CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

September 14, 2011

DM-11-003

TO: TO WHOM IT MAY CONCERN

Attached are all our regulations pertaining to Direct Marketing and Certified Farmers' Markets. The following changes in underline and strikeout were filed with the Secretary of State on August 18, 2011 and will become effective on September 17, 2011. The underline text denotes new language to the regulations while the text in strikeout indicates language that has been deleted.

Sincerely,

Susan Shelton
Supervising Special Investigator
Inspection and Compliance Branch

Enclosure

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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 ~~The intent of this article is to fac~~ilitate facilitating the sale of agricultural products from producers and certified producers within the state directly to 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, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code. Reference: Sections 821, 42941, 58101, 58101.5, 58102, 58103, and 58104, Food and Agricultural Code.

§ 1392.1. Direct Marketing Authorized.

(a) Notwithstanding other provisions of this Group, this article authorizes producers or certified producers of certified or noncertifiable agricultural products to sell their products, as defined in this article, 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 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 a certified farmers' market, or agricultural products which he/she has produced, at or near the point of production.

(d) Fresh fruits, nuts, and vegetables may be sold directly to 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; or

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

(e) 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).

(ef) 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.

(~~f~~g) 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 ~~or~~ at or near the point of production, must comply with all applicable laws and regulations pertaining to quality and labeling.

(gh) 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 and 47003, Food and Agricultural Code. Reference: Sections 42941, 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 approved by the county agricultural commissioner of that county where agricultural products are sold by producers or certified producers directly to 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 where agricultural products are sold by the producers directly to 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. 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.

(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.

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

(f) 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.

(g) 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~~. It excludes~~ a person ~~who purchases~~ to whom fresh fruits, nuts, and vegetables are sold for commercial resale ~~unless such products comply with all applicable size, standard pack, containers, and labeling requirements~~ except as provided in subsection 1392.4(k).

(h) Direct Marketing. The sale:

(1) At a certified farmers' market of agricultural products by a certified producer to 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 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 ~~or~~ near the point of production of agricultural products by a producer to a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

(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. ~~It~~ 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.

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.

(k) Agricultural Products. Agricultural products include all certified and noncertifiable agricultural products as defined in section 1392.2(1) and section 1392.2(m).

(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, and nursery stock.

(m) Noncertifiable Agricultural Products.

Noncertifiable agricultural products include all certified agricultural products that have been processed, those 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, and fish and shellfish produced under controlled conditions in waters or ponds located in California.

(n) Nonprofit Organization. An organization which qualifies for nonprofit status for California income tax purposes.

(o) Market Manager. A person or persons empowered to implement the rules, regulations, policies, and directives of the governing body of a certified farmers' market.

(p) Market Rules. A set of written rules or regulations approved by each certified farmers' market. The rules and regulations may be more stringent than established state regulations, provided they do not violate or conflict with any state law or regulation governing their activities.

(q) Notice and Hearing Process. A process initiated at the discretion of a county agricultural commissioner after alleged violation(s) of the provisions of this article has occurred.

(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.

(s) Partnership. A partnership is a separate entity distinct from its individual members. 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. ~~, its agricultural products, which~~ Such agricultural products shall be produced by practice of the agricultural arts upon land that the partnership, as a separate entity, exclusively controls.

(t) Sprouts. Sprouts are germinated seeds, legumes and nuts such as, but not limited to, pumpkin seeds, peanuts, flax, soybeans and fenugreek. For the purpose of practicing the agricultural arts to sell sprouts at a certified farmers' market, a minimum of fifty percent of the seeds, legumes, or nuts, in any package or container offered or displayed for sale, must have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering. No requirement for a minimum measurement of the sprout shall apply nor shall a minimum time of seed hydration be required.

(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) 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) Seasoning. Seasoning shall be defined as salt or spice used in food preparation.

(1) Spice. 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.

(x) 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) 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, 47001 and 47003, Food and Agricultural Code.

§ 1392.3. Where Direct Marketing Permitted. [Repealed]

§ 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, or a farm stand, only agricultural products which ~~they have~~ he or she produced 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 certified producer's immediate family or employee(s) may also act for and sell the certified producer's agricultural products. No certifiable agricultural products may be sold at a certified farmers' market unless such products are listed on the certified producer's certificate.

