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**FOOD AND AGRICULTURAL CODE
CHAPTER 10.5 – DIRECT MARKETING [47000-47062]**

ARTICLE 1. General Provisions [47000-47003]

Section 47000.

The Legislature finds and declares all of the following with regard to the direct marketing of agricultural products:

- (a) Direct marketing of agricultural products benefits the agricultural community and the consumer by, among other things, providing an alternative method for growers to sell their products while benefiting the consumer by supplying quality produce at reasonable prices.
- (b) Direct marketing is a good public relations tool for the agricultural industry that brings the farmer face-to-face with consumers and other end users.
- (c) The direct marketing potential of a wide variety of California-produced agricultural products should be maximized and encouraged.
- (d) Farm stands allow farmers to sell fresh produce and eggs grown on their farm as well as other food products made with ingredients produced on or near the farm, thus enhancing their income and the local economy.
- (e) The permitting, regulating, and operating of certified farmers' markets provide the essential core and foundation for the creation and operation of additional nonagricultural vending activities that are ancillary but contiguous to the certified farmers' market, thereby providing a larger community event amenity for business districts and additional revenue for the operators of certified farmers' markets.
- (f) The department should maintain a direct marketing program and encourage the sale and purchase of California-grown fresh produce and other California-produced agricultural products.
- (g) It is the intent of the state to promote the purchase and consumption of California-grown produce and to promote access to California-produced agricultural products. Restaurants and nonprofit organizations can assist in bringing California-grown products to all Californians.
- (h) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.
- (i) 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.
- (j) The department is encouraged to establish an ad hoc advisory committee to assist the department in establishing regulations affecting direct marketing of products and to advise the secretary in all matters pertaining to direct marketing.

Section 47000.5.

The following definitions apply to this chapter, unless otherwise specified:

- (a) (1) "Agricultural product" means a fresh or processed product produced in California, including fruits, nuts, vegetables, herbs, mushrooms, dairy, shell eggs, honey, pollen, unprocessed bees wax, propolis, royal jelly, flowers, grains, nursery stock, raw sheared

wool, livestock meats, poultry meats, rabbit meats, and fish, including shellfish that is produced under controlled conditions in waters located in California.

(2) 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 agricultural products for purposes of this chapter. 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 for purposes of this chapter.

(b) "Practice of the agricultural arts" means 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.

(c) "Producer" means 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. A person or entity that rents, leases, or otherwise acquires the right to possession of property essentially only for or limited to the period of the harvest season of the agricultural products produced on that property shall not be considered a producer under the provisions of this chapter.

Section 47001.

(a) The secretary may adopt regulations to encourage the direct sale by farmers to the public of all types of California agricultural products. It is the intent of the Legislature that, in adopting those regulations, the secretary shall endeavor to keep costs incurred by farmers and certified farmers' market operators to a minimum, recognizing that any administrative costs imposed on farmers and certified farmers' market operators are generally passed on in the form of increased prices to the public, thus economically benefiting neither the public nor the farmer.

(b) In accordance with the intent expressed in subdivision (a), the secretary may adopt regulations clarifying the provisions of this chapter, including the adoption of regulations for maintaining the quality and wholesomeness of the products offered for sale and promoting and fostering honest selling activities for those products.

(c) The secretary may enter into a cooperative agreement with a county agricultural commissioner to carry out the provisions of this chapter, including, but not limited to, administration, investigations, inspections, registrations, and assistance pertaining to direct marketing producers and outlets. Compensation under the cooperative agreement shall be paid from assessments and fees collected and deposited pursuant to this chapter and shall provide reimbursement to the county agricultural commissioner for associated costs exclusive of the costs of certification and minimum inspections required pursuant to Section 47020.

(d) Upon reasonable suspicion of a violation of Section 890, a certified farmers' market operator may contract with a county agricultural commissioner for a special onsite field

or storage verification inspection of a direct marketing producer selling in a certified farmers' market operated and controlled by the operator. All contracts and contract fees are subject to the discretion of the county agricultural commissioner in the county where the verification inspections are being requested.

Section 47002.

California farmers registered or certified pursuant to this chapter as direct marketing producers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, and shall be exempt from size, standard pack, container, and labeling requirements at an outlet or location operated by an individual, organization, or entity that is regulated pursuant to this chapter or is recognized by a regulation adopted pursuant to Section 47001 and is otherwise authorized by local ordinances, subject to the following conditions:

(a) All fresh fruits, nuts, and vegetables sold shall comply with the California Code of Regulations governing maturity and quality.

(b) No exemption granted by this section supersedes the provisions of federal marketing orders, state marketing orders, or any health and safety laws, regulations, or ordinances.

(c) All fresh fruits, nuts, and vegetables sold in closed consumer containers shall be labeled with the name, address, and ZIP Code of the producer, and a declaration of identity and net quantity of the commodity in the package.

(d) If a farmer selling produce pursuant to this section implements any exemption to size, standard pack, container, or labeling requirements as provided by this section, those sales may only be conducted as direct sales to any of the following:

(1) Consumers who are end users.

(2) Individuals, organizations, or entities that subsequently sell the produce directly to end users.

(3) Individuals, organizations, or entities that distribute the produce directly to end users at no cost to those end users.

(e) A farmer selling produce under paragraph (2) or (3) of subdivision (d) shall provide the individual, organization, or entity a memorandum that lists the identity of the producer, the address of the producer, and the identity and quantity of the produce purchased. A bill of sale or a container label including this information shall meet the requirements of this subdivision.

Section 47003.

The secretary may establish qualifications for persons selling products directly to the public whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and other direct marketing outlets and distributors may likewise be subject to qualifications.

ARTICLE 1.5. Certified Farmers' Markets [47004 - 47005.4]

Section 47004.

(a) Certified farmers' markets are California agricultural product point-of-sale locations that are registered under the provisions of Section 47020 and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(b) The operator of a certified farmers' market shall establish a clearly defined marketing area where only agricultural products may be sold. Only the producer or the lawful authorized representative of the producer may sell agricultural products within the area defined as a certified farmers' market. Sales of agricultural products purchased from another individual or entity shall not occur within a certified farmers' market, and an agricultural product producer or product dealer shall not sell his or her agricultural products to another individual or entity with the understanding or knowledge that the products are intended to be resold in a certified farmers' market in violation of this chapter or the regulations adopted pursuant to this chapter. Every producer selling within a certified farmers' market shall comply with Section 47020.

(c) All vendors of agricultural products selling within a certified farmers' market shall do all of the following:

(1) Post a conspicuous sign or banner at the point of sale that states the name of the farm or ranch, the county where the farm or ranch maintains the production grounds that produced the products being offered for sale is located, and a statement that "We Grew What We Are Selling" or "We Raised What We Are Selling" or "We Grow What We Sell" or similar phrases that clearly represent that the farm or ranch is only selling agricultural products that they themselves have grown or raised on California land that they possess or control. Product sales by different farms at the same vendor stand shall separate the products from each farm or ranch and correspondingly post the required sign or banner in direct relationship with the sales display of the products produced by each farm.

(2) Ensure that all processed agricultural products that they offer for sale state in a clear manner by package label, container label, or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm or ranch is located. In addition, every processed product shall identify on a package label, container label, or on bulk sales signage the registration number or other identity reference of the facility where the food was processed, or another required labeling statement or information, in accordance with Sections 110460, 114365, and 114365.2 of the Health and Safety Code, or, in the case of meat or poultry products, the identity of the facility where the meat or poultry products were cut and wrapped, in accordance with the applicable United States Department of Agriculture or State of California inspection standards, or, in the case of dairy products, the identity of the facility where the dairy products were manufactured or processed.

(3) Ensure all products being represented or offered for sale as organic are clearly labeled or have conspicuous and posted point-of-sale signage identifying the products as organic.

(d) The representations required pursuant to subdivision (c) shall be subject to the provisions and penalties specified in Section 890.

(e) An operator of a certified farmers' market that also operates, manages, or otherwise controls a separate sales activity or vending event or marketing area in close proximity, adjacent, or contiguous to the operator's certified farmers' market shall not allow the sale or distribution of fresh whole fruits, nuts, vegetables, cultivated mushrooms, herbs, and flowers by vendors selling within those sales activity or vending event or marketing areas.

(f) The operator of a certified farmers' market shall keep an accurate participation record of the individual direct marketing producers whose agricultural products were presented for sale in their market each market day. The operators shall submit to the department a quarterly report of the registration numbers and participation frequency of the direct marketing producers whose agricultural products were presented for sale in the operator's market during that past quarter. The department shall create and maintain online capability for reporting.

(g) Operators of certified farmers' markets may establish rules and procedures that are more restrictive and stringent than state laws or regulations governing or implementing this chapter, so long as the rules and procedures are not in conflict with state laws or regulations.

