

**TITLE 3. DEPARTMENT OF FOOD AND AGRICULTURE
ARTICLE 6.5 DIRECT MARKETING**

June 17, 2011

**NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS AND
ADDITION OF DOCUMENTS AND INFORMATION TO RULEMAKING FILE**

Pursuant to the requirements of Government Code Section 11346.8(c), and Section 44 of Title 1 of the California Code of Regulations, the California Department of Food and Agriculture (the Department) is providing notice of changes made to the California Code of Regulations, Title 3, Article 6.5, Section 1392.4(m) and Section 1392.4.1 [Table A]. In addition, pursuant to the requirements of Government Code Section 11346.8(c), and Section 44 of Title 1, of the California Code of Regulations, the Department is providing notice of inclusion of an Addendum to the Statement of Reasons to the rulemaking file.

As determined by the Department, the following changes have been made to the enclosed text. The changes being made include:

Section 1392.4(m) – This section was amended to correctly refer to the appropriate California Code of Regulations section. This proposed addition would require the seller of processed products to document compliance with production requirements referenced in Section 1392.4 (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.

The specific purpose for adding Section 1392.4(m) is to align direct marketing regulations with the statutory changes provided in AB 2168 and to ensure that processed products offered for sale by direct marketing participants are labeled and produced in accordance with the requirements of the Food and Drug Administration and the California Department of Public Health, respectively.

The necessity for adding Section 1392.4(m) is to align direct marketing regulations with the statutory changes provided in Assembly Bill (AB) 2168 (Ch. 477, Stats. of 2008) and ensure that processed products are produced in a kitchen certified by the California Department of Public Health and appropriate labeling is included on processed products. Based upon the recommendations of the CFMAC, the Department has determined that these proposed amendments are reasonably necessary to carry out the purpose for which for which it is proposed.

Section 1392.4.1 [Table A] – Table A included within this section was amended to provide that a failure to conform to the provisions of direct marketing statutes and regulations would be considered a minor violation if two noncompliances were received within a 12 month period for both certified producers and market operators.

The specific purpose for amending Table A within proposed Section 1392.4.1 is to implement the provisions of AB 2168 and ensure that selling activities are conducted without fraud, deception, or misrepresentation. This proposed addition provides that the CDFA Secretary and county agricultural commissioners shall use the provisions of this section to determine the violation class and amount of the penalty.

The necessity for adding the penalty matrix [Table A] is to implement the provisions of AB 2168 and to ensure that selling activities are conducted without fraud, deception, or misrepresentation. Based upon the recommendation of the CFMAC, the Department has determined that these proposed amendments are reasonably necessary to carry out the purpose for which it is proposed.

If you have any comments regarding these proposed changes, the Department will accept written comments between June 17, 2011 and July 2, 2011. All written comments must be submitted to the Department no later than 5:00 p.m. on July 2, 2011, and addressed to:

Steve Patton, Acting Branch Chief
Inspection and Compliance Branch
California Department of Food and Agriculture
1220 N Street, Sacramento, CA 95814
Telephone: (916) 445-2180; Fax: (916) 445-2427
Email: spatton@cdfa.ca.gov

All written comments received by July 2, 2011, that pertain to the indicated changes will be reviewed and responded to by the Department's staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications of the text indicated by **dotted bold underline** and ~~**dotted bold underline strikethrough**~~ and the Addendum to the Statement of Reasons.

Pursuant to the requirements of Government Code Sections 11346.8(d), 11346.9(a)(1), and 11347.1, the Department is providing notice that documents and other information which the Department has relied upon in adopting the proposed regulations have been added to the rulemaking file and are available for public inspection and comment. The documents and information added to the rulemaking file are as follows:

- Addendum to the Statement of Reasons
- Certified Farmers' Market Advisory Committee Meeting Minutes dated March 4, 2009.
- Certified Farmers' Market Advisory Committee Subcommittee Meeting Minutes dated December 16, 2009.
- Certified Farmers' Market Advisory Committee Meeting Minutes dated January 20, 2010.
- Certified Farmers' Market Advisory Committee Meeting Minutes dated April 14,

2010.

These documents are available for public inspection and copying at the Department's office at 560 J Street, Suite 220, Sacramento, CA 95814 from June 17, 2011 through July 2, 2011 between the hours of 8:00 a.m. and 5:00 p.m. If you have any comments regarding the documents and other information, written comments must be submitted to the Department by 5:00 p.m. on July 2, 2011, to:

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All written comments received by July 2, 2011 which pertain to the documents listed on the previous page and other information will be reviewed and responded to by the Department's staff as part of the compilation of the rulemaking file.

AVAILABILITY OF DOCUMENTS ON THE INTERNET

Copies of the original notice of proposed rulemaking; the proposed text of the regulations originally noticed to the public; the initial statement of reasons; the addendum to the statement of reasons; the notice of modification to text of proposed regulations and the text of the modified regulations dated September 22, 2010; and, this second notice of modification to the text of proposed regulations and the text of the modified regulations dated June 17, 2011 can be accessed through the Department's website at: <http://www.cdfa.ca.gov/is/Regulations.html>