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

(c) Only agricultural products may be sold or offered for sale at a certified farmers' market. The sale of nonagricultural products shall not be permitted in the area designated as a certified farmers' market.

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

(e) When any agricultural products are sold by weight, the type of scale used shall be approved by the Department of Food and Agriculture, and shall be tested and sealed for use by the county sealer-director of weights and measures.

(f) A certified farmers' market may allow, or prohibit, a certified producer or his/her 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 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 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 buying and selling 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.

(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.

(iii) Names of both certified producers involved.

(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.

(h) 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.

(i) 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.

(j) 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.

(k) 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 must list all of the following:

(i) Identity of the producer;

(ii) Address of the producer;

(iii) Identity of the product purchased;

(iv) Quantity of the product purchased.

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

(m) A seller of processed agricultural products shall document compliance with the production requirements referenced in Section 1392.4(k) 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.

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.
(a) For the purposes of this section, violation classes are designated as "Serious," "Moderate," and "Minor".

(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) that occurred within a two-year period and which resulted in conviction of an infraction or misdemeanor charge or an administrative civil penalty.

(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) that occurred within a two-year

period and 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.

(c) 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

Code Section	Description of Violation	VIOLATION TYPE		
		MINOR Fine Range $50 - $150	MODERATE Fine Range $151 - $400	SERIOUS Fine Range $401-$1000
Section I	**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 NC in 12 months		
2. FAC 47002(e)	Failure to provide to purchaser of product a memorandum/receipt which includes all required information	X		
3. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
4.FAC 47022.1	Deceptive pack	2nd NC in 12 months		
5. FAC 47022.2	Mislabel/Misleading statement	2nd NC in 12 month		
6. FAC 47022.3	Falsify documents or make false statements regarding size, maturity, condition, or quality of products offered for sale	-	-	X
7. FAC 47022.4	Unlawfully removing warning tag or product held under NC	-	-	X
8. FAC 47022.5	Refusing to submit for inspection or stop any vehicle for inspection	-	-	X
9. FAC 47022.6	Refusing to allow inspection of property, storage etc.	-	-	X
10. FAC 47022.7	Alteration of any documents issued by an enforcing			X

	officer			
11. CCR 1392.1(d)	Selling product exempt from size, standard pack, container, and labeling requirements at a certified farmers market without being a certified producer		-	X
12. CCR 1392.1(e)	Failure to sell fresh fruits, nuts, and vegetables in compliance with maturity and quality requirements	2nd NC in 12 month		
13. CCR 1392.1(f)	Failure to sell agricultural products in compliance with quality and labeling requirements – (excludes fresh fruits, nuts, and vegetables)	2nd NC in 12 month		
14. CCR 1392.1(g)	Products sold that are not under exemption must comply with all regulations regarding quality and labeling	2nd NC in 12 month		
15. CCR 1392.4(a)	Certified producer selling product(s) not of their own production	-	-	X
16. CCR 1392.4(a)	Certified producer selling product(s) which they produced but do not have listed on their certified producer's certificate	2nd NC in 12 month		
17. CCR 1392.4(b)	Selling products at a certified farmers market not in compliance with specified California Health and Safety Code Requirements	X		
18. CCR 1392.4(c)	Selling nonagricultural products in the certified section of a certified farmers market	-	X	
19. CCR 1392.4(d)	Producer not having a valid Certified Producer's Certificate	-	-	X
20. CCR 1392.4(d)	Certified producer's embossed certificate not in possession and/or not conspicuously posted	2nd NC in 12 month		
21. CCR 1392.4(e)	Failure to use approved scale or sealed scale	-	X	
22. CCR 1392.4(f)1	A certified producer representing or being represented by more than two other certified producers in a 12-month period		X	
23. 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 whom one is selling	2nd NC in 12 month		
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 month		
25. CCR 1392.4(f)(3)	Failure to add name of another certified producer that the producer is selling for to his/her certificate	-	X	
26. 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	
27. 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		