(h) Except for certified farmers' markets operated by government agencies, nonprofit entities and other qualified operators of certified farmers' markets shall be considered private entities and may take actions, adopt rules, and impose requirements they deem necessary for the proper and honest operation of their market, subject to the application of any state or other laws. Government agency operators of certified farmers' markets are subject to applicable state laws, the regulations and laws of the governing agency, and other laws governing the conduct and actions they may take as a governmental entity.

Section 47005.

An enforcing officer may enter and inspect any place or conveyance where products are produced, stored, packed, delivered for shipment, loaded, shipped, transported, or sold pertaining to a certified producer's certificate over which they have jurisdiction.

Section 47005.1.

An enforcing officer may inspect all products, containers, and equipment found in any place or conveyance to determine compliance with this chapter or the regulations adopted thereunder. The enforcing officer may also take representative samples of products and containers, which may be subject to any method of inspection or testing as deemed necessary.

Section 47005.2.

An enforcing officer may seize and hold as evidence all or any part of any container, pack, load, bulk lot, consignment or shipment of products which is packed, delivered for shipment, loaded, shipped, transported, or sold to secure the conviction of the party the enforcing officer knows or believes has violated or is violating any provision of this chapter or the regulations adopted thereunder.

Section 47005.3.

Any evidence that is seized under the authority of this chapter or the regulations adopted thereunder by an enforcing officer in any county may be admitted into evidence in any action taken by any other county.

Section 47005.4.

Nothing in this chapter shall be interpreted to preclude the creation and keeping of additional information that a certified farmers' market operator may endeavor itself to create and keep, or to contractually require a vendor to provide additional information as a condition to selling in the operator's farmers' market.

Section 47010.

(a) The secretary shall establish a committee that shall be known as the Certified Farmers' Market Advisory Committee. The primary goals of the committee shall be all of the following:

(1) Promote the demand and consumption of agricultural products purchased directly from producers at certified farmers' markets.

(2) Ensure that existing and future certified farmers' markets are primarily maintained for the benefit of the producers selling their products within those markets.

(3) Ensure that honest and fair marketing of products occurs within certified farmers' markets and within an ancillary vending activity under the operation and control of a certified farmers' market operator.

(b) The committee shall be composed of 14 members and their alternates. The secretary shall endeavor to appoint six members and their alternates who shall be producers or representatives of agricultural organizations that represent producers, six members and their alternates who shall be certified farmers' market operators or representatives of the operator, one public member, and one member and his or her alternate who shall be a county agricultural commissioner. An alternate member shall serve at a committee meeting only in the absence of, and shall have the same powers and duties as, the member for whom he or she is designated as alternate. All appointees shall serve two-year terms or at the pleasure of the secretary. Members appointed to fill vacancies shall serve the remainder of the term.

(c) The secretary shall make an effort to include members who represent geographical diversity and diverse agricultural products.

(d) The committee shall meet at the request of the secretary. It shall meet at least once each year.

(e) The committee may appoint its own officers, including a chairperson, a vice chairperson, a secretary, and any other officers it deems necessary. The committee may adopt rules that it deems are necessary for the conduct of its meetings and functions to carry out the objectives of this chapter.

Section 47011.

The Certified Farmers' Market Advisory Committee shall be advisory to the secretary on matters pertaining to direct marketing of agricultural products at certified farmers' markets and may make recommendations, including, but not limited to, the following:

- (a) The amendment, repeal, or adoption of legislation and regulations that relate to the primary goals stated in subdivision (a) of Section 47010.
- (b) Administrative policies and procedures that relate to the primary goals stated in subdivision (a) of Section 47010, including the inspection of producers and certified farmers' markets.
- (c) Administrative civil penalties for violations of certified farmers' market laws and regulations.
- (d) Program and enforcement fees collected pursuant to Section 47021.
- (e) Statewide review of certified farmers' market promotion and enforcement actions.
- (f) The annual budget of the department's certified farmers' market program to carry out the goals and purposes of this chapter.
- (g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

Section 47013.

The members of the committee and any alternate shall serve without compensation, but may be reimbursed by the department for travel expenses incurred in the performance of their duties.

ARTICLE 3. Certificates [47020 - 47021]

Section 47020.

(a) An operator of a certified farmers' market shall annually register with the department by applying for and obtaining a certificate from the county agricultural commissioner's office in the county in which the certified farmers' market is located. The application shall include the times and location of the market, the name and contact information for the operator of the market, and the agent for service of process for the operator. Upon approval of an application, the county agricultural commissioner shall issue to the operator a certified farmers' market certificate.

(b) A certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from the date of issue, and may be renewed annually thereafter. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at least once for every six months of operation. At the time of application or renewal, the county agricultural commissioner shall provide a schedule of fees that reflects an estimate of expenses for inspections and may charge a certification and inspection fee equal to the actual expenses incurred.

(c) (1) (A) Before selling at a certified farmers' market, a producer shall register with the department by applying for and obtaining a certificate from the county agricultural commissioner's office in the county in which the producer's land or facility is located. The application shall include a declaration by the producer that he or she is knowledgeable of and intends to produce in accordance with good agricultural

practices, as outlined in the Small Farm Food Safety Guidelines published by the department. Upon approval of an application, the county agricultural commissioner shall issue to the producer a certified producer's certificate.

(B) A declaration made pursuant to subparagraph (A) shall not be used to infer that the producer is not required to comply with other state or federal laws relative to food safety and good agricultural practices.

(2) As part of obtaining or renewing a certified producer certificate, a producer farming fruit, vegetables, nuts, herbs, and similar crops shall annually submit to the county agricultural commissioner's office in the county in which the producer's land or facility is located information requested by the department about the specific crops that he or she will harvest or intends to harvest for sale directly to the public. The secretary may promulgate regulations specifying the information a producer is required to submit.

(3) A certified producer's certificate issued by a county agricultural commissioner shall be valid for up to 12 months from the date of issue and may be renewed annually thereafter. The county agricultural commissioner in each county shall perform at least one onsite inspection for all new certified producer's certificate applicants, and may perform additional inspections as needed of the property or properties listed on the certified producer's certificate issued in his or her county as deemed appropriate by the county agricultural commissioner to verify production of the commodities being sold at a certified farmers' market or the existence in storage of the producer's actual harvested production, or both, of any product being sold at a certified farmers' market. Where practical or purposeful, verification inspections shall be made when the actual harvest or sale of the commodity in question is occurring. The county agricultural commissioner shall provide to the producer a schedule of fees that reflects an estimate of expenses for certification or inspection at the time of application or renewal or before any needed additional verification inspection, and may charge a certification and inspection fee equal to the actual expenses incurred.

(d) Renewal of a certified farmers' market certificate or certified producer's certificate may be denied by either the department or a county agricultural commissioner if a certified farmers' market or a producer is delinquent in the payment of the required state fee or a county certification and inspection fee or administrative civil penalty authorized pursuant to this chapter. The certificate may be eligible for renewal when all outstanding balances and associated penalties or administrative fines have been paid to the department or the respective county or counties.

Section 47021.

(a) Every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of vendors participating and selling goods under the authority and management of the certified farmers' market operator participating on each market day for the entire previous quarter. The fee shall be two dollars (\$2) for each vendor whose products were presented for sale on each market day. A certified farmers' market operator may directly recover all or part of the fee from the participating vendors. An operator of a certified farmers' market located in a county with a population of less than 400,000 that allows only vendors of agricultural products produced by producers on land located in the same county as the certified farmers' market may petition the secretary for a vendor fee of one dollar (\$1). The petition shall include a statement of verification of the information upon which the

petition is based by the county agricultural commissioner in the county where the certified farmers' market is located.

(b) An operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due shall pay to the department a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department to cover the reasonable costs to carry out this chapter, including all of the following actions undertaken by the department:

(1) The coordination of the Certified Farmers' Market Advisory Committee or any ad hoc direct marketing advisory committee.

(2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.

(3) The adoption of regulations to carry out the provisions of this chapter pertaining to certified farmers' markets.

(4) Hearings from actions taken to enforce this chapter.

(5) The maintenance of a current statewide listing of certified farmers' markets locations.

(6) The maintenance of a current statewide listing of producers who have been certified.

(7) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.

(8) Other actions, including the maintenance of special fund reserves, that are recommended by the Certified Farmers' Market Advisory Committee or any ad hoc direct marketing advisory committee and approved by the department for purposes of carrying out this chapter pertaining to certified farmers' markets.

(9) Investigation and enforcement expenses, including expenses incurred by any county agricultural commissioner for actions conducted pursuant to this chapter.

ARTICLE 3.5. Violations [47022 - 47022.7]

Section 47022.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to prepare, pack, place, deliver for shipment, deliver for sale, load, ship, transport, cause to be transported, or sell any products in bulk, or in any container or subcontainer, unless such products conform to the provisions of this chapter or the regulations adopted thereunder.

