

**ADDENDUM TO THE 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**

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 the Direct Marketing Program. As outlined under FAC Section 47010, the CFMAC is a statutorily mandated committee with the primary directive of ensuring the integrity of certified farmers' markets. The CFMAC is composed of 17 members and their alternates who represent certified producers, market managers, two major marketing associations, county agricultural commissioners, and the public. The 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. Accordingly, this proposed regulatory action will ensure that selling activities are conducted without fraud, deception, or misrepresentation, therefore ameliorating enforcement issues. The specific purpose of each adoption, and the rationale for the determination that each adoption is reasonably necessary to carry out the purpose for which it is proposed, together with a description of the public problem, administrative requirement, or other condition or circumstance that each adoption is intended to address, is outlined below.

Proposed Amendments to Section 1392 add new language in order to clarify the intent of CCR, Title 3, Article 6.5 Direct Marketing. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments specify that the intent of direct marketing regulations is to encourage productive and profitable agriculture in California, as directed by state agricultural policy, by facilitating the sale of agricultural products from producers and certified producers within the state to consumers or 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 selling activities are conducted honestly and fairly.

The necessity for amending existing Section 1392 is to provide clarity to the intent of the direct marketing regulations and align the intent with the legislative changes provided in AB 2168. 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.

Proposed Amendments to Section 1392.1(a) add new language expanding to whom producers may sell products. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments authorize producers or certified producers of certified or noncertifiable agricultural products to sell their products 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 the direct marketing article.

The necessity for amending existing Section 1392.1(a) is to align regulations with statutory changes provided in AB 2168 that expanded to whom the producer may sell products. 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.

Proposed Amendments to Section 1392.1(d) expand exemptions for size, standard pack, container, and labeling requirements for fresh fruits, nuts, and vegetables sold to

individuals, organizations, or entities that subsequently sell their products to end users. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments provide that fresh fruits, nuts, and vegetables may be sold directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the product directly to end users exempt from size, standard pack, container, and labeling requirements under specified conditions by certified producers at certified farmers' markets and by producers of agricultural products at a field retail stand or farm stand located at or near the point of production.

The necessity for amending Section 1392.1(d) is to align regulations with the statutory changes provided in AB 2168. Consequently, these proposed changes will ameliorate conflicting language. 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.

Proposed Section 1392.1(e) adds new language regulating conditions under which fresh fruits, nuts, and vegetables may be sold for commercial resale. The specific purpose of this proposed regulation is to mandate that all products sold for commercial resale shall comply with all applicable standardization requirements, e.g., standard pack, size, standard container, and labeling requirements unless product is sold under direct marketing conditions.

This proposed section specifies 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 subsection 1392.4(k).

The necessity for amending Section 1392.1(e) is to ensure that product sold outside of direct marketing channels complies with applicable standardization requirements. 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.

Proposed Section 1392.1(f) was previously subsection (e). The specific purpose of renumbering this section is to establish continuity within the direct marketing regulations.

Proposed Section 1392.1(g) was previously subsection (f). The specific purpose for amending this section is to establish continuity within the direct marketing regulations and to align direct marketing regulations with the statutory changes provided in AB 2168.

This proposed regulation specifies that, 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.

The necessity for amending Section 1392.1(d) is to align regulations with the statutory changes provided in AB 2168. 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.

Proposed Section 1392.1(h) was previously subsection (g). The specific purpose of renumbering this section is to establish continuity within the direct marketing regulations.

Proposed Amendments to Section 1392.2(a) provides clarification in regard to the definition of a "certified farmers' market." The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments provide clarification in regard to the definition of a certified farmers' market and establish that it is a location approved by the county agricultural commissioner of that county where agricultural products are sold by producers or certified producers direct to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. In addition, this proposed amendment specifies that a certified farmers' market may only be operated by one or more certified producers, by a nonprofit organization, or by a local government agency.

The necessity for amending Section 1392.2(a) is to align regulations with the statutory changes provided in AB 2168 and to establish clarity and continuity in regard to the definition of a certified farmers' market. 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 it is proposed.

Proposed Amendments to Section 1392.2(b) define and specify the conditions for a valid certified farmers' market certificate. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168 and establish liability and responsibility for certified farmers' market operators.

These proposed amendments provide that a certified farmers' market certificate is issued by the county agricultural commissioner authorizing the location where agricultural products are sold by producers directly to consumers, or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. In addition, the proposed amendments provide that an operator of a certified farmers' market is liable and responsible for all aspects of the operation of a certified farmers' market specified on the certificate, including, but not limited to, legal, financial, and regulatory compliance requirements.

