

**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**

June 27, 2016

**NOTICE OF MODIFICATIONS TO TEXT OF
PROPOSED REGULATIONS**

NOTICE IS HEREBY GIVEN that pursuant to the requirements of Government Code subsection 11346.8(c) and section 44 of Title 1 of the California Code of Regulations (CCR), the California Department of Food and Agriculture (Department), is proposing to modify the originally proposed text for subsections 1392.4, 1392.4.1, and 1392.9 of Title 3, Division 3, Chapter 1, Subchapter 4, Article 6.5 of the CCR. The proposal pertains to the action described in the Informative Digest published in the California Regulatory Notice Register on October 23, 2015 [Notice File No. Z-2015-1013-05; Register 2015, No. 43-Z] relating to Direct Marketing/Certified Farmers' Markets. These changes are in response to comments received regarding the proposed regulation. A copy of the modified text is enclosed.

WRITTEN COMMENTS REGARDING THE MODIFIED TEXT: If any person wishes to comment on the proposed modifications to the text, the written comment must be submitted to the contact person named in this notice beginning on June 27, 2016 and ending at 5:00 p.m. on July 12, 2016. The written comments are to be restricted to the recent modifications as shown in the attached regulatory text. The Department is not required to respond to comments received in response to this notice on other aspects of the proposal. All written comments previously submitted regarding this proposal remain in the Department's rulemaking file. All written comments received by 5:00 p.m. on July 12, 2016, which pertain to the indicated changes will be reviewed and responded to by the Department as part of the compilation of the rulemaking file.

CONTACT PERSONS: Written comments concerning this proposal are to be addressed to the following:

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Comments may also be submitted via facsimile (FAX) at (916) 900-5345 or by e-mail to steve.patton@cdfa.ca.gov

WEBSITE ACCESS: materials regarding this proposal can be found by accessing the following Internet address: <https://www.cdfa.ca.gov/is/regulations.html>

**DEPARTMENT OF FOOD AND AGRICULTURE
PROPOSED REGULATIONS**

Existing code is indicated by original type.

Text proposed to be added is displayed in underline type. Text proposed to be deleted is displayed in ~~striketrough~~ type.

Text proposed to be added after publication of the Notice of Proposed Rulemaking is displayed in double underline type.

Text proposed to be deleted after publication of the Notice of Proposed Rulemaking is displayed in ~~double striketrough~~ type.

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

§ 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 the public 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, 47001, 47002, 47003, 47004, 47005, 47005.1, 47005.2, 47005.3, 47020, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code. Reference: Sections 821, 42941, 47000, 47000.5, 47021 58101, 58101.5, 58102, 58103, and 58104, Food and Agricultural Code.

§ 1392.1. Direct Marketing Authorized.

(a) Notwithstanding other provisions of this ~~chapter~~ Group, this article authorizes producers or certified producers of certified or non-certifiable agricultural products to sell their products as defined in this article, directly to the public 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 or near the point of production.~~

(db) Fresh fruits, nuts, and vegetables may be sold directly to the public 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, outlet, or location; or

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

(ec) 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(kj).

(fd) 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.

(ge) 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, outlet, location, or a farm stand at or near the point of production, must comply with all applicable laws and regulations pertaining to quality and labeling.

(hf) 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, 47002, and 47003, Food and Agricultural Code. Reference: Sections 42941, 47000, 47002, and 47003, Food and Agricultural Code.

§ 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 and timeframe, including days of the week and hours of operation approved by the county agricultural commissioner of that county where only agricultural products are sold by producers or certified producers directly to the public 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, months of operation, day of the week, and hours of operation where agricultural products are sold by the producers directly to the public 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 and only for the location, day, and time specified on the certificate. 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 sharecrops-:

(1) Prior to planting of annual and biannual crops;

(2) 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) Prior to bloom of tree and vine 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.~~ A person, partnership, corporation, or an otherwise legally formed farm or ranch that produces agricultural products by the practice of the agricultural arts upon land that the person or entity owns, rents, leases, sharecrops, or otherwise controls and has the documented legal right to possession.

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

(f) Authorized Representative. A person approved by the certified producer to conduct business on behalf of the certified producer at a certified farmer's market.

~~(fg)~~ 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.

(gh) 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(kj).

(hj) Direct Marketing. The sale:

- (1) At a certified farmers' market, outlet, or location of agricultural products by a certified producer to the public 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 the public a consumer or to individuals, organizations, or entities 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 the public a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users;:
- (4) Near the Point of Production, which means not beyond the first paved county or primary road; or
- (5) At an outlet or location where only a certified producer may sell only their certified agricultural products directly to consumers exempt from container, labeling, and packaging requirements. An outlet means any location operated by the producer selling certified product directly to the consumer.