Section 47022.1.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to deceptively prepare, pack, place, deliver for shipment, load, ship, transport, or sell any products.

Section 47022.2.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to mislabel any products, or place or have any false or misleading statement or designation of quality, grade, trademark, or trade name, on any wrapper or container, or on the label or lining of any container of any product, or on any placard that is used in connection with, or which has reference to, any products, bulk lot, bulk load, load, arrangement, or display of products.

Section 47022.3.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to falsify any documents or to make any statement, representation, or assertion orally, by public outcry, proclamation, or in writing, or by any other manner or means whatever, that concerns the quality, size, maturity, condition, or any other matter that relates to products which is false, deceptive, or misleading in any particular.

Section 47022.4.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to remove or dispose any products, or their containers to which any warning tag or notice has been affixed by an enforcing officer, or to remove the warning tag or notice from the place where it is affixed, except under a written permit to do so from an enforcing officer or under his or her specific direction.

Section 47022.5.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit any container, subcontainer, load, or display of products to the inspection of an enforcing officer, or to refuse to stop any vehicle which contains products for the purpose of inspection by an enforcing officer.

Section 47022.6.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to refuse to submit to inspection by an enforcing officer of any property used in the sales, storage, or production of agricultural products.

Section 47022.7.

It is unlawful for any person when operating under the provisions of this chapter or the regulations adopted thereunder to alter in any respect any certified producer's certificate, any certified farmers' market certificate, any notice of violation, report, statement, or other document that is referred to in this chapter, which is issued by an enforcing officer.

ARTICLE 4. Enforcement [47025 - 47026]

Section 47025.

(a) In lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or certified farmers' market certificates pursuant to any other authority, the secretary or the county agricultural commissioner may impose an administrative civil penalty, suspension of certification, or both, on a person who violates this chapter or any regulation implemented pursuant to this chapter.

(b) A civil penalty pursuant to this section shall be levied in proportion to the violation, measured as either "serious," "moderate," or "minor."

(1) "Serious" violations are repeat or intentional violations, punishable by a civil penalty of not less than four hundred one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(2) "Moderate" violations are repeat violations or violations that are not intentional, punishable by a civil penalty of not less than one hundred fifty-one dollars (\$151), but not more than four hundred dollars (\$400) per violation.

(3) "Minor" violations are violations that are procedural in nature, punishable by a civil penalty of not less than fifty dollars (\$50), but not more than one hundred fifty dollars (\$150) per violation.

(c) Before a civil penalty or suspension is imposed pursuant to this section, the person charged with the violation shall receive written notice of the proposed action including the nature of the violation and, if applicable, the amount of the proposed civil penalty. The person shall have the right to request a hearing within 20 days after receiving notice of the proposed action. A notice that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or if the notice is not accepted at that address. If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and to present evidence on his or her own behalf. If a hearing is not timely requested, the commissioner may take the action proposed without a hearing.

(d) If the person, upon whom the commissioner imposed a civil penalty or suspension, requested and appeared at a hearing, the person may appeal the commissioner's decision to the secretary within 30 days of the date of receiving a copy of the commissioner's decision. The following procedures apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the secretary.

(2) The appellant and the commissioner, at the time of filing the appeal or within 10 days thereafter or at a later time prescribed by the secretary, may present the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the commissioner's decision.

(3) The secretary may grant oral arguments upon application made at the time written arguments are filed.

(4) If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given at least 10 days before the date set

therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the secretary.

(5) The secretary shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2), that he or she has received. If the secretary finds substantial evidence in the record to support the commissioner's decision, the secretary shall affirm the decision.

(6) The secretary shall render a written decision within 45 days of the date of appeal or within 15 days of the date of oral arguments or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the secretary may affirm the commissioner's decision, modify the commissioner's decision by reducing or increasing the amount of the civil penalty levied, if applicable, so that it is within the secretary's guidelines for imposing civil penalties, or reverse the commissioner's decision. Any civil penalty increased by the secretary shall not be higher than that proposed in the commissioner's notice of proposed action given pursuant to subdivision (c). A copy of the secretary's decision shall be delivered or mailed to the appellant and the commissioner.

(8) Any person who does not request a hearing with the commissioner pursuant to a civil penalty or suspension imposed under subdivision (c) may not file an appeal to the secretary pursuant to this subdivision.

(9) Review of a decision of the secretary may be sought by the appellant within 30 days of the date of the decision pursuant to Section 1094.5 of the Code of Civil Procedure.

(e) After the exhaustion of the appeal and review of procedures provided in this section, the commissioner, or his or her representative, may file a certified copy of a final decision of the commissioner that directs the payment of a civil penalty or provides for the imposition of a suspension, and, if applicable, a copy of any decision of the secretary, or his or her authorized representative, rendered on an appeal from the commissioner's decision and a copy of any order that denies a petition for a writ of administrative mandamus, with the clerk of the superior court of any county. Judgment shall be entered immediately by the clerk in conformity with the decision or order. No fees shall be charged by the clerk of the superior court for the performance of any official service required in connection with the entry of judgment pursuant to this section.

(f) In addition to the civil penalties prescribed in subdivision (b), or a suspension imposed pursuant to this section, the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

(g) "Person," as used in this section, means any applicant for a certified producers' certificate or certified farmers' market certificate, producer of agricultural products, certified producer, family member or employees of a certified producer, certified farmers' market manager, or certified farmers' market operator engaged or involved in the direct marketing of agricultural products at a certified farmers' market pursuant to this chapter.

ARTICLE 5. Other Direct Marketing Outlets and Distributions [47030 - 47050]

Section 47030.

Field retail stands are producer-owned and operated premises located at or near the point of production established in accordance with local ordinances and land use codes.

Section 47050.

Farm stands are field retail stands, as defined in Section 47030, that sell or offer for sale California agricultural products grown or produced by the producer, and also sell or offer for sale nonpotentially hazardous prepackaged food products from an approved source or bottled water or soft drinks. All agricultural products, processed or otherwise, sold at a farm stand shall be consistent in manner and character with the intent of this chapter.

ARTICLE 6. Community-Supported Agriculture [47060 - 47062]

Section 47060.

For purposes of this article, the following definitions apply:

- (a) "Community-supported agriculture program" or "CSA program" means a program under which a registered California direct marketing producer, or a group of registered California direct marketing producers, grow food for a group of California consumer shareholders or subscribers who pledge or contract to buy a portion of the future crop, animal production, or both, of a registered California direct marketing producer or a group of registered California direct marketing producers.
- (b) "Single-farm community-supported agriculture program" means a program in which all delivered farm products originate from and are produced at the farm of one registered California direct marketing producer, and no more than a de minimis amount of delivered farm products originate at the farms of other registered California direct marketing producers.
- (c) "Multi-farm community-supported agriculture program" means a program in which all delivered farm products originate from and are produced at one or more farms of a group of registered California direct marketing producers who declare their association as a group at the time of their annual certification or by amending the annual certification during the year.
- (d) "Farm" means a farm operated by a registered California direct marketing producer or a group of registered California direct marketing producers.

Section 47061.

(a) A producer that markets whole produce, shell eggs, or processed foods through a single-farm community-supported agriculture program or multi-farm community-supported agriculture program shall comply with all of the following:

(1) Register annually with the department as a California direct marketing producer, which shall include both of the following:

(A) A statement specifying whether the producer is part of a single-farm community-supported agriculture program or multi-farm community-supported agriculture program.

(B) (i) A declaration by the producer that he or she is knowledgeable and intends to produce in accordance with good agricultural practices, as outlined in the small farm food safety guidelines published by the department.

(ii) A declaration made pursuant to this subparagraph shall not be used to infer that the producer is not required to comply with any other state or federal laws relative to food safety and good agricultural practices.

- (2) Label the consumer box or container used to deliver farm products to the consumer with the name and address of the farm delivering the box or container.
 - (3) Maintain the consumer boxes or containers in a condition that prevents contamination.
 - (4) Inform consumers, either by including a printed list in the consumer box or container or by delivering a list electronically to the consumer, of the farm of origin of each item in the consumer box or container.
 - (5) Maintain records that document the contents and origin of all of the items included in each consumer box or container, in accordance with department regulations.
 - (6) Comply with all labeling and identification requirements for shell eggs and processed foods imposed pursuant to the provisions of the Health and Safety Code, including, but not limited to, the farm's name, physical address, and telephone number.
- (b) A registered California direct marketing producer that is in compliance with this section and in good standing shall be deemed an approved source, as defined in Section 113735 of the Health and Safety Code.
 - (c) A potentially hazardous food, as defined in Section 113871 of the Health and Safety Code, shall not be included in a consumer box distributed pursuant to this article unless that food has been produced, processed, and handled pursuant to all applicable federal, state, and local food safety requirements.
 - (d) Poultry and rabbit meat produced pursuant to Part 2 (commencing with Section 25401) of Division 12, and other meats produced pursuant to Chapter 4.1 (commencing with Section 18940) of Part 3 of Division 9, that are marketed under this chapter shall comply with handling requirements established in the small farm food safety guidelines published by the department, as described in paragraph (2) of subdivision (b) of Section 47062.
 - (e) An enforcement officer, as defined in Section 113774 of the California Retail Food Code (Part 7 (commencing with Section 113700) of Division 104 of the Health and Safety Code) may enter into and inspect a community-supported agriculture program in response to a public food safety complaint. The enforcement officer may recover reasonable costs associated with that inspection from the registered California direct marketing producer operating the community-supported agriculture program.
 - (f) Nothing in this section shall be construed to remove the responsibility of a community-supported agriculture program from obtaining all required permits and licenses, including, but not limited to, a produce handler license or a cottage food permit.

