

**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**  
**§1392.8.1 Certified Farmers' Market Fees.**

November 28, 2014

**NOTICE OF PROPOSED RULEMAKING**

NOTICE IS HEREBY GIVEN that the California Department of Food and Agriculture (Department) proposes to amend the proposed regulations described below after considering all comments, objections, and recommendations regarding the proposed actions.

**PUBLIC HEARING**

The Department has not scheduled a public hearing on this proposed action. However, the Department will hold a hearing if it receives a written request for a public hearing from any interested person, or his or her authorized representative, no later than 15 days before the close of the written comment period.

**WRITTEN COMMENT PERIOD**

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department. Comments may also be submitted via facsimile (FAX) at (916) 900-5345 or by e-mail to [steve.patton@cdfa.ca.gov](mailto:steve.patton@cdfa.ca.gov). The written comment period closes at **5:00 p.m. on January 12, 2015**. The Department will consider only comments received at the Department by that time. Submit comments to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5030; Fax: (916) 900-5345

**AUTHORITY AND REFERENCE**

Sections 14, 407, and 47001 of the Food and Agricultural Code authorize the Department to adopt these proposed regulations. The proposed regulations implement, interpret, and make specific Section 1392.8.1 of the Food and Agricultural Code.

**INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW**

This rulemaking action amends Title 3, Division 3, Chapter 1, Subchapter 4, Article 6.5,

### § 1392.8.1. Certified Farmers' Market Fees.

Section 14 of the Food and Agricultural Code authorizes the Department to adopt rules and regulations in accordance with the Administrative Procedure Act. Additional authority vested in the Food and Agricultural Code grants the California Department of Food and Agriculture Secretary the authority to amend or repeal rules and regulations.

Section 407 of the Food and Agricultural Code authorizes the Secretary of the Department to adopt such regulations as are reasonably necessary to carry out the provisions of the Food and Agricultural Code which the Secretary is directed or authorized to administer or enforce.

Section 47001 of the Food and Agricultural Code specifies, in part, that the Secretary of the Department may adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. These regulations may include provisions to ensure and maintain quality and wholesomeness of the products, and to ensure that the selling activities are conducted without fraud, deceptions, or misrepresentation.

The Food and Agriculture Code §47000-47003 provides opportunities for California farmers to market their agricultural products directly to consumers with exemptions for minimum size, labeling, standard pack, and container requirements. These exemptions allow farmers to sell their products directly to the consumer without the added expense of commercial preparation. There are over 2,000 certified producers and 800 CFMs in California.

CDFA is authorized to enforce the statutes for Direct Marketing, which include CFMs, under FAC Sections 47000-47062, which in part states, "The department should assist producers in organizing certified farmers' markets, field retail stands, farm stands, community-supported agriculture, and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs."

As such, the CFM Program ensures that certified producers and market operators are complying with laws and regulations, which are in place to assure an equitable marketplace for certified producers to conduct business and help promote consumer confidence. The Department provides oversight to the counties and has jurisdiction to enforce all pertinent laws and regulations; provides appeal review and hearings; and conducts investigations on complaints and alleged infractions.

In the fall of 2010, news reports highlighted instances of cheating at CFMs, including vendors selling fraudulently labeled products and reselling fruits and vegetables directly from wholesale markets. In response to these media reports, the Department held four listening sessions designed to solicit input for improving the CFM Program. Several common themes were echoed throughout the sessions – specifically that CDFA, county agricultural commissioners, and market managers should enhance enforcement,

communication, and education. Accordingly, many of the participants argued that the CDFA CFM fee of sixty cents (\$.60) for each certified producer certificate on each market day is not sufficient to guarantee adequate enforcement at CFMs throughout the state.

Upon conclusion of the listening sessions, the Department formed a CFM Technical Planning Committee for the purpose of reviewing various functions of the CFM Program (e.g., registration, enforcement, and administration) and evaluating current processes and procedures. The CFM Technical Planning Committee consisted of producers, market managers, agricultural commissioners, and industry affiliates. The CFM Technical Planning Committee spent a significant amount of time and effort reviewing mechanisms to prevent possible abuse at CFMs. It was discussed that the abuse could be a result of CDFA's inability to provide adequate enforcement and oversight due to its nominal annual revenue of approximately \$260,000.

The CFM Technical Planning Committee recommended statutory changes to alleviate discrepancies in how current inspection and enforcement provisions are applied from county to county and uniform funding mechanisms at both the state and local level. Additional statutory changes were deemed necessary to enhance compliance at CFMs by allowing the state to train and certify all CFM managers on an annual basis, provide training of county personnel, and develop and share educational material. In addition, the CFM Technical Planning Committee recommended that full cost recovery for county inspections should be legislatively mandated in an appropriate section of the FAC. On March 10, 2011, the CFM Technical Planning Committee presented its recommendations to the CFM Advisory Committee, which was endorsed by an 11 to 3 vote. In addition, the CFM Advisory Committee expressed support for a Department CFM fee that would not exceed four dollars (\$4.00) for each certified producer certificate on each market day.