The necessity for amending Section 1392.2(b) is to align regulations with the statutory changes provided in AB 2168 and to establish liability and responsibility for certified farmers' market operators. 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 it is proposed.

Proposed Amendments to Section 1392.2(e) provide clarification to the definition of a certified producer. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments would define a certified producer as 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.

The necessity for amending Section 1392.2(e) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Amendments to Section 1392.2(g) provide clarification to the definition of a consumer. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments would define a consumer as 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).

The necessity for amending Section 1392.2(g) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Amendments to Section 1392.2(h) provide clarification to the definition of direct marketing. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments expand both where and to whom producers may sell their products under direct marketing regulations. The necessity for amending Section 1392.2(h) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Amendments to Section 1392.2(j) provide clarification in regard to the definition of an employee. The specific purpose for amending this section is to prohibit the practice of reselling agricultural products purchased from another producer.

These proposed amendments would specify that 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.

The necessity for amending Section 1392.2(j) is to ensure that individuals selling at certified farmers' markets are not reselling agricultural products purchased from another producer. Buying and reselling practices at certified farmers' markets threaten the integrity of the Direct Marketing Program, which rests primarily on the consumer's assumption that they are purchasing agricultural products directly from the producer. 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 it is proposed.

Proposed Amendments to Section 1392.2(s) provide clarification in regard to the definition of a partnership. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168 and to provide clarification in regard to the definition of a partnership.

These proposed amendments would specify that 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.

The necessity for amending Section 1392.2(s) is to provide clarification in regard to the definition of a partnership and to align the intent with the legislative changes provided in AB 2168. Buying and reselling practices at certified farmers' markets threaten the integrity of the Direct Marketing Program, which rests primarily on the consumer's assumption that they are purchasing agricultural products directly from the producer. Consequently, establishing a clear definition for a partnership will ensure that such practices are ameliorated. 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.

Proposed Section 1392.2(u) adds a definition for processed agricultural products. The specific purpose for adding this definition is to enhance clarity and uniformity for acceptable processed products available for sale through direct marketing channels.

This proposed addition would provide that 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 necessity for adding Section 1392.2(u) is to provide clarification in regard to the definition of a processed product. Accordingly, these regulations would ensure that all of the ingredients contained in the processed product are produced by the seller, thus enhancing the integrity and marketing opportunities of the Direct Marketing Program and the producer, respectively. 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.

Proposed Section 1392.2(v) adds a definition for a preservative. The specific purpose of adding this definition is to allow producers to sell agricultural products containing preservatives in order to enhance clarity and uniformity for acceptable products available for sale through direct marketing channels.

This proposed addition would provide that a preservative is 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.

The necessity for adding Section 1392.2(v) is to provide clarification in regard to the definition of a preservative. Accordingly, these regulations would allow producers to market agricultural products containing preservatives, thus enhancing the integrity and marketing opportunities of the Direct Marketing Program and producer, respectively. 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.

Proposed Section 1392.2(w) adds a definition for seasoning. The specific purpose of adding this definition is to allow producers to sell agricultural products containing seasoning in order to enhance clarity and uniformity for acceptable products available for sale through direct marketing channels.

This proposed addition would provide that a seasoning is defined as a salt or spice used in food preparation. 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.

The necessity for adding Section 1392.2(w) is to provide clarification in regard to seasoning. Accordingly, these regulations would allow producers to market agricultural products containing seasoning, thus enhancing the integrity and marketing opportunities of the Direct Marketing Program and the producer, respectively. 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.

Proposed Section 1392.2(x) adds a definition for flavoring. The specific purpose of adding this definition is to allow producers to sell agricultural products containing flavoring in order to enhance clarity and uniformity for acceptable products available for sale through direct marketing channels.

This proposed addition would define a flavoring as 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.

The necessity for adding Section 1392.2(x) is to provide clarification in regard to flavoring. Accordingly, these regulations would allow producers to market agricultural products containing flavoring, thus enhancing the integrity and marketing opportunities of the Direct Marketing Program and the producer, respectively. 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.

Proposed Section 1392.2(y) adds a definition for food coloring. The specific purpose for adding this definition is to allow producers to sell agricultural products containing food coloring in order to enhance clarity and uniformity for acceptable products available for sale through direct marketing channels.