Section 47062.

- (a) The fee for, or the fee for amendment to, the annual registration of a registered California direct marketing producer shall be set by regulation enacted by the secretary that is reflective of the actual cost of the processing of registration or amendment to the registration, but in no event shall either fee exceed one hundred dollars (\$100) annually.
- (b) Fees collected pursuant to this article shall be deposited in the Department of Food and Agriculture Fund and shall be used by the department for the administration of this article. Administration of this article shall include all of the following:
 - (1) Create and maintain a registration system for California direct marketing producers.
 - (2) In consultation with the State Department of Public Health and local health officers or designees, publish, periodically update, and post on the Department of Food and

Agriculture's Internet Web site small farm food safety guidelines on, but not limited to, safe production, processing, and handling of both nonpotentially hazardous and potentially hazardous foods.

(3) Coordination expenses incurred relative to meetings of any ad hoc direct marketing advisory committee established by the secretary.

(c) All or part of the annual registration fee shall be waived if fees are paid by a California direct marketing producer to the department for registration or certification under any other program under the purview of this chapter.

(d) The provisions of this article shall be complied with regardless of any waiver of fees granted.

(e) The adoption, amendment, or repeal of any fee pursuant to this section shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. An order to adopt, amend, or repeal regulations concerning the fee pursuant to this section shall be transmitted within 30 days by the secretary to the Office of Administrative Law. The Office of Administrative Law shall file the order promptly with the Secretary of State without further review pursuant to Article 6 (commencing with Section 11349) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. The order shall contain all of the following:

(1) Indicate that the regulations are adopted, amended, or repealed pursuant to this chapter.

(2) State that the order is being transmitted for filing.

(3) Request that the Office of Administrative Law publish a notice of the filing of the order and print an appropriate reference in Title 3 of the California Code of Regulations.

CALIFORNIA CODE OF REGULATIONS
ARTICLE 6.5. Direct Marketing

Section 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 Agricultural 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 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 and 47020, Food and Agricultural Code. Reference: Sections 821, 42941, 47000, 47000.5 and 47021, Food and Agricultural Code.

Section 1392.1. Direct Marketing Authorized.

- (a) Notwithstanding other provisions of this Chapter, this article authorizes producers or certified producers of certified or noncertifiable agricultural products to sell their products, as defined in this article, directly to the public 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) Fresh fruits, nuts, and vegetables may be sold directly to the public 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, or the authorized representative of the certified producer, at a vendor stand at a certified farmers' market; or
 - (2) The certified producer of the agricultural products at an outlet or location; or
 - (3) The producer of the agricultural products at a field retail stand, or farm stand located at or near the point of production.
- (c) 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 in Subchapter 4, (commencing with section 1359) of Chapter 1, of Division 3, of Title 3 of the California Code of Regulations, except as provided in subsection 1392.4(i).
- (d) Fresh fruits, nuts, and vegetables which are sold or offered for sale at a certified farmers' market, a field retail stand, a farm stand at or near the point of production, or an outlet or location, must comply with Subchapter 4, (commencing with section 1359) of Chapter 1, of Division 3, of Title 3 of the California Code of Regulations governing maturity, quality, and consumer package labeling.
- (e) All agricultural products, as defined in subsection 1392.4(j), sold or offered for sale at a certified farmers' market, a field retail stand, a farm stand located at or near the

point of production, or an outlet or location, must comply with all applicable laws and regulations.

(f) 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.

Section 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 the public 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(s) of the week, and hours of operation where agricultural products are sold by the producers or certified producers directly to the public, 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, months of operation, day(s) of the week, and hours of operation as 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; and
- (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, 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. A person or entity that rents, leases, or otherwise acquires the right to possession of property essentially only for or limited to the period of the harvest season of the agricultural products produced on that property shall not be considered a producer under the provisions of this chapter.

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

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

(g) 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.

(h) The Public. A person who purchases and receives agricultural products at a field retail stand, a farm stand at or near the point of production, at a certified farmers' market, or an outlet or location, 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(i).

(i) Direct Marketing. The sale:

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

(4) At an outlet or location of agricultural products by a certified producer to the public or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

(j) Agricultural Products. 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, raw sheared wool, 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 subsection 1392.2(l) and subsection 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 agricultural products for purposes of this Chapter.

(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 for purposes of this Chapter.

(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, herbs, cultivated mushrooms, shell eggs, honey, cut flowers, unprocessed grains, and nursery stock.

(m) Noncertifiable Agricultural Products. Noncertifiable agricultural products include all certified agricultural products that have been processed, any products that are produced from trees, vines, or plants of a certified agricultural product (including flowers and processed products), dairy, pollen, unprocessed beeswax, propolis, royal jelly, raw sheared wool, livestock meats, poultry meats, rabbit meats, and fish, including shellfish that is produced under controlled conditions in waters located in California. The noncertifiable agricultural products shall meet the definition provided in subsection 1392.2(j).

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

(o) Market Operator. One or more certified producers, a nonprofit organization, or a local government agency who operates a certified farmers' market. The market operator is the financially responsible party and shall ensure the market's compliance with all applicable statutes and regulations, and applicable enforcement actions would be brought against the market operator.

If the market operator is more than one certified producer, a nonprofit organization, or a local government agency, the market operator shall designate an authorized representative and an agent for service of process, which shall be listed on the certified farmers' market certificate.

(p) Authorized Representative of the Market Operator. A person under the authority and management of the market operator who is designated to conduct business on the operator's behalf, which includes, but is not limited to: the market manager, the agent for service of process of the operator, a member of the operator's board of directors, and an employee of the operator.

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

(r) 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.

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

(t) Practice of the Agricultural Arts. 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 seedlings which are in containers or plugs less than 2" in

diameter.

(u) 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 the public or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. Such agricultural products shall be produced by practice of the agricultural arts upon land that the partnership, as a separate entity, exclusively controls.

(v) 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.

(w) 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.

(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.

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

(i) Spice. Spice shall be defined as any granulated or powdered aromatic plant products used in food preparation. Spices include, but are not limited to the following salts or spices: chili powder, black pepper, ginger, garlic, onion, jalapeno, cinnamon and nutmeg.

(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.

(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.

(x) At or Near the Point of Production. For the purpose of this article, "at or near the point of production" means not beyond the first paved county or primary road.

(y) Outlet or location. For the purpose of this article, an "outlet or location" means an approved location that is regulated pursuant to this chapter, that is operated by a certified producer, in which only the certified producer may directly market their agricultural products to the public.

(z) Enforcing Officer. For the purpose of this article, "an enforcing officer" means the secretary; or any county agricultural commissioner, their deputies, and inspectors, who under the supervision and control of the secretary, are authorized under this division to carry out the enforcement of this chapter.

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.

Section 1392.3. Where Direct Marketing Permitted. [Repealed]

HISTORY

1. Repealer filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).

Section 1392.4. Conditions of Direct Marketing.

(a) Except as provided in subsection (e) below, a producer or certified producer may sell or offer to sell, at a certified farmers' market, a field retail stand, a farm stand at or near the point of production, or an outlet or location, only agricultural products which he or she produced to the public or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. To sell certifiable agricultural products at a certified farmers' market or an outlet or location, a producer shall obtain a certified producer's certificate from the county agricultural commissioner where the commodities are produced.

(1) The authorized representative(s) of the certified producer shall only sell the certified producer's agricultural products at a certified farmers' market.

(2) The certified producer is responsible for the actions of the authorized representative(s) of the certified producer and any violations and associated penalties and/or suspensions that stem from the actions of the authorized representative(s) of the certified producer, while selling on behalf of the certified producer at a certified farmers' market.

(3) All certifiable agricultural products that are sold at a certified farmers' market, or an outlet or location, must be produced by the certified producer.

(4) All certifiable agricultural products that are sold at a certified farmers' market, or an outlet or location, must be listed on the certified producer's certified producer's certificate.

(5) All noncertifiable agricultural products, that are sold in the defined marketing area where only agricultural products may be sold, must be produced by the producer, aside from exceptions listed in subsection 1392.2(w).