28. CCR 1392.4(f)(7)	Commission sales / buying and selling between certified producers	-	-	X
29. CCR 1392.4(f)(9)	When selling on behalf of another producer, failure to keep required records for a period of three years	X		
30. CCR 1392.4(f)(10)	Failure to produce records for inspection upon demand	X		
31. CCR 1392.4(h)	Failure to post organic registration and/or documentation of organic certification when representing product as organic	X		
32. CCR 1392.4(i)	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		
33. CCR 1392.4(j)	Sale of sprouts with less than 50% having emerged	X		
34. CCR 1392.4(k)(l)	Not providing memorandum with required information		X	
35. CCR 1392.4(m)	Does not have required documentation on processed products		X	
36. CCR 1392.5(c)	Refusing to provide documentation	-	-	X
37. 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 CDFA and/or the County Agricultural Commissioner	X		
4. CCR 1392.8.1.	Failure to submit remittance with required information	X		
5. CCR 1392.9(a)(1)	Failure to ensure each seller is a Certified Producer, member of immediate family of Certified Producer, or employee of Certified Producer	2nd NC in 12 months	-	-
6. 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	-	-
7. CCR 1392.9(a)(3)	Failure to ensure the certified producer has in their possession a valid certified producer's certificate	2nd NC in 12 months	-	-
8. CCR 1392.9(a)(3)	Failure to ensure the Certified Producer posts a valid Certified Producer's Certificate	2nd NC in 12 months		
9. CCR 1392.9(a)(4)	Failure to ensure all products for sale by producer are listed on their certificate	2nd NC in 12 months	-	-

10. CCR 1392.9(a)(5)	Failure to ensure the producers are selling only approved non-certifiable ag. products	2nd NC in 12 months	-	-
11. 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	2nd NC in 12 months	-	-
12. 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 load lists for 18 months	2nd NC in 12 months	-	-
13. CCR 1392.9(c)	Operation of a CFM without possession of a current, valid CFM Certificate	-		X
14. 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		
16. FAC 47022	Failure to conform to the provisions of this chapter or the regulations adopted thereunder	2nd NC in 12 months of same violation		
17. FAC 47022.3	Falsify documents or false statements to obtain market Certificate	-	-	X
18. FAC 47022.6	Refusing to allow inspection of property	-	-	X
19_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. 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.

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

(c) Any producer shall provide, 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 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 issue an 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 embossed photocopies of the original certificate to comply with the provisions of this article.

(f) 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, 58101.5, 58102 and 58103, Food and Agricultural Code. Reference: Sections 42941, 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. 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 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.

(c) The county agricultural commissioner shall not issue a certificate for a certified farmers' market when notified that a permit for the operation of such market has been denied by an agency of local government.

(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.

(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.

(f) The certified farmers' market's rules and regulations shall contain:

(1) a 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.

(g) A current copy of the certified farmers' market's rules and regulations shall be sent to the Department of Food and Agriculture, ~~Fruit and Vegetable Quality Control Standardization~~ 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, ~~and~~ 47003 and 47004, 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 issuing, modifying, verifying, or renewing any certificate, including embossed photocopies, as set by the board of supervisors of that county.

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.

§ 1392.8.1. Certified Farmers' Market Fees.

(1) Every operator of every certified farmers' market shall remit to the Department of Food and Agriculture sixty cents ($0.60) for each certified producer represented by each certified producer's certificate and other agricultural producers participating in the market(s) on each market day for the entire quarter. 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

(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 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, 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, and ~~T~~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.

(2) 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.

(3) In addition to monthly interest charges referenced in Section 1392.8.1(2), 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, ~~or their~~ a member of the producer's immediate family ~~member~~, or an employee of the producer.

(2) Sells only certified and noncertifiable agricultural products.

(3) Has in ~~their~~ 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 ~~their~~ is or her possession listed on the certified producer's current, valid certificate.

(5) ~~Who sells~~ Sells, when selling noncertifiable agricultural products, only those products which were produced in accordance with the certified farmers' market's rules and regulations.

(6) ~~Who~~ When ~~represents~~ 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 ~~they are~~ 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).

(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.

(c) No person shall operate a certified farmers' market unless he or she has in his or her possession a current, valid certified farmers' market certificate issued by the county agricultural commissioner for that market.

(d) The operator of a certified farmers' market shall, upon the request of an enforcement officer, provide for review his or her current, valid certified farmers' market certificate at any time during the operation of a certified farmers' market.

(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.