Assembly Bill (AB) 1871 (Dickinson, Chapter 579, Statutes of 2014) creates a funding mechanism for counties to be reimbursed for enforcement activities outside of the certification process. This change brings the need for increased budget authority so that the CFM Program can contract with county agricultural commissioners for enforcement work not related to the certification of producers.

Benefits of the Proposed Action: The proposed regulatory action will create a funding mechanism for counties to be reimbursed for enforcement activities outside of the certification process. It will also expand current state enforcement capabilities. The benefits of this additional enforcement include increased consumer confidence, an equitable marketplace among producers, collaboration among state and county partners, level producer competitiveness and profitability; and, enhanced education and outreach efforts.

### **CONSISTENCY EVALUATION**

During the process of developing these regulations and amendments, the Department has conducted a search of any similar regulations on this topic and has concluded that

these regulations are both consistent and compatible with existing state regulations.

### **DISCLOSURES REGARDING THE PROPOSED ACTION**

The Department has made the following initial determinations:

Mandate on local agencies and school districts: None.

Cost or savings to any state agency: None.

Cost to any local agency or school district which must be reimbursed in accordance with Government Code sections 17500 through 17630: None.

Other nondiscretionary cost or savings imposed on local agencies: None.

Cost or savings in federal funding to the state: None.

Significant, statewide adverse economic impact directly affecting business including the ability of California businesses to compete with businesses in other states: None.

Cost impacts on a representative private person or business: The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

### **RESULTS OF THE ECONOMIC IMPACT ASSESSMENT/ANALYSIS**

The Department concludes that it is (1) likely that the proposal will create jobs and not eliminate existing business; (2) likely that this proposal will not create new business or expand current business opportunities; (3) likely that this proposal will not eliminate jobs; (4) Also, additional enforcement activities will protect consumers and the industry, and assure that consumers are purchasing produce direct from the farm. Finally, the proposed rulemaking will create an indirect impact to the protection of public health and safety.

Benefits of the Proposed Action: The proposed regulatory action will create a funding mechanism for counties to be reimbursed for enforcement activities outside of the certification process. It will also expand current state enforcement capabilities. The benefits of this additional enforcement include increased consumer confidence, an equitable marketplace among producers, collaboration among state and county partners, level producer competitiveness and profitability; and, enhanced education and outreach efforts.

Significant effect on housing costs: None.

### **SMALL BUSINESS DETERMINATION**

The Department has initially determined that the proposed changes to the regulations

would have no significant impact directly affecting small businesses. All Certified Farmers' Markets and vendors would be operating under the same regulatory structure with regards to the fee increase which the Department has calculated as minimal.

### **CONSIDERATION OF ALTERNATIVES**

In accordance with Government Code section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

The Department invites interested persons to present statements or arguments with respect to alternatives to the proposed regulations at the scheduled hearing or during the written comment period.

### **CONTACT PERSONS**

Inquiries concerning the proposed administrative action may be directed to:

Steve Patton, Compliance Chief  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5030; Fax: (916) 900-5345

The backup contact person for these inquiries is:

Laurel Rudolph, SSA  
Inspection and Compliance Branch  
California Department of Food and Agriculture  
1220 N Street, Sacramento, CA 95814  
Telephone: (916) 900-5030; Fax: (916) 900-5345

Please direct requests for copies of the proposed text of the regulations, the initial statement of reason, the modified text of the regulation, if any, or other information upon which the rulemaking is based to Danielle Chapman at the above address.

### **AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS**

The Department will have the rulemaking file available for inspection and copying throughout the rulemaking process at its office at: 2800 Gateway Oaks Drive, Suite 100, Sacramento, CA 95833. As of the date this notice is published in the Notice Register, the rulemaking file consists of this notice; the proposed text of the regulations; the initial statement of reasons; and petitions received from industry. Copies may be obtained by

contacting Laurel Rudolph at the address or phone number listed above.

**AVAILABILITY OF CHANGED OR MODIFIED TEXT**

After considering all timely and relevant comments received, the Department may amend the proposed regulations substantially as described in this notice. If the Department makes modifications, which are sufficiently related to the originally proposed text, it will make the modified text (with the changes clearly indicated) available to the public for at least 15 days before the Department adopts the regulations as revised. Please send requests for copies of any modified regulations to the attention of Danielle Chapman at the address listed above. The Department will accept written comments on the modified regulations for 15 days after the date on which they are made available.

**AVAILABILITY OF FINAL STATEMENT OF REASONS**

Upon its completion, copies of the Final Statement of Reasons may be obtained by contacting Danielle Chapman at the address listed above.

**AVAILABILITY OF DOCUMENTS ON THE INTERNET**

Copies of the Notice of Proposed Rulemaking, the Initial Statement of Reasons, and the text of the regulations in underline and strikeout can be accessed through the Department's website at: <http://www.cdfa.ca.gov/is/Regulations.html>