(6) The sale of nonagricultural products shall not be permitted in the defined marketing area where only agricultural products may be sold at a certified farmers' market.

(b) An authorized representative of the certified producer may only sell on behalf of one certified producer per certified farmers' market, per market day, unless operating under subsection 1392.4(e).

(c) The certified producer's embossed photocopy certificate or the certified producer's photocopy certificate with the county seal affixed to it shall accompany the certified agricultural products during transportation and at the point of sale.

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

(e) A certified farmers' market may allow, or prohibit, a certified producer 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:

(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 conspicuously posted valid certificate and conspicuously posted sign or banner 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 farmers' market.

(4) The name of the certified producer who is selling the certified agricultural 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 certified producer, selling for another certified producer shall not sell or offer for sale, at the same certified farmers' market, on the same day, the same commodity, variety/type, or product(s).

(7) 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.

(8) Buying and reselling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall be a fixed amount and not related to the volume or value of the products sold. A documented agreement, signed by both certified producers, shall be in place prior to the commencement of sales, and shall include reimbursable expenses covered by the payment.

(9) 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.

(10) A certified producer who sells certified agricultural products on behalf of

another certified producer or whose certified agricultural 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 as listed on the valid 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 as listed on the valid certified producer's certificate.

(iii) Names of both certified producers involved, as listed on the valid certified producer's certificate.

(11) A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the secretary or county agricultural commissioner.

(f) 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, in accordance with the Code of Federal Regulations, Title 7, §205.101 (1-1-2020 Edition), which is hereby incorporated by reference, 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 enforcing officer, be made available for review at any time during participation in a certified farmers' market.

(g) 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, in accordance with the Code of Federal Regulations, Title 7, §205.101, 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 enforcing officer, be made available for review at any time during participation in a certified farmers' market.

(h) 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.

(i) 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, bill of sale, or container label in accordance with Section 47002(e) of the Food and Agricultural Code. The memorandum, bill of sale, or container label must list all of the following:

- (1) Identity of the producer;
- (2) Address of the producer;

- (3) Identity of the product purchased;
- (4) Quantity of the product purchased; and
- (5) Date transaction occurred.

(j) A certified producer shall not fail to provide the memorandum, bill of sale, or a container label so described and under the circumstances set forth in subsection (i) of this section and shall, under any circumstances, issue a memorandum, bill of sale, or a container label, 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.

(k) Every person selling certifiable agricultural products within a certified farmers' market shall, at the point of sale:

- (1) Conspicuously post their valid certified producer's certificate; and
- (2) Conspicuously post a legible sign or banner that states:
 - (i) The name of the farm or ranch, as listed on the valid certified producer's certificate and "doing business as" name ("dba") (if applicable), as listed on the valid certified producer's certificate; and
 - (ii) The production county where the products being offered for sale were produced; and
 - (iii) A statement of "We Grow What We Sell" or a similar phrase.

(l) A seller of processed agricultural products shall state in a clear manner by package label, container label, or bulk sales signage that they consist only, with the exception of incidental flavorings and necessary preservatives, of agricultural products grown or raised by the farm or ranch selling them, the farm or ranch name, and the city where the farm or ranch is located. In addition, every processed product shall identify on a package label, container label, or on bulk sales signage the registration number or other identity reference of the facility where the food was processed, or another required labeling statement or information, in accordance with Sections 110460, 114365, and 114365.2 of the Health and Safety Code, or, in the case of meat or poultry products, the identity of the facility where the meat or poultry products were cut and wrapped, in accordance with the applicable United States Department of Agriculture or State of California inspection standards, or, in the case of dairy products, the identity of the facility where the dairy products were manufactured or processed. He or she shall have a copy of the above required 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 subsection 1392.2(w), 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.)

(m) Within 48 hours of the conclusion of each market day, each certified producer or the authorized representative of the certified producer participating in the sale of agricultural products at a certified farmers' market shall provide the market operator an itemized list of all products sold at the certified farmers' market.

- (1) The product list shall state the name of the certified producer, as listed on the valid certified producer's certificate, certified producer's certificate number, market name, date of market, the commodity, variety/type, and quantity of each

product sold at the market, including all processed agricultural products. For certifiable products, the commodity, variety/type, and quantity of each product sold must be listed in the same unit of measure or count as it appears on the valid certified producer's certificate.

(n) The secretary or a county agricultural commissioner may deny the issuance of a certificate to any certified producer or 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.

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.

Section 1392.4.1 Administrative Civil Penalties for Direct Marketing

HISTORY

1. Repealer filed 5-5-20; ; operative 5-5-20 pursuant to Government Code section 11346.2(d) (Register 2019, No. 49-Z).

Section 1392.5. Producer Certification Procedures.

(a) A producer may become certified by applying to the county 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 automatically becomes registered with the California 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, or an outlet or location.

(1) Any revocation or suspension of a certified producer's certificate by the county agricultural commissioner or secretary, pursuant to Food and Agricultural Code section 47025, shall cause the concurrent revocation or suspension of the certified producer's registration with the California Department of Food and Agriculture.

(2) Certified producers shall notify the county agricultural commissioner within 30 days of any change of business address to update their certified producer's certificate.

(3) Certified producers shall provide the county agricultural commissioner with a list of all authorized representatives who are authorized to sell on their behalf.

(b) The certificate and application shall be on a form authorized by the secretary. Upon certification, the certified producer and all authorized representatives of the certified producer selling on behalf of the certified producer shall comply with the terms of this article, and the form must include the following:

(1) Producer name; farm or ranch name; dba (if applicable); business address, including city, zip code; phone number; e-mail address (if applicable); and fax number (if applicable);

(2) All production sites, including total acreage per production site, and storage locations;

- (3) All commodities in alphabetical order by common name and identified by variety/type, if known;
 - (4) Estimated amount/unit grown per commodity; estimated production per commodity; harvest season; season altering devices (if applicable) and months in storage (if applicable); and
 - (5) Authorized counties where commodities may be sold; certified producers the certificate holder may sell for; certified producers authorized to sell the certificate holder's commodities; the certificate number; and date declared.
- (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, upon the review of a producer's 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 the certified producer's certificate.
- (f) The county agricultural commissioner shall issue an embossed photocopy of the original certified producer's certificate or a photocopy of the original certified producer's certificate with the county seal affixed to it 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 valid photocopies of the original certificate from the issuing county to comply with the provisions of this article.
- (g) A certified producer's certificate shall be valid for up to 12 months from the date of issue.
- (h) The issuing county agricultural commissioner shall send a photocopy of the original certificate to each destination county listed on the certified producer's certificate and to the California Department of Food and Agriculture.
- (1) The issuing county agricultural commissioner shall provide each destination county and the California Department of Food and Agriculture with the updated business address when reported by the certificate holder, within 10 business days.

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47001, 47002, 47003 and 47020, Food and Agricultural Code. Reference: Sections 42941, 47000 and 47000.5, Food and Agricultural Code.

Section 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 automatically becomes registered with the California Department of

Food and Agriculture. The certificate shall indicate that the marketplace is a certified farmers' market.

(1) The issuing county agricultural commissioner shall send a photocopy of the original certified farmers' market certificate to the California Department of Food and Agriculture.

(i) The issuing county agricultural commissioner shall provide the California Department of Food and Agriculture with the updated mailing address when reported by the certificate holder, within 10 business days.

(2) Any revocation or suspension of a certified farmers' market certificate by the county agricultural commissioner or secretary, pursuant to Food and Agricultural Code section 47025, shall cause the concurrent revocation or suspension of the certified farmers' market registration with the California Department of Food and Agriculture.

(3) Market operators shall notify the county agricultural commissioner within 30 days of any change of mailing address to update their certificate.

(b) The signed application/certificate shall be made by the proposed operator(s) of a certified farmers' market on a form authorized by the secretary. Upon certification, the applicant agrees to comply with all terms of this article, and the form must include the following:

(1) The name of the market operator, operator mailing address, phone number, fax number (if applicable), website address (if applicable), physical address, and email address (if applicable);

(2) The market name, market mailing address, phone number, fax number (if applicable), email address (if applicable), and the name of the market manager;

(3) The market location; including city, county, and cross streets; months of operation; days of operation; hours of operation; and the estimated number of vendors per market day;

(4) Applicant's printed name, designation of whether the person filling out the form is the applicant or the applicant's authorized representative, signature, and date;

(5) A map that clearly locates and identifies the defined marketing area where only agricultural products may be sold; and

(6) Documentation of qualification to operate a certified farmers' market as defined in the California Code of Regulations Section 1392.2(a).

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

(f) If the governing body of a certified farmers' market or the market operator promulgates market rules, the rules shall specify procedural criteria pertaining to:

(1) Admission of producers to the market(s).

(2) Admission of agricultural products to the market(s).