~~(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 a 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.~~

(kj) Agricultural Products. Agricultural products means fresh or processed products produced in California, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed bees wax, propolis, royal jelly, flowers, grains, nursery stock, livestock meats, poultry meats, rabbit meats, and fish, including shellfish that is produced under controlled conditions in waters located in California. Agricultural Products include all certified and noncertifiable agricultural products as defined in section 1392.2(l) and section 1392.2(m).

(k) Nonagricultural Products. Products that are characterized as services, arts, crafts, bakery, candies, soaps, balms, perfumes, cosmetics, pottery, clothing, fabrics, pastas, compost, fertilizers, candles, ceramics, foraged foods, and types of wares are not considered agricultural products.

(1) A product that combines an agricultural product with a nonagricultural product or service in a manner that materially increases the purchase price of the product shall disqualify the product from being sold as an agricultural product within the area designated as a certified farmers' market.

(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, mushrooms, herbs, and nursery stock.

(m) Noncertifiable Agricultural Products. Noncertifiable agricultural products include all certified agricultural products that have been processed, ~~these 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 as well as dairy, pollen, unprocessed beeswax, propolis, royal jelly, livestock meats, poultry meats, rabbit meats, and fish and including shellfish that are produced under controlled conditions in waters or ponds located in California.~~ The noncertifiable agricultural products shall meet the definition provided in 1392.2(j).

...

(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.~~ The undertaking of being predominantly responsible for the decisions and actions encompassing the various phases of producing an agricultural product. The practice of the agricultural arts for fruit, floral, nut, vegetable, and other plant products includes directive or actual responsibility for all the actions of planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting. The practice of the agricultural arts for agricultural animal products includes directive or actual responsibility for a substantial time of the raising, feeding, veterinary care, and product harvesting.

(1) The practice of agricultural arts specifically for nursery stock shall include planting or transplanting one of the following into containers in a planting medium:

(i) Seed, bulbs or corms, or

(ii) Plant cuttings, or

(iii) Rooted plants which are in containers or plugs no larger than 2" in diameter.

...

(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~~1~~) 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~~2~~) -Seasoning. Seasoning shall be defined as salt or spice used in food preparation.

(4i) Spice. Spice shall be defined as any of various granulated or powdered 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~~3~~) 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~~4~~) 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, 47000.5, 47001 and 47003, Food and Agricultural Code.

§ 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, outlet or location, or a farm stand, only agricultural products which he or she produced to the public consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

(1) The certified producer's ~~immediate family or employee~~ authorized

representative(s) may also act for and sell the certified producer's agricultural products at a certified farmers' market.

(2) No certifiable agricultural products may be sold at a certified farmers' market, outlet, or location unless such products are produced by and listed on the certified producer's certificate.

(3) No noncertifiable agricultural products, aside from incidental flavorings, may be sold at a certified farmers' market unless all products are produced by the agricultural producer.

~~(b) All agricultural products, when sold or offered for sale at a certified farmers' market or at a field retail stand or farm 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.~~

(b) An authorized representative may only represent one certified producer per certified farmers' market unless operating under section 1392.4(f).

...

(d) The certified producer's ~~embossed~~ official county issued photocopy certificate shall accompany the certified agricultural products during transportation and shall be conspicuously posted at the point of sale.

...

(f) A certified farmers' market may allow, or prohibit, a certified producer or his/her authorized representative ~~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 or authorized representative 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 and conspicuously posted signage 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 b~~Buying and reselling of any agricultural product 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 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 as listed on the county issued certified producer's certificate.
 - (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 as listed on the county issued certified producer's certificate.
 - (iii) Names of both certified producers involved as listed on the county issued certified producer's certificate.

(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.~~

(hg) 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.

(ih) 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.

(ji) 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.

(kj) 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, bill of sale, or a container label must list all of the following:

~~(i)~~(1) Identity of the producer;

~~(ii)~~(2) Address of the producer;

~~(iii)~~(3) Identity of the product purchased;

(iv)(4) Quantity of the product purchased.;

(5) Date transaction occurred.

(~~k~~) A certified producer shall not knowingly fail to provide the memorandum so described and under the circumstances set forth in subsection (~~k~~j) 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.

(l) Every person selling agricultural products within a certified farmers' market shall post conspicuous, legible signage clearly visible to all consumers with the following:

(1) The name and production counties of the producer; and

(2) A statement of "We Grow What We Sell" or a similar statement.

(m) A seller of processed agricultural products shall document in a clear manner via label or signage compliance with the production requirements referenced in Section 1392.4(~~k~~j) 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.