This proposed addition would define food coloring as a dye or pigment that is added to a product to impart color. The necessity for adding Section 1392.2(y) is to provide clarification in regard to food coloring. Accordingly, these regulations would allow producers to market agricultural products containing food color, thus enhancing the integrity and marketing opportunities of the Direct Marketing Program and the producer, respectively. 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.

Proposed Section 1392.2(z) would define at or near the point of production. The specific purpose for adding this definition is to align direct marketing regulations with the statutory changes provided in AB 2168 and to establish an appropriate location for individuals to sell their products directly to consumers exempt from standardization regulations and statutes.

This proposed addition would specify that for the purpose of direct marketing, at or near the point of production means not beyond the first paved county or primary road.

The necessity for adding section 1392.2(z) is to provide an appropriate mechanism for individuals to sell their products at or near the point of production. The Department has determined that authorizing individuals to directly market their products not beyond the first paved county or primary road is a reasonable interpretation of at or near the point of production and consistent with the intent of AB 2168. 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.

Proposed amendments to Section 1392.4(a) would clarify the conditions of direct marketing. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments would specify that 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 necessity for amending Section 1392.4(a) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed amendments to Section 1392.4(b) would clarify the conditions of direct marketing. The specific purpose for amending this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

These proposed amendments would specify that all agricultural products when sold or offered for sale at a field retail stand or farm stand near the point of production shall comply with all applicable requirements of the California Retail Food Code and the California Health and Safety Code.

The necessity for amending Section 1392.4(b) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Section 1392.4(k) would require a certified producer, when implementing standardization exemptions, to provide individuals, organizations, or entities intending to subsequently sell their product with a dated memorandum in accordance with Section 47002(e) of the Food and Agricultural Code. The specific purpose for adding this section is to align direct marketing regulations with the statutory changes provided in AB 2168.

This proposed addition would require a certified producer, when implementing any exemption to size, standard pack, container, or labeling requirements and selling agricultural products under such exemptions 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: identity of the producer, address of the producer, identity of the product purchased, and quantity of the product purchased.

The necessity for adding Section 1392.4(k) is to align regulations with the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Section 1392.4(l) provides that a certified producer shall not knowingly fail to provide the memorandum so described and under the circumstances set forth in 1392.4(k) and require a certified producer to issue a memorandum as described in 1392.4(k) for any sale of a single agricultural commodity in excess of twenty-five pounds net weight to any individual consumer or end user. The specific purpose for adding Section 1392.4(l) is to align direct marketing regulations with Food and Agricultural Code Section 861 and the statutory changes provided in AB 2168.

The necessity for adding Section 1392.4(l) is to align regulations with Food and Agricultural Code Section 861 and the statutory changes provided in AB 2168. 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 it is proposed.

Proposed Section 1392.4(m) establishes requirements for sellers of processed agricultural products. 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.

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 necessity for adding Section 1392.4(m) is to align direct marketing regulations with the statutory changes provided in AB 2168 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 it is proposed.

Proposed Section 1392.4.1 establishes administrative civil penalties for direct marketing. The specific purpose for adding 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 Section 1392.4.1 is to align direct marketing regulations with the statutory changes provided in 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.

Proposed Section 1392.4.1(a) establishes a violation class and penalty category. The specific purpose for adding Section 1392.4.1(a) is to implement the provisions of AB 2168 and ensure that selling activities are conducted without fraud, deception, or misrepresentation.

This proposed addition designates serious, moderate and minor violation categories. Serious violations are defined as 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 moderate violation that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty. Moderate violations are defined as violations which undermine enforcement, or those in which there is a potential for an intermediate level of consumer or competitive harm or for any violation which is a repeat minor violation that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty. Minor violations are violations that have minimal adverse effect on consumers or equitable competition at the marketplace.

The necessity for adding Section 1392.4.1(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.

Proposed Section 1392.4.1(b) provides that repeat violations may result in an escalation of violation class. The specific purpose for adding Section 1392.4.1(b) 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 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.

The necessity for adding Section 1392.4.1(b) 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.

Proposed Section 1392.4.1(c) provides conditions for utilizing Table A in order to establish the level of severity of a particular violation. The specific purpose for adding Section 1392.4.1(c) 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 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.

The necessity for adding Section 1392.4.1(c) 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.

Proposed amendments to Section 1392.6(b) would require certified farmers' market operators to include a map identifying the non-certified and/or non-agricultural product areas of the certified farmers' market operator application. The specific purpose for amending this section is to clearly differentiate the boundaries of a certified farmers' market from the non-certified and/or non-agricultural product areas of the market.