(a) Every person or entity that enters into a partnership as defined in Section 1392.2(s), sharecropping, or similar contractual agreement with another person(s) or entity and that applies for a certified producer's certificate under such agreement shall provide the issuing agricultural commissioner, at the time of application, with proof of partnership as defined in the United States and California Tax Codes, or the Partnership's Federal Tax Identification Number and a copy of their current written agreement which shall contain the following:

(1) A clear, concise and accurate description of the property to be farmed. The description shall include the present use of the property, the dimensions, and the location of the property; and

(2) Partners shall demonstrate equitable risk by submitting a description of each party's financial and material resource input, which shall include the degree of involvement each party has in agricultural production; and

(3) The date of the agreement and the signatures of all parties involved; and

(4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties. The notarized signatures on the agreement of all parties executing the agreement.

(5) A statement of verification that the property or properties to be farmed by the partnership or producers cooperating under a similar contractual agreement are under the exclusive control of the partnership as a separate entity from its individual members.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, all parties listed on the certificate shall:

(1) Have entered into the agreement prior to planting of annual and biannual crops; and

(2) Have entered into the agreement 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) Have entered into the agreement prior to bloom of tree and vine crops; and

(4) Be engaged in agricultural production upon the land which is the subject of the agreement.

(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 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.

(a) Every person or entity who enters into a farm lease with another person(s) or entity and who applies for a certified producer's certificate under such agreement shall provide the issuing agricultural commissioner, at the time of application, with a copy of the current written lease agreement which shall contain the following:

(1) A clear and concise accurate description of the leased property. The description shall include the present use of the property, the dimensions of the leased property and the location; and

(2) The purchase price (cost) of the lease; and

(3) The date of the agreement and the signatures of all parties involved; and

(4) A guarantee of the signatures on the agreement by a notary public executed at the time of signing by all parties. The notarized signatures on the agreement of all executing the agreement.

(b) Notwithstanding the above, an enforcing officer representing the Department or agricultural commissioner may request such additional documentation as is reasonably necessary to show that the conditions of this article are being met.

(c) To qualify for a certified producer's certificate, the person applying for the certificate shall:

(1) Assume all financial risks associated with producing agricultural products; and

(2) Enter into the agreement prior to planting of annual and biannual crops; and

(3) Enter into the agreement 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 price to cut back of artichokes), and

(4) Enter into the agreement prior to bloom of tree and vine crops, and

(5) Perform agricultural production upon the land which is the subject of the agreement.

(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 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 to determine whether a violation of these provisions has occurred. The hearing process may review the actions of:

(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.

(c) The county agricultural commissioner, upon determination that a violation has been made in accordance with (a), above, may:

(1) Suspend and/or refuse, for a period of up to 18 months, to issue a certificate to the violator; and/or

(2) Suspend, for a period of up to 18 months, the privilege of participation, under the provisions of this article, of any person whose action resulted in the violation.

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.

§ 1392.11. Appeals.

Any person may appeal to the director for a hearing if aggrieved by any one of the following 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.

<u>(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.</u>

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, <u>47004.1,</u> 58101.5 and 58104, Food and Agricultural Code. Reference: Sections 42941, 58101, 58101.5, 58102, 58103 and 58104, Food and Agricultural Code.

§ 1392.12. Emergency Declaration.

(a) The director may, on an as needed, case by case basis, waive or modify specific restrictions within this

Article on the direct marketing of agricultural products, including, but not limited to, restrictions or limitations on production acreage and commodities, as well as certification requirements, if a declared plant, pest or animal quarantine, or a declared state of emergency, as defined by Government Code Section 8558, interferes with the normal operative effect of the rules.

(b) Any waivers or modifications shall be consistent with any quarantine, and the response to any declared state of emergency as defined by Government Code Section 8558.

(c) Prior to the utilization of any waivers or modifications, certified producers and certified farmers' markets shall enter into compliance agreements with California Department of Agriculture through the county agricultural commissioner in the county in which their certificates have been issued.

Note: Authority cited: Sections 407, 47000, 47001, 47002, 47003, 47004, 47005, 47005.1 and 47020, Food and Agricultural Code. Reference: Sections 47000, 47001, 47002, 47003, 47022, 47022.3 and 47022.6, Food and Agricultural Code.