§ 1392.4.1. Administrative Civil Penalties for Direct Marketing.

When taking enforcement action pursuant to ~~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 and/or length of the suspension.

(a) For the purposes of this section, violation classes are designated as "Serious," "Moderate," and "Minor" using the following definitions:-

(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) ~~and the secretary or commissioner determines that one of the following aggravating circumstances support elevation to "Serious": that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty.~~

- (i) The respondent has a history of violations which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty; or
- (ii) The respondent failed to cooperate in the investigation of the incident or allow a lawful inspection.

(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-paragraph (3) ~~and the secretary or commissioner determines that one of the following aggravating circumstances support elevation to "Moderate": that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty.~~

- (i) The respondent has a history of violations 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.~~

~~(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 17. Fruit, Nut and Vegetable Standards, and Title 3, Article 6.5. Direct Marketing, California Code of Regulations.

Table A				
		VIOLATION TYPE		
		MINOR	MODERATE	SERIOUS
Code Section	Description of Violation	Fine Range	Fine Range	Fine Range and/or Suspension

		\$50-\$150	\$151-400	\$401-\$1000 <u>and/or 0-18 Months</u>
Section 1 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 <u>noncompliance</u> (NC) in 12 months		
2. FAC 47002(e)	Failure to provide to purchaser of product a memorandum/receipt which includes all required information	X		
<u>3.</u> FAC 47004(b)	<u>Resale of agricultural products in a CFM</u>	=	=	<u>X</u>
34. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
45. FAC 47022.1	Deceptive pack	2nd NC in 12 months =	<u>X</u>	
56. FAC 47022.2	Mislabel/Misleading statement	2nd NC in 12 months =	<u>X</u>	
67. FAC 47022.3	Falsify documents or make false statements regarding size, maturity, condition, or quality of products offered for sale	-	-	X
78. FAC 47022.4	Unlawfully removing warning tag or product held under NC	-	-	X
89. FAC 47022.5	Refusing to submit for inspection or stop any vehicle for inspection	-	-	X
910. FAC 47022.6	Refusing to allow inspection of property, storage etc.	-	-	X
1011. FAC 47022.7	Alteration of any documents issued by an enforcing officer			X
1112. CCR 1392.1(db)	Selling product exempt from size, standard pack, container, and labeling requirements at		-	X

	a certified farmers' market without being a certified producer			
14 13. CCR 1392.1(g c)	Products sold that are not under exemption must comply with all regulations regarding quality and labeling	2nd NC in 12 months		
14 14. CCR 1392.1(e d)	Failure to sell fresh fruits, nuts, and vegetables in compliance with maturity and quality requirements	2nd NC in 12 months		
14 15. CCR 1392.1(f e)	Failure to sell agricultural products in compliance with quality and labeling requirements – (excludes fresh fruits, nuts, and vegetables)	2nd NC in 12 months		
<u>16. CCR 1392.2(k)(1)</u>	<u>Selling agricultural products combined with nonagricultural products or services that materially increases the price of the product within the CFM</u>	<u>X</u>		
15 17. CCR 1392.4(a)(2)	Certified producer selling certifiable product(s) at a CFM not of their own production they did not produce	-	-	X
16 18. CCR 1392.4(a)(2)	Certified producer selling product(s) which they produced but do not have listed on their certified producer's certificate	2nd NC in 12 months		
<u>19. CCR 1392.4(a)(3)</u>	<u>Agricultural producer selling noncertifiable product(s) not of own production within CFM</u>	=	=	<u>X</u>
17. CCR 1392.4(b)	Selling products at a certified farmers market not in compliance with specified California Health and Safety Code Requirements	X		
<u>20. CCR 1392.4(b)</u>	<u>Authorized representative representing more than one certified producer at a single certified farmers' market on a single day</u>	=	<u>X</u>	
18 21. CCR 1392.4(c)	Selling nonagricultural products in the certified section of a certified farmers' market	-	X	
19 22. CCR 1392.4(d)	Producer not having a valid county issued Certified Producer's Certificate <u>while selling certifiable agricultural products at a certified farmers' market</u>	-	-	X
20 23. CCR 1392.4(d)	Certified producer's embossed county issued certificate not in possession and/or not conspicuously posted	2nd NC in 12 months		