These proposed amendments provide that the application for a certified farmers' market shall include a map that clearly locates and identifies the boundaries of the certified, non-certified and/or non-agricultural product areas of the market.

The necessity for adding this section is to the implement 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.

Proposed amendments to Section 1392.6(f) make minor, technical, and non-substantive changes to language related to certification requirements of a certified farmers' market.

Proposed amendments to Section 1392.6(g) make minor, technical, and non-substantive changes to language related to certification requirements of a certified farmers' market and add language providing market participants with the right to appeal the imposition of a fine or suspension or expulsion from a certified farmers' market. The specific purpose for amending this section is to update appropriate references for the California Department of Food and Agriculture's Inspection and Compliance Branch and to provide a mechanism for certified producers to appeal adverse actions.

These proposed amendments update appropriate references to the California Department of Food and Agriculture's Inspection and Compliance Branch. In addition, these proposed amendments provide that 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: Notice of the alleged violation by setting forth the factual basis for it as well as the proposed penalty; A reasonable time period to request an appeal; If an appeal is requested, an opportunity to dispute the alleged violation and/or the proposed penalty; A short, written statement of decision.

The necessity for adding section 1392.6(g) is to appropriately reference the California Department of Food and Agriculture's Inspection and Compliance Branch and to provide a mechanism for certified producers to appeal adverse actions. 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.

Proposed amendments to Section 1392.8.1 establishes quarterly reporting requirements for certified farmers' market operators. The specific purpose of this proposed regulation is to ensure that agricultural products offered for sale at certified farmers' markets are of acceptable quality and that the selling activities are conducted honestly and fairly.

These proposed amendments would require a market operator to provide the California Department of Food and Agriculture with a 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.

The necessity for adding Section 1392.8.1 is to provide a mechanism for the Department and county enforcement staff to determine which producers are selling at certified farmers' markets and which products are being sold by non-certified producers. 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.

Proposed amendments to Section 1392.9(a) make minor technical non-substantive changes to the compliance requirements for the operator of certified farmers' markets. The specific purpose of this proposed regulation is to reconcile minor technical errors in existing direct marketing regulations and align direct marketing regulations with Food and Agricultural Code Section 861 and the statutory changes provided in AB 2168, thus ensuring appropriate trace back mechanisms for agricultural products.

These proposed regulations would require the operator of a certified farmers' market to ensure that each person participating in the sale of agricultural products in the area designated as a certified farmers' market to issue dated memorandums of sale in compliance with subsections 1392.4(k) and 1392.4(l).

The necessity for adding Section 1392.9(a) is to implement the provisions of Food and agricultural Code Section 861 and the statutory changes provided in AB 2168, thus ensuring appropriate trace back mechanisms. 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 it is proposed.

Proposed amendments to Section 1392.9(b) revises compliance requirements for operators of certified farmers markets. The specific purpose of this proposed regulation is to ensure appropriate trace back mechanisms for processed products.

These proposed regulations would require operators of certified farmers' markets to keep records of processed products as they currently do with fresh products.

The necessity for adding Section 1392.9(b) is to provide a mechanism for the Department and county enforcement staff to establish appropriate enforcement and trace back mechanisms for processed agricultural products. 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.

Proposed Section 1392.9(e) establishes the right to appeal the imposition of a fine or expulsion from the market consistent with the requirements of Section 1392.6(g). The specific purpose of this proposed regulation is to ensure that certified farmers' market participants have the right to appeal adverse actions, e.g., the imposition of a fine, suspension, or expulsion from the market.

These proposed regulations would provide that 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).

The necessity for adding Section 1392.9(e) is to provide a mechanism to ensure that certified producers have the right to appeal adverse actions. 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.

Proposed Section 1392.11(e) establishes the right to appeal to CDFA. The specific purpose of this proposed regulation is to ensure that certified farmers' market participants are provided with due process in the event that their appeal is denied by a certified farmers' market or the operator of a certified farmers' market.

These proposed regulations would provide that any person may appeal to CDFA for a hearing if aggrieved by a 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.

The necessity for adding Section 1392.11(e) is to provide a mechanism to ensure that certified producers have a right to appeal adverse actions to CDFA. 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.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The Department is relying upon the following documents pertaining to the proposed regulatory changes:

- 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.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the Department.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS

The Department has not identified any alternatives that would lessen any adverse impact on small businesses. 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."