- (3) Imposition of a fine or suspension or expulsion of producer(s) from the market(s).
- (4) Allowance of a certified producer selling on behalf of another certified producer as provided in subsection 1392.4(e).
- (5) A clause, which states that the governing body or the market operator shall implement and enforce all rules pertaining to the operation of a certified farmers' market in a fair and equitable manner.
- (6) Procedures for taking action(s) shall include:
 - (i) Written notice to the vendor of the alleged violation(s) by setting forth the factual basis of the proposed penalty;
 - (ii) Market appeal procedure which specifies;
 - (A) A reasonable time period to request an appeal;
 - (B) If an appeal is requested, an opportunity to dispute the alleged violation(s) and/or the proposed penalty; and
 - (C) A short, written statement of the decision.

Note: Authority cited: Sections 14, 407, 42681, 42682, 42684, 47000, 47002, 47003, 47004, 47020 and 47025, Food and Agricultural Code. Reference: Section 42941, Food and Agricultural Code.

Section 1392.7. Certificates Issued.

1. Repealer filed 5-5-20; operative 5-5-20 pursuant to Government Code section 11346.2(d) (Register 2019, No. 49-Z).

Section 1392.8. Fees.

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

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

§ 1392.8.1. Certified Farmers' Market Fees.

(a) Every operator of every certified farmers' market shall remit to the California 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. This includes each vendor participating and selling goods at the market operator's certified farmers' market or a separate sales activity that is concurrently operated, adjacent to, or contiguous, to the certified farmers' market, which is under the control of the market operator, the authorized representative of the market operator, or an individual or entity that is empowered by the market operator.

- (1) Goods shall include tangible, material products.
 - (i) Distribution of materials with no monetary exchange shall not be

considered goods for purposes of this article.

(2) The fee shall be submitted within 30 days after the end of each quarter, and shall be submitted with a form authorized by the secretary, and must contain the following information:

- (i) Name of market operator, as listed on the certified farmers' market certificate;
- (ii) Market certificate number, as listed on the certified famers' market certificate;
- (iii) Name and address of the market, as listed on the certified farmers' market certificate;
- (iv) Name of market manager, as listed on the certified farmers' market certificate;
- (v) Market day(s) and hours of operation, as listed on the certified farmers' market certificate;
- (vi) Quarterly period for which the report is submitted;
- (vii) A list of each participating certified producer, their certified producer's certificate number and issuing county, the dates the certified producer participated in the market for the quarter, and the total number of days that the certified producer participated for the entire quarter; a list of each participating producer offering for sale non-certifiable agricultural products, the products being sold, the dates the producer participated in the market for the quarter, and the total number of days that the producer participated for the entire quarter; and the total number of non-agricultural vendors that participated, per market day, for the entire quarter;
- (viii) Amount of fees submitted; and
- (ix) Signature of market operator or the authorized representative of the market operator.

(b) 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.

(c) In addition to monthly interest charges referenced in Section 1392.8.1(b), 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 an additional one hundred dollars (\$100) 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.

Section 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 defined marketing area where only agricultural products may be sold:

- (1) Is a producer, a certified producer, or an authorized representative of the

certified 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) When selling noncertifiable agricultural products, sells only those products produced in accordance with subsection 1392.4.

(6) When a certified producer is representing another certified producer, sells in accordance with subsection 1392.4(e).

(7) Issues dated memorandum(s), bill(s) of sale, or a container label(s) in compliance with subsections 1392.4 (i) and (j).

(8) Is in compliance with applicable signage requirements under subsection 1392.4 (k).

(b) The operator of a certified farmers' market shall obtain from each certified producer or the authorized representative of the certified producer participating in the sale of agricultural products, in the defined marketing area where only agricultural products may be sold, an itemized list of all products sold, per subsection 1392.4(m), within 48 hours of the conclusion of each market day.

(1) The market operator shall keep the list of products sold for a minimum of eighteen months.

(2) Upon the request of an enforcing officer, the market operator shall, within 72 hours, submit the itemized product list for inspection.

(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.

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.

Section 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(u), 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 county 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 must be entered into prior to the commencement of agricultural production, and 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, and 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 valid photocopies of certificates issued to the partnership shall be surrendered to the issuing county 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.

Section 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 county agricultural commissioner, at the time of application, with a copy of the current written lease agreement, which must be entered into prior to the commencement of agricultural production, and 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, and 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 valid photocopies of certificates shall be surrendered to the issuing county agricultural commissioner.

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

Section 1392.10. Administrative Civil Penalties for Direct Marketing.

When taking enforcement action pursuant to 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 the length of the suspension. Repeat violations of the same code section, that occurred within a two-year period from the date of the last violation which resulted in a penalty, shall be escalated to the next violation class.

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

(1) "Serious". For the purposes of this article, serious violations are repeat or intentional violations. Intentional violations are those which preclude or interfere with enforcement, or cause false, misleading or deceptive business practices. Serious violations include but are not limited to: all repeated moderate violations of the same code section that occurred within a two-year period from the date of the last violation which resulted in a penalty; selling agricultural products not of own production in the defined marketing area where only agricultural products may be sold; falsifying or altering documents or making false statements; refusing inspection by an enforcing officer; buying and reselling agricultural products between certified producers or producers of noncertifiable agricultural products; operating without a valid certificate; and failure to submit quarterly forms and fees to the California Department of Food and Agriculture.

(i) Serious violations are punishable by an administrative civil penalty of not less than four hundred and one dollars (\$401) and up to a maximum of one thousand dollars (\$1,000) per violation.

(ii) Serious violations are punishable by suspension of certification for a period of not less than six months and not more than 18 months per action.

(2) "Moderate". For the purposes of this article, moderate violations are repeat violations or those which undermine enforcement. Moderate violations include but are not limited to: all repeated minor violations of the same code section that occurred within a two-year period from the date of the last violation which resulted in a penalty; deceptively packing products; mislabeling products; selling nonagricultural products in the defined marketing area where only agricultural products may be sold; using an unapproved scale; failure to meet certification requirements when certified producers are selling on each other's behalf, failure to provide memorandums; and failure to report changes in address, leases, or partnerships to county agricultural commissioner.

(i) Moderate violations are punishable by an administrative civil penalty of not less than one hundred and fifty-one dollars (\$151) and up to a maximum of four hundred dollars (\$400) per violation.

(3) "Minor". For the purposes of this article, minor violations have minimal adverse effects on the public or equitable competition in the marketplace. Minor violations include but are not limited to: transporting, packing, or selling products that do not meet maturity, quality, or labeling standards, selling an agricultural product combined with a nonagricultural product which materially increases the price of the product in the defined marketing area where only agricultural products may be sold; selling certifiable agricultural products not listed on the certificate, failure to conspicuously post or have in possession the required certificate/registration/signage; and market rules not in compliance, failure to complete product list requirements, and failure to meet market sales and record keeping requirements when certified producers are selling on each other's behalf.

(i) Minor violations are punishable by an administrative civil penalty of not less than fifty dollars (\$50) and up to a maximum of one hundred and fifty dollars (\$150) per violation.

(b) Tables A and B provide the level of severity of an initial violation and the corresponding penalty range for "serious," "moderate," and "minor" violation classes. The Description of Violation column in Tables A and B are 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 (Certified Producers)

For additional information regarding assessing administrative civil penalties,
refer to section 1392.10

FAC Code Section	CCR Code Section	Description of Violation	Minor Violation Class	Moderate Violation Class	Serious Violation Class	Penalty/ Suspension
1. FAC §47002	-	Transport, pack, or sell products that do not meet maturity or quality standards; or closed consumer container requirements (IRQ)	x			\$50 - \$150 penalty
2. FAC §47022	-	Prepare, pack, place, deliver for shipment, load, ship, transport or sell any products that do not conform to the provisions of this chapter or the regulations adopted thereunder	x			\$50 - \$150 penalty
3. FAC §47022.1	-	Deceptively prepare, pack, place, deliver for shipment, load, ship, transport or sell any products		x		\$151 - \$400 penalty
4. FAC §47022.2	-	Mislabeling products; false/misleading statements on products		x		\$151 - \$400 penalty
5. FAC §47022.3	-	Falsify documents or make false statements regarding size, maturity, condition, or quality of products offered for sale			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
6. FAC §47022.4	-	Unlawfully removing warning tag/notice from product/container affixed by enforcing officer			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
7. FAC §47022.5	-	Refusing to submit any container/load/products for inspection or refuse to stop any vehicle for inspection			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
8. FAC §47022.6	-	Refusing to allow inspection of property used in sales/storage/production of agricultural products			x	\$401 - \$1,000 penalty and 6 - 18 months suspension