2124. CCR 1392.4(e)	Failure to use approved scale or sealed scale	-	X	
2225. CCR 1392.4(f)(1)	A certified producer <u>or authorized representative</u> representing or being represented by more than two other certified producers in a 12-month period		X	
2326. 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 <u>for</u> whom one is selling <u>by conspicuously posting each certified producer's valid certificate and signage at a certified farmers' market</u>	2nd NC in 12 month X		
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 months		
2527. CCR 1392.4(f)(3)	Failure to add name of another certified producer that the producer is selling for to his/her certificate	-	X	
2628. 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	
2729. 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 X		
2830. CCR 1392.4(f)(7)	Commission sales / <u>Buying and re-selling</u> between certified producers	-	-	X
2931. CCR 1392.4(f)(9)	When selling on behalf of another producer, failure to keep required records for a period of three years	X		
3032. CCR 1392.4(f)(10)	Failure to produce records for inspection upon demand	X		
3133. CCR 1392.4(hg)	Failure to post organic registration and/or documentation of organic certification when representing product as organic	X		

3234. CCR 1392.4(h)	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		
3335. CCR 1392.4(j)	Sale of sprouts with less than 50% having emerged	X		
3436. CCR 1392.4(k)	Not providing memorandum with required information		X	
37. CCR 1392.4(1)(1)	<u>Failure to clearly and visibly post signage stating name and county of production</u>	<u>X</u>		
38. CCR 1392.4(1)(2)	<u>Failure to clearly and visibly post banner stating "We Grow What We Sell" or similar statement</u>	<u>X</u>		
3539. CCR 1392.4(m)	Does not have required documentation on processed products	<u>X</u>	<u>X</u>	
3644 <u>40.</u> CCR 1392.5(c)	Refusing to provide documentation <u>upon request</u>	-	-	X
42 <u>41.</u> CCR 1392.9.1(d)	<u>Failure to report to County Agricultural Commissioner (CAC) any change in Partnership Agreement and/or surrender invalid certificates to CAC</u>	-	<u>X</u>	
3743 <u>42.</u> 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 CDEA and/or the County Agricultural Commissioner	X		
1. CCR 1392.9(b)(4)	<u>Failure to submit a certified producer's itemized list of products for inspection upon the request of an enforcement officer within 48 hours</u>	-	<u>X</u>	

42. CCR 1392.8.1-	Failure to submit remittance with required information	X		
53. CCR 1392.9(a)(1)	Failure to ensure each seller is a Certified Producer, member of immediate family of Certified Producer, member of immediate family of Certified Producer, or authorized representative employee of Certified Producer	2 nd NC in 12 months	-	-
64. 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	-	-
75. CCR 1392.9(a)(3)	Failure to ensure the certified producer has in their possession a valid certified producer's certificate	2 nd NC in 12 months	-	-
86. CCR 1392.9(a)(3)	Failure to ensure the Certified Producer posts a valid Certified Producer's Certificate	2 nd NC in 12 months		
97. CCR 1392.9(a)(4)	Failure to ensure all products for sale by producer are listed on their certificate	2 nd NC in 12 months	-	-
108. CCR 1392.9(a)(5)	Failure to ensure the producers are selling only approved non-certifiable ag. products <u>that all producers of noncertifiable processed agricultural products are in compliance with section 1392.4(m) and produced in accordance with the definitions found in 1392.2(r)</u>	2 nd NC in 12 months	-	-
119. 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	2 nd NC in 12 months		
10. CCR <u>1392.9(a)(8)</u>	<u>Failure to ensure that all vendors post conspicuous signage with their products at a certified farmers' market</u>	<u>2nd NC in 12 months</u>		
121. 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	2 nd NC in 12 months	-	-

	load lists for 18 months			
13 12. CCR 1392.9(c)	Operation of a CFM without possession of a current, valid CFM Certificate	-	<u>X</u>	
1413. 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		
14. FAC 47004(e)	<u>Allowing the sale of fresh whole fruits, nuts or vegetables in the area adjacent to and under the control of the CFM operator</u>	-	<u>X</u>	
16 15. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
1716. FAC 47022.3	Falsify documents or false <u>or deceptive statements regarding products to obtain market Certificate</u>	-	-	X
1817. FAC 47022.6	Refusing to allow inspection of property	-	-	X
19 18. 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.

§ 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. Upon approval of a certified producer's certificate issued by the county agricultural commissioner of the county where the producer's farm is located, a producer becomes registered with the Department of Food and Agriculture. 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, outlet, or location.

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

(1) List name, business name, address, city, zip code, phone number, and e-mail;

(2) List all production sites and storage locations on the certificate in alphabetical order by common name and identify products known by variety;

(3) List all commodities in alphabetical order by common name and identify products known by variety;

(4) List amount grown in acreage, estimated production, harvest season, methods used to alter the harvest season or to control ripening, and months in storage; and

(5) List authorized counties where commodities may be sold and any producers the certificate holder may sell for or can have their products sold by, including the certificate number and date declared.

