of the California Department of Food and Agriculture (CDFA) to adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products (FAC Section 47001(a)). AB 2168 specified that the regulations may include provisions to ensure that selling activities are conducted without fraud, deception, or misrepresentation (FAC Section 47001(b)). AB 2168 also removed language authorizing direct marketing by retail stands located at or near the point of production and instead authorized field retail stands to engage in direct marketing, subject to similar conditions. In addition, AB 2168 established farm stands, subject to specified requirements, as another form of direct marketing (FAC Section 47050). The products available from, and the restrictions and requirements that apply to, these direct marketing venues vary, as specified under statute.

The statutory changes in AB 2168, as approved by the Legislature and signed by the Governor, created the necessity to make conforming changes to portions of the California Code of Regulations (CCR), Title 3, Division 3, Chapter 1, Subchapter 4, Article 6.5. The relevant statutes are Food and Agricultural Code Sections 47000, 47001, 47002, 47003, 47030, and 47050.

This regulatory action is also based upon the recommendations of the Certified Farmers' Market Advisory Committee (CFMAC). Consequently, the Department is pursuing the amendment, repeal, and adoption of regulations related to the administration and enforcement of direct marketing. As outlined under FAC Section 47010, the Certified Farmers' Market Advisory Committee is a statutorily mandated committee with the primary directive of ensuring the integrity of certified farmers' markets. CFMAC is comprised of 17 members and their alternates who represent certified producers, market managers, two major marketing associations, county agricultural commissioners, and the public. In addition to other duties, CFMAC is tasked with making recommendations on the amendment, repeal, and adoption of legislation and regulations related to the administration and enforcement of direct marketing laws.

Neither the Food and Agricultural Code nor existing direct marketing regulations are sufficient to establish uniform rules for direct marketing, thus necessitating the need for modification of existing regulations as well as the adoption of additional regulations. The specific purpose for adopting, repealing, and amending regulations included in the proposed text and the rationale supporting the Department's determination that each change to the CCR is reasonable and necessary to carry out the purpose for which this action is proposed is as follows:

**Proposed amendments to Section 1392. Intent.**

The proposed amendments to Section 1392 are necessary to clarify the intent of direct marketing regulations. With the approval of CFMAC, the Department is proposing amendments to Section 1392 to clarify the intent of CCR, Title 3, Article 6.5. Direct Marketing. The proposed amendments to specify that the intent of this article is to encourage productive and profitable agriculture in California, as directed by state agricultural policy, by facilitating the sale of agricultural products to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, as defined in this article, 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.

**Proposed amendments to Section 1392.1. Direct Marketing Authorized.**

As a result of AB 2168, FAC Section 47002 states that if a farmer selling produce pursuant to this section implements any exemption to size, standard pack, container, or labeling requirements as provided by this section, those sales may be only conducted as direct sales to the following:

1. Consumers who are end users;
2. Individuals, organizations, or entities that subsequently sell the produce directly to end users; and
3. Individuals, organizations, or entities that distribute the produce directly to end users at no cost to those end users.

The proposed amendments to Section 1392.1 (a) are necessary to align regulations with statute that expanded to whom the producer may sell products. Section 1392.1 (a) currently defines what may be sold and to whom the producer may sell. Amending this section will expand to whom the producer may sell products.

Section 1392.1 (d) gives exemptions to a producer selling to a consumer. The purpose of amending this section is to allow those same exemptions to entities that will be re-selling or distributing fresh fruits, nuts and vegetables to an end user at specific locations.

Section 1392.1 (e) is a new subsection that regulates producers selling to wholesalers. This new subsection provides that 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 Section 1392.4(k).

Section 1392.1 (f) was previously subsection (e). This section was renumbered for continuity purposes.

Section 1392.1 (g) was previously subsection (f). Amendments to this subsection expand the locations to include a retail stand or farm stand where producers must comply with regulations pertaining to quality and maturity.

Section 1392.1 (h) was previously subsection (g). This section was renumbered for continuity purposes.

### **Proposed amendments to Section 1392.2. Definitions.**

Section 1392.2 (a) further defines the term “Certified Farmers’ Market.” It states who may operate a farmers’ market. Amending this section adds the word “only” to clarify the options listed are not examples, but the specific entities that may operate the market. It also clarifies to whom the producer may sell.

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

Amending Section 1392.2 (e) allows the producer to sell to individuals who will resell or distribute the products to end users.

Amending Section 1392.2 (g) changes the definition to include where the consumer may purchase a product and includes those entities that will be reselling or distributing the product.

Amending Section 1392.2 (h) (1), (2), and (3) expands both where and to whom producers may sell their products.

Amending Section 1392.2 (j) defines and clarifies the term “employee.”

Amending Section 1392.2 (s) changes the definition to include selling to those that will be reselling or distributing to end users.

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

The purpose of adopting Section 1392.2 (z) is to give a definition to the term “at or near the point of production.” This term is used as a regulated location in several sections.

### **Proposed amendments to Section 1392.4. Conditions of Direct Marketing**

The purpose of amending Section 1392.4 (a) is to establish conditions of direct marketing. This section will expand where and to whom producers may sell their products.

Amending Section 1392.4 (b) will expand the locations to include retail stands and farm stands.

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

Creating Section 1392.4 (k) would require the seller of processed products to document compliance with the production requirements referenced in Section 1392.2 (k) and to have that documentation available at the point of sale. It limits the quantities of the processed products to be less than the quantities of fresh commodities listed on the Certified Producers Certificate. Additionally, the included ingredients not of their own production (except sugar and water) must be the last ingredients listed on the label required by the Food and Drug Administration.

The specific purpose of adopting Section 1392.4 (l) is to further clarify when the producer must issue a memorandum.

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

### **Proposed amendments to Section 1392.6. Certification Requirements of Certified Farmers’ Markets.**

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

Amending Section 1392.6 (f) will require that the certified farmers’ market rules and regulations include a provision regarding due process. Additionally, creating Section 1392.9 (e) will stipulate that the market operator shall provide due process to market

participants prior to the imposition of a fine, and further outlines the due process requirements.

Amending Section 1392.6 (g) will stipulate that the market operator shall provide due process to market participants prior to the imposition of a fine, and further outlines the due process requirements. It also updates information on the Department of Food and Agriculture.

### **Proposed amendments to Section 1392.9. Direct Marketing, Compliance Requirements for the Operator of a Certified Farmers' Market.**

Amending Section 1392.9 will list the compliance requirements for the certified farmers' market operator. Amending Sections 1392.9 (a) (1), (3), (4), (5), and (6) makes non-technical grammatical changes, and adopting (7) requires market managers to ensure compliance with sub sections 1392.4 (k) and (l).

Amending Section 1392.9 (b) (1) will require operators of certified farmers' markets to keep records of processed products as they currently do with fresh products.

Creating Section 1392.9 (e) will require market operators to provide participants the right to appeal, consistent with Section 1392.6 (g).

### **Proposed amendments to Section 1392.11. Appeals.**

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

### **SMALL BUSINESS IMPACT**

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

### **ECONOMIC IMPACT ON AFFECTED BUSINESSES**

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