9. FAC §47022.7	-	Altering any document referred to in this chapter issued by an enforcing officer			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
10.FAC §47002	3 CCR §1392.1(b)	Selling product exempt from size, standard pack, container, and labeling requirements: at a certified farmers' market without being the certified producer or the authorized representative of the certified producer; at an outlet or location without being the certified producer; at a field retail stand/farm stand without being the producer			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
11. FAC §47002	3 CCR §1392.1(c)	Fresh fruits, nuts, vegetables sold for commercial resale that do not comply with all regulations regarding applicable size, standard pack, standard container, and labeling requirements	x			\$50 - \$150 penalty
12. FAC §47002(a)	3 CCR §1392.1(d)	Fresh fruits, nuts, vegetables sold that do not comply with regulations regarding maturity, quality, and consumer package labeling.	x			\$50 - \$150 penalty
13. FAC §47002	3 CCR §1392.1(e)	Selling agricultural products that do not comply with applicable laws and regulations	x			\$50 - \$150 penalty
14. FAC §47000.5(a)(2)	3 CCR §1392.2(k)(1)	Selling agricultural products combined with nonagricultural products or services that materially increases the purchase price of the product in the defined marketing area where only agricultural products may be sold	x			\$50 - \$150 penalty

15. FAC §47020(c)(1)(A)	3 CCR §1392.4(a)	Producer selling certifiable agricultural product(s) at a certified farmers' market/outlet or location without obtaining a valid certified producer certificate			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
16. FAC §47002	3 CCR §1392.4(a)(3)	Certified producer selling certifiable agricultural product(s) at a certified farmers' market/outlet or location they did not produce			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
17. FAC §47020(c)(2)	3 CCR §1392.4(a)(4)	Certified producer selling product(s) not listed on their Certified Producer's Certificate	x			\$50 - \$150 penalty
18. FAC §47002	3 CCR §1392.4(a)(5)	Selling noncertifiable agricultural products producer did not produce, within the defined marketing area where only agricultural products may be sold			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
19. FAC §47004(b)	3 CCR §1392.4(a)(6)	Selling nonagricultural products in the defined marketing area where only agricultural products may be sold			x	\$151 - \$400 penalty
20. FAC §47004(b)	3 CCR §1392.4(b)	Authorized representative of the certified producer selling on behalf of more than one certified producer per certified farmers' market, per market day			x	\$151 - \$400 penalty
21. FAC §47002	3 CCR §1392.4(c)	Certified producer not having a valid Certified Producer's Certificate in possession while selling and transporting certifiable agricultural products	x			\$50 - \$150 penalty
22. FAC §47003	3 CCR §1392.4(d)	Failure to use approved scale or sealed scale			x	\$151 - \$400 penalty
23. FAC §47004(c)(1)	3 CCR §1392.4(e)(1)	Certified producer selling on behalf of more than two other certified producers in a 12-month period			x	\$151 - \$400 penalty

24. FAC §47004(c)(1)	3 CCR §1392.4(e)(2)	Failure to separate and identify, at the point of sale, one's own products from that of another certified producer for whom one is selling, and conspicuously posting each certified producer's valid certified producer's certificate and signage at a certified farmers' market	x			\$50 - \$150 penalty
25. FAC §47004(c)(1)	3 CCR §1392.4(e)(3)	Failure to list (on certified producer's certificate) name of the certified producer for whom the certified producer is conducting sales for		x		\$151 - \$400 penalty
26. FAC §47004(c)(1)	3 CCR §1392.4(e)(4)	Failure to list (on certified producer's certificate) the name of the certified producer who is authorized to conduct sales on their behalf		x		\$151 - \$400 penalty
27. FAC §47004(c)(1)	3 CCR § 1392.4(e)(5)	Certified producer selling/offering for sale product for another certified producer in greater volume than the certified producer is offering for sale	x			\$50 - \$150 penalty
28. FAC §47004(c)(1)	3 CCR § 1392.4(e)(6)	Certified producer selling/offering for sale the same commodity as another certified producer when selling on their behalf (at same certified farmers' market, on the same day)	x			\$50 - \$150 penalty
29. FAC §47004(b)	3 CCR §1392.4(e)(8)	Buying and reselling agricultural products between certified producers (when selling on behalf of another certified producer)			x	\$401 - \$1,000 penalty and 6 - 18 months suspension

30. FAC §47004(c)(1)	3 CCR §1392.4(e)(10)	Failure to keep required records for a period of not less than three years: when selling certified agricultural products on behalf of another certified producer; or whose certified agricultural products are sold by another certified producer	x			\$50 - \$150 penalty
31. FAC §47020(c)(2)	3 CCR §1392.4(e)(11)	Failure to produce for inspection records upon demand of an enforcing officer	x			\$50 - \$150 penalty
32. FAC §47004(c)(3)	3 CCR §1392.4(f)	Failure to post organic registration and/or documentation of organic certification when representing product as organic	x			\$50 - \$150 penalty
33. FAC §47004(c)(3)	3 CCR §1392.4(g)	Failure to post organic registration and/or documentation of organic certification when selling for another certified producer representing product as organic	x			\$50 - \$150 penalty
34. FAC §47002(a)	3 CCR §1392.4(h)	Sale of sprouts with less than 50% of seeds/legumes/nuts having emerged	x			\$50 - \$150 penalty
35. FAC §47002(e)	3 CCR §1392.4(i)	Not providing memorandum with required information		x		\$151 - \$400 penalty
36. FAC §47002(e)	3 CCR §1392.4(j)	Failure to provide memorandum, bill of sale, or container label when a certified producer sells a single agricultural commodity in excess of 25 lbs.		x		\$151 - \$400 penalty

37. FAC §47020(c)(1)(A)	3 CCR §1392.4(k)(1)	Failure to conspicuously post valid certified producer's certificate at point of sale	x			\$50 - \$150 penalty
38. FAC §47004(c)(1)	3 CCR §1392.4(k)(2)(i), (k)(2)(ii), (k)(2)(iii)	Failure to clearly and conspicuously post signage stating: farm/ranch name as listed on valid certified producer's certificate and dba (if applicable) as listed on valid certified producer's certificate; production county as listed on valid certified producer's certificate; "We Grow What We Sell" or similar phrase	x			\$50 - \$150 penalty
39. FAC §47004(c)(2)	3 CCR §1392.4(l)	Does not have required documentation on processed products		x		\$151 - \$400 penalty
40. FAC §47020(c)(2)	3 CCR §1392.5(a)(2)	Failure to report to county agricultural commissioner change in business address within 30 days		x		\$151 - \$400 penalty
41. FAC §47022.6	3 CCR §1392.5(c)	Refusing to provide documentation upon request of an enforcing officer or market manager			x	\$401 - \$1,000 penalty and 6 - 18 months suspension

42. FAC §47020(c)(2)	3 CCR §1392.9.1(d)	Failure to immediately report to county agricultural commissioner any change in Partnership Agreement and/or surrender invalid certificates to issuing county agricultural commissioner		x		\$151 - \$400 penalty
43. FAC §47020(c)(2)	3 CCR §1392.9.2(d)	Failure to immediately report to county agricultural commissioner any change in Farm Lease Agreement and/or surrender invalid certificates to issuing county agricultural commissioner		x		\$151 - \$400 penalty

Table B (Market Operators)

For additional information regarding assessing administrative civil penalties, refer to section 1392.10

<i>FAC Code Section</i>	<i>CCR Code Section</i>	<i>Description of Violation</i>	<i>Minor Violation Class</i>	<i>Moderate Violation Class</i>	<i>Serious Violation Class</i>	<i>Penalty/ Suspension</i>
1. 47004(e)	-	Allowing the sale/distribution of fresh whole fruit, nuts, vegetables, cultivated mushrooms, herbs, or flowers by vendors selling in the separate sales activity that is concurrently operated, adjacent to, or contiguous, to the certified farmers' market			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
2. FAC §47022.6	-	Refusing to allow inspection of property used in sales of agricultural products			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
3. FAC §47022.7	-	Altering any document referred to in this chapter issued by an enforcing officer			x	\$401 - \$1,000 penalty and 6 - 18 months suspension
4. FAC §47020(a)	3 CCR §1392.6(a)(3)	Failure to report to county agricultural commissioner change in mailing address within 30 days		x		\$151 - \$400 penalty
5. FAC §47004(g)	3 CCR 1392.6(f)	Market rules not in compliance (if rules were established)	x			\$50 - \$150 penalty
6. FAC §47004(f); §47021(a)	3 CCR §1392.8.1.	Failure to remit quarterly forms and/or fees or failure to remit quarterly forms with required information			x	\$401 - \$1,000 penalty and 6 - 18 months suspension