(c) Any producer shall provide a list of all authorized representatives, and, 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, upon review of application and determination that the applicant meets the requirements of a certified producer, 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 perform at least one on-site inspection of each property listed on each new producer's initial application prior to issuing a certificate.

~~(ef)~~ The county agricultural commissioner shall issue an official ~~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 official ~~embossed photocopies~~ of the certificate from the issuing county to comply with the provisions of this article.

(g) A certified producer's certificate shall be valid for not more than 12 months from the date of issue.

~~(fh)~~ 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, 47001, 47002, 47003, 47020, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections

42941, 47000, and 47000.5 ~~58101, 58101.5, 58102, 58103 and 58104~~, Food and Agricultural Code.

§ 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. Upon approval of a certified farmers' market certificate issued by the county agricultural commissioner of the county where the certified farmers' market is located, a certified farmers' market becomes registered with the Department of Food and Agriculture. 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 on a form authorized by the Secretary 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. the following:

(1) List the name of the operator, mailing address, phone number, fax number, physical address, website address, city, zip code, and email address;

(2) List the market name, mailing address, phone number, fax number, city, zip code, market manager name, and email address;

(3) List the market location, including city and cross streets, city, zip code, county, months of operation, which days the market will operate, what hours the market will be open, and the estimated number of vendors per day;

(4) Print applicant name, check whether the person filling out the form is an applicant or applicant representative, sign, and date the application; and

(5) Applicants shall also submit a map that clearly locates and identifies the boundaries of the certified, noncertified, and/or nonagricultural product areas of the market as well as documentation of qualification to operate a certified farmer's market.

...

~~(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.~~

(d) The Secretary or a county agricultural commissioner may deny a certificate to any market operator who is determined to be delinquent in the payment of fees or penalties required under Chapter 10.5 of Division 17 of the Food and Agricultural Code or this article.

~~(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.~~

(e) The issuing county agricultural commissioner shall notify the Secretary upon approval thereby completing the registration of the certified farmers' market.

(1) Any revocation or suspension of a certificate by the Secretary or a county agricultural commissioner pursuant to Food and Agricultural Code Section 47025 shall cause the concurrent revocation or suspension of the certified farmers' market's registration with the Secretary.

~~(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.~~

(f) A certified farmers' market certificate shall be valid for 12 months from the date of issue only during the specified months of operation, day of the week and hours of operation listed on the certificate.

~~(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, 47020, and 47025, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code

§ 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.

§ 1392.8. Fees.

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

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47020, 47021, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 47000, and 47001, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

§ 1392.8.1. Certified Farmers' Market Fees.

(4a) Every operator of every certified farmers' market shall remit to the Department of Food and Agriculture two dollars (\$2) for each vendor participating and selling goods under the authority and management of the certified farmers' market operator on each market day for the entire previous quarter.

(1) 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~~ operator
- (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, and e-mail 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 and the number of vendors in the nonagricultural section for each market day, a list of products being sold by noncertified 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.

(2b) 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.

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

§ 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 authorized representative 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~~ Sells all noncertifiable agricultural products that are in compliance with subsection 1392.4(m) and are produced in accordance with subsection 1392.2(r).
- (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).
- (8) Is in compliance with applicable signage requirements under subsections 1392.4 (l) and (m).

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

...

~~(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.

§ 1392.9.1. Direct Marketing. Requirements for Partnerships, Sharecropping Agreements, and Similar Contractual Agreements.

...

(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~~ official 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

§ 1392.9.2 Direct Marketing. Requirements for Farm Leases.

...

(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~~ official copies of certificates issued to the partnership shall be surrendered to the issuing agricultural commissioner.

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

§ 1392.10. Penalties.

(a) Any county agricultural commissioner may, at any time, initiate a notice and hearing process in accordance with Food and Agricultural Code Section 47025 to determine whether a violation of these provisions has occurred. The hearing process may review the actions of the certificate holder or his/her authorized representative.:

~~(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.

...

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47004, and 47025, ~~58101.5, 58102 and 58103~~, Food and Agricultural Code. Reference: Sections 42941, ~~58101, 58101.5, 58102, 58103 and 58104~~, Food and Agricultural Code.

§ 1392.11. Appeals.

Any person may appeal to the ~~director~~ Secretary for a hearing if aggrieved by any one of the following state or county 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. Any administrative penalty, including, but not limited to fines.~~

~~(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, 47021, 47025, ~~58101.5 and 58104~~, Food and Agricultural Code. Reference: Sections 42941, ~~58101, 58101.5, 58102, 58103 and 58104~~, Food and Agricultural Code.

...