

**DEPARTMENT OF FOOD AND AGRICULTURE
DIRECT MARKETING PROGRAM**

**REGULATION CHANGE SYNOPSIS
EFFECTIVE 01/01/2021**

This document provides a synopsis of changes made to the direct marketing regulations that become effective January 1, 2021. For a full version of the regulations, please visit: [https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I6BF78E10D45811DEB97CF67CD0B99467&originationContext=documenttoc&transitionType=Default&contextData=\(sc.Default\)](https://govt.westlaw.com/calregs/Browse/Home/California/CaliforniaCodeofRegulations?guid=I6BF78E10D45811DEB97CF67CD0B99467&originationContext=documenttoc&transitionType=Default&contextData=(sc.Default)). These changes do not supersede any other laws, rules, or regulations.

Market Operator Overview

What does my Certified Farmers' Market (CFM) Certificate authorize?

A CFM Certificate authorizes a market operator to hire a market manager, to designate an authorized representative to conduct business on the operator's behalf, and allows the market to operate only at the location listed during the specified months of operation, day(s) of the week, and hours of operation.

What are my responsibilities as a CFM Operator?

The market operator is the financially responsible party and shall ensure the market's compliance with all applicable statutes and regulations. Applicable enforcement actions will be taken 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 must designate an authorized representative and an agent for service of process, which shall be listed on the certified farmers' market certificate.

What is an Agent for Service of Process?

An Agent for Service of Process is the person designated to accept service of process on behalf of the certificate holder. This person would receive legal documents on behalf of the certificate holder.

What is the role of an Authorized Representative of the Market Operator?

An authorized representative of a market operator is a person who is designated to conduct business on the operator's behalf. This representative can be the Agent for Service of Process, a person on the board of director's, the market manager, etc.

What is the role of a Market Manager?

A market manager is empowered by the market operator to implement the rules, regulations, policies, and directives of the governing body of a CFM. This is often the person who oversees the daily activities at the CFM.

Do Certified Producer Certificates (CPC) have to be embossed?

CPCs either must be embossed or have the county seal affixed to it. The CPC must accompany the certified agricultural products during transportation.

As a market operator, do I have to notify the county agricultural commissioner if my mailing address changes?

Yes; a market operator or their authorized representative must notify the county agricultural commissioner within 30 days of any change of mailing address to update their CFM certificate.

As a market operator, do I have to implement market rules?

Market rules are no longer required. However, if a CFM does have rules, they must comply with the requirements detailed in Section 1392.6(f).

As a market operator, do I have to submit certified producer's product list (load list) to an enforcing officer?

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

Certified Producer Overview

Who can sell and conduct business on my behalf at a CFM?

A certified producer can have an "authorized representative" sell and/or conduct business on their behalf at a CFM but must provide the county agricultural commissioner with a list of those authorized representatives. The certified producer is responsible for the actions of their authorized representative, including any violations and associated penalties and/or suspensions. Furthermore, an authorized representative can only sell on behalf of one certified producer per CFM, per market day, unless selling on behalf of a cross-referenced certified producer, as discussed in Section 1392.4(e).

What are my responsibilities when selling on behalf of another certified producer?

If a certified producer is cross-referenced, and authorized to sell on another certified producer's behalf, and the market allows this practice, the certified producer must:

- Conspicuously post each valid CPC and the respective sign or banner
- Not sell the same commodity, variety, or product on the same day, at the same CFM
- Separate each certified producer's agricultural products
- Have a documented, signed agreement in place before sales commence
- Provide a product list (load list) to the market manager within 48 hours of the conclusion of the market day

Where can a certified producer sell their agricultural products?

A certified producer can sell their agricultural products at an approved outlet or location or a CFM. When selling at an outlet or location, you cannot have an authorized representative sell on your behalf. Furthermore, when a certified producer sells their

agricultural products at a CFM, they must provide a product list (load list) to the market manager within 48 hours of the conclusion of the market day.

If I am not a certified producer, where can I sell my agricultural products?

If you are not a certified producer, you can sell your agricultural products at a field retail stand or farm stand at or near the point of production. However, the agricultural products cannot be sold past the first paved county road and you cannot have an authorized representative sell on your behalf.

What is an “outlet or location”?

An “outlet or location” means an approved location that is regulated pursuant to the Direct Marketing chapter, that is operated by a certified producer, in which only the certified producer may directly market their agricultural products to the public.

Which agricultural products are certifiable?

Certifiable agricultural products include whole fresh fruits, nuts, vegetables, herbs, cultivated mushrooms, shell eggs, honey, cut flowers, unprocessed grains, and nursery stock.

Which agricultural products are NOT certifiable?

Noncertifiable agricultural products include 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. Additionally, all certified agricultural products that have been processed are noncertifiable agricultural products for purposes of direct marketing.

What does “Practicing the Agricultural Arts” mean?

Practicing the agricultural arts means being predominantly responsible for the decisions and actions of producing an agricultural product.

For fruit, floral, nut, vegetable, and other plant products, it includes directive or actual responsibility for all the actions of planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting. For nursery stock, it includes planting or transplanting one of the following into containers in a planting medium: seed, bulbs or corms; plant cuttings, or rooted seedlings which are in containers or plugs less than 2” in diameter.

If I am selling agricultural products that I produced in the agricultural section of a CFM, can I also sell nonagricultural products at my vendor stand?

No; the sale of nonagricultural products is not be permitted in the ag. section of a CFM.

As a certified producer, do I have to notify the county agricultural commissioner if my business address changes?

Yes; a certified producer must notify the county agricultural commissioner within 30 days of any change of business address to update their certified producer’s certificate.

Civil Penalty Overview

Any penalties that were previously in the “2nd NC in 12 months” class are now in the minor class.

Market Operator Penalty Changes

- Allowing the sale of fresh whole fruits, nuts, vegetables, cultivated mushrooms, herbs, or flowers in the ancillary section – serious class
- Failure to report change in mailing address to county agricultural commissioner within 30 days – moderate class
- Remittance issues – serious class
- Allowing the sale of nonagricultural products in the ag. section – moderate class
- Failure to submit product list to enforcing officer within 72 hours of the request – minor class

Certified Producer Penalty Changes

- Selling agricultural products combined with a nonagricultural product in the ag. section of a CFM – minor class
- Selling noncertifiable agricultural products in the ag. section that producer did not produce – serious class
- Selling nonagricultural products in the ag. section – moderate class
- Authorized representative selling on behalf of more than one certified producer at the same CFM, on the same market day – moderate class
- Selling on behalf of more than two other certified producers during the 12-month certificate period – moderate class
- Selling the same commodity as second certificate producer at same CFM, on same market day – minor class
- Selling at a CFM without proper signage – minor class
- Failure to report change in business address to county agricultural commissioner within 30 days – moderate class
- Failure to immediately report change in partnership agreement to county agricultural commissioner and surrender CPCs – moderate class