7. FAC §47004(b)	3 CCR §1392.9(a)(1)	Failure to ensure each seller of agricultural products is a producer, a certified producer, or an authorized representative of the certified producer	x			\$50 - \$150 penalty
8. FAC §47004(b)	3 CCR §1392.9(a)(2)	Allowing the sale of nonagricultural products in the defined marketing area where only agricultural products may be sold		x		\$151 - \$400 penalty
9. FAC §47003	3 CCR §1392.9(a)(3)	Failure to ensure the certified producer has in the certified producer's possession a valid certified producer's certificate that is posted at the point of sale	x			\$50 - \$150 penalty
10. FAC §47003	3 CCR §1392.9(a)(4)	Failure to ensure each certifiable agricultural product in possession of the certified producer is listed on the certified producer's valid Certified Producer's Certificate	x			\$50 - \$150 penalty
11. FAC §47002; §47004(c)(2)	3 CCR §1392.9(a)(5)	Failure to ensure producers are selling only noncertifiable agricultural products produced in accordance with section 1392.4	x			\$50 - \$150 penalty

12. FAC §47004(c)(1)	3 CCR §1392.9(a)(6)	Failure to ensure that (when a certified producer is selling on behalf of another certified producer) the certified producer separates and identifies, at the point of sale, each certified producer's products, and conspicuously posts each certified producer's valid certified producer's certificate and signage at a certified farmers' market	x			\$50 - \$150 penalty
13. FAC §47004(f)	3 CCR §1392.9(b)	Failure to collect itemized list of all products sold from each certified producer or the authorized representative of the certified producer within 48 hours of the conclusion of each market day	x			\$50 - \$150 penalty
14. FAC §47004(f)	3 CCR §1392.9(b)(1)	Failure to keep itemized list of all products sold (from certified producer) for not less than 18 months	x			\$50 - \$150 penalty
15. FAC §47004(f)	3 CCR §1392.9(b)(2)	Failure to submit a certified producer's itemized product list for inspection upon the request of an enforcing officer within 72 hours	x			\$50 - \$150 penalty
16. FAC §47020(a)	3 CCR §1392.9(c)	Operating a certified farmers' market without possession of a current, valid Certified Farmers' Market Certificate			x	\$401 - \$1,000 penalty and 6 - 18 months suspension

17. FAC §47022.6	3 CCR §1392.9(d)	Failure to present, upon request of an enforcing officer, a current, valid Certified Farmers' Market Certificate for review during operation of a certified farmers' market	x			\$50 - \$150 penalty
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Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code. Reference: Sections 42651, 43003 and 47025, Food and Agricultural Code.

§ 1392.10.1. Appeal of a California Department of Food and Agriculture Notice of Proposed Action and Informal Hearing Process.

(a) The secretary may, at any time, issue a written notice of proposed action which shall include the nature of the violation and if applicable the amount of the proposed penalty and/or length of the proposed suspension in accordance with Food and Agricultural Code section 47025(c).

(b) A notice of proposed action shall be sent by certified mail, or a mail delivery service that tracks the delivery, to the last known address on file with the Department, of the person charged. The notice shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(c) The person charged may appeal a notice of proposed action, including an administrative civil penalty or suspension, for any violation, within 20 calendar days after receiving the notice of proposed action, by submitting a written request to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, as provided in the notice of proposed action. Any objection to the California Department of Food and Agriculture's selection of the informal hearing procedure shall be made in writing to the Legal Office of Hearings and Appeals and shall be resolved by the Hearing Officer prior to the hearing, pursuant to Government Code section 11445.30.

(d) Failure to submit a timely request for a hearing constitutes a waiver of the appellant's right to contest the notice of proposed.

(e) At least 10 business days before the hearing, the California Department of Food and Agriculture shall provide a notice of the informal hearing to the appellant providing the date, location, and time of the informal hearing.

(f) A notice of informal hearing which is sent to the last known address, on file with the Department, of the appellant, shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(g) Any documents to be considered by the hearing officer shall be received by the Legal Office of Hearings and Appeals at least 3 business days prior to the scheduled informal hearing. Any documents not timely submitted may be considered at the discretion of the hearing officer.

(h) Informal hearings shall be conducted as follows:

(1) The informal hearing shall be presided over and conducted by a hearing officer designated by the secretary.

(2) The standard of proof to be applied by the hearing officer shall be preponderance of the evidence unless statutes or regulations applicable to the determination provide a higher standard.

(3) A teleconference line shall be made available.

(4) Hearings shall be recorded by the California Department of Food and Agriculture. A transcript of the recording or an electronic copy of the recording shall be provided to any interested party upon written request.

(i) The decision of the hearing officer shall be in writing, issued within 30 calendar days after the conclusion of the hearing, and shall be effective immediately.

(j) Review of the secretary's decision may be sought by the appellant within 30 calendar days of the date of the decision and order, pursuant to Section 1094.5 of the Code of Civil Procedure.

(k) In addition to the administrative civil penalties set forth in Food and Agricultural Code section 47025(b), or a suspension imposed pursuant to Food and Agricultural Code

section 47025, the appellant may be required to cover the cost of the administrative hearing, unless the decision of the secretary or county agricultural commissioner is overturned.

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code; Section 11400.20, Government Code. Reference: Section 47025, Food and Agricultural Code; Sections 11445.20 and 11445.30, Government Code; and Section 115, Evidence Code.

§ 1392.10.2. Appeal of a County Agricultural Commissioner's Decision.

(a) A person, upon whom the county agricultural commissioner imposed an administrative civil penalty or suspension, who requested and appeared at a hearing, may appeal the county agricultural commissioner's decision to the secretary by submitting a written appeal request within 30 calendar days of the date of receiving a copy of the county agricultural commissioner's decision to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, 1220 N Street, Suite 315, Sacramento, California 95814.

(b) The appellant shall file a copy of the appeal with the county agricultural commissioner at the same time it is filed with the secretary.

(c) The appeal request shall:

- (1) Be in writing;
- (2) Be signed by the appellant or his or her authorized agent;
- (3) State the grounds for the appeal; and
- (4) Include a copy of the county agricultural commissioner's decision.

(d) Both the appellant and the county agricultural commissioner, at the time of filing the appeal or within 10 calendar days thereafter, may submit the record of the hearing and a written argument to the secretary stating the ground for affirming, modifying, or reversing the county agricultural commissioner's decision. All documents must be submitted to the Legal Office of Hearings and Appeals of the California Department of Food and Agriculture, 1220 N Street, Suite 315, Sacramento, California 95814.

(e) The appellant or the county agricultural commissioner, or both, may request oral argument and such request must be made at the time written arguments are filed as set forth above.

(f) The secretary may grant or deny oral arguments upon application made at the time written arguments are filed.

(g) If an application to present an oral argument is granted, the California Department of Food and Agriculture shall provide written notice of the time and place for the oral argument and shall be given at least 10 calendar days before the date set. The times of oral argument may be altered by agreement of the parties.

(h) If an application to present an oral argument is denied, the California Department of Food and Agriculture shall provide written notice of the denial and state the reasons why it was denied.

(i) A notice of oral argument, which is sent to the last known address, on file with the Department, of the appellant, shall be considered received even if delivery is refused or if the notice is not accepted at that address.

(j) The secretary shall:

- (1) Decide the appeal on the record of the county agricultural commissioner's hearing, the written evidence, and the written argument submitted as described

in (d) above.

(2) Affirm, modify or reverse the county agricultural commissioner's decision.

(3) Affirm the county agricultural commissioner's decision if the secretary finds substantial evidence in the record to support the county agricultural commissioner's decision. Substantial evidence means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

(4) Render a written decision within 45 calendar days of the date the appeal is received by the California Department of Food and Agriculture's Legal Office of Hearings and Appeals or within 15 calendar days of the date of oral arguments or as soon thereafter as practicable.

(5) Deliver or mail a copy of the decision and order to the appellant and the county agricultural commissioner.

(k) Review of the secretary's decision may be sought by the appellant within 30 calendar days of the date of the decision and order pursuant to Section 1094.5 of the Code of Civil Procedure.

(l) In addition to administrative civil penalties or a suspension imposed, the appellant may be required to cover the cost of the administrative hearing unless the decision of the secretary or county agricultural commissioner is overturned.

Note: Authority cited: Sections 407 and 47001, Food and Agricultural Code; and Section 11400.20, Government Code. Reference: Section 47025, Food and Agricultural Code.

Section 1392.11. Appeals.

1. Repealer filed 5-5-20; (Register 2019, No. 49-Z).

Section 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.

Section 1392.13. Community-Supported Agriculture Registration and Fees.

A registration fee shall be collected to fund a Community-Supported Agriculture registration program.

(a) Every producer of a single-farm or multi-farm community-supported agriculture program shall remit to the Department of Food and Agriculture a registration fee of seventy-five dollars (\$75.00) annually. The fee is due January 1 and shall be submitted on a form approved by the director. Registration is valid for one full calendar-year: January 1 through December 31. A fee of twenty-five dollars (\$25.00) shall be paid to the Department for registration amendments and shall be submitted on a form approved by the director.

Note: Authority cited: Sections 407 and 47062, Food and Agricultural Code. Reference: 47000, 47001, 47060, 47061 and 47062, Food and Agricultural Code.