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Title 3. Food and Agriculture

Division 3. Economics

Chapter 1. Fruit and Vegetable Standardization

Subchapter 4. Fresh Fruits, Nuts and Vegetables

Article 6.5. Direct Marketing (Refs & Annos)

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§ 1392.2. Definitions.

Unless the context otherwise requires, the following definitions govern the construction of the language in this article.

(a) **Certified Farmers' Market.** A location approved by the county agricultural commissioner of that county where agricultural products are sold by producers or certified producers directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. A certified farmers' market may only be operated by one or more certified producers, by a nonprofit organization, or by a local government agency.

(b) **Certified Farmers' Market Certificate.** A certificate issued by the county agricultural commissioner authorizing the location where agricultural products are sold by the producers directly to consumers, or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. The certificate is valid only when bearing the original signatures of the county agricultural commissioner and the authorized representative of the certified farmers' market. Upon receipt of a certified farmers' market certificate, an operator shall assume and retain responsibility for all aspects of the operation of a certified farmers' market at the location specified; including, but not limited to legal, financial and regulatory compliance requirements.

(c) **Land Which the Producer or Certified Producer Controls.** Land that the producer or certified producer farms and owns, rents, leases, or sharecrops.

(d) **Producer.** A person or separate entity that produces agricultural products by practice of the agricultural arts upon land which the person or separate entity controls. Producer may be, for the purposes of this article, a person, partnership, corporation or any other entity.

(e) **Certified Producer.** A producer authorized by the county agricultural commissioner to sell certified agricultural products, produced by practice of the agricultural arts upon land which the certified producer controls, directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users, at a certified farmers' market.

(f) **Certified Producer's Certificate.** A certificate issued by the county agricultural commissioner in the county of production authorizing the transportation and sale of certified agricultural products pursuant to this article.

(g) **Consumer.** A person who purchases and receives agricultural products at a field retail stand or farm stand at or near the point of production or at a certified farmers' market exclusively for personal or normal household use and does not include a person to whom fresh fruits, nuts, and vegetables are sold for commercial resale except as provided in subsection 1392.4(k).

(h) **Direct Marketing. The sale:**

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

(2) At a certified farmers' market of noncertifiable agricultural products by a producer to a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users; or

(3) At a field retail stand or farm stand near the point of production of agricultural products by a producer to a consumer or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users.

(i) **Immediate Family.** Parents, children, grandparents, or grandchildren of the certified producer or a family member regularly residing in the certified producer's household.

(j) Employee. Any person employed by a certified producer at a regular salary or wage, on either a full or part time basis. The term "employee" does not include any person who is reselling agricultural products purchased from another producer or whose compensation is primarily based on a commission of sales.

Notwithstanding the above, an employee of an agricultural cooperative organized under the laws of California may sell the agricultural products of one of its members in accordance with the provisions of this article.

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

(l) Certified Agricultural Products. Agricultural products, which are certified under the jurisdiction of the county agricultural commissioner relative to inspection and verification of compliance with the provisions of this article, include fresh fruits, nuts, vegetables, shell eggs, honey, flowers, and nursery stock.

(m) Noncertifiable Agricultural Products.

Noncertifiable agricultural products include all certified agricultural products that have been processed, those products other than certified agricultural products noted in (l) above from any tree, vine or plant and their flowers (including processed products), livestock (including rabbits) and livestock products, and fish and shellfish produced under controlled conditions in waters or ponds located in California.

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

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

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

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

(r) Agricultural Production and Practice of the Agricultural Arts. To be involved in and make decisions regarding all phases of producing an agricultural product, which includes, but is not limited to, planting, growing, fertilizing, irrigating, cultivating, pest control, and harvesting.

(s) Partnership. A partnership is a separate entity distinct from its individual members. As a separate entity, a partnership must obtain a certified producer's certificate to market its agricultural products directly to consumers or to individuals, organizations, or entities that subsequently sell or distribute the products directly to end users. Such agricultural products shall be produced by practice of the agricultural arts upon land that the partnership, as a separate entity, exclusively controls.

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

(u) Processed Agricultural Products. Processed agricultural products shall be defined as agricultural products that have been altered or prepared by such means as, but not limited to, slicing, juicing, drying, shelling, smoking, freezing or cooking, provided, however, that the seller has produced all of the ingredients contained in the final product. The only exceptions to this production requirement shall be the inclusion of food coloring, pectin, rennin/rennet or ingredients used as preservatives, seasonings, and flavorings.

(v) Preservative. An additive, substance or ingredient(s) added to agricultural products to prevent decomposition due to chemical change or microbial action and/or to protect against decay, discoloration or spoilage. Preservatives include, but are not limited to: sulfites added to dried fruits, dried vegetables or wine; sugar added in the making of jams, jellies and preserves; salt or salt brine solution for curing olives; or vinegar for pickling of products such as, but not limited to, beans, asparagus and cucumbers.

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

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

(x) Flavoring. A substance, additive or ingredient, which may itself include seasonings or preservatives, that imparts flavor to a food without changing the consistency of or rendering unidentifiable the original product. Flavorings include, but are not limited to: liquid, powder or natural smoke, hickory, vanilla extract, nut oil, and soy sauce.

(y) Food Coloring. For the purposes of this regulation, food coloring shall be defined as a dye or pigment that is added to a product to impart color.

(z) At or Near the Point of Production. For this articles' purposes, "at or near the point of production" means not beyond the first paved county or primary road.

Note: Authority cited: Sections 407, 42681, 42684, 47000, 47001, 47002, 47003 and 47004, Food and Agricultural Code. Reference: Sections 42941, 47000, 47001 and 47003, Food and Agricultural Code.

HISTORY

1. Amendment of subsection (a) filed 3-30-79; effective thirtieth day thereafter (Register 79, No. 13).
2. Amendment of undesignated paragraph and subsection (a), amendment and renumbering of subsections (k) to (c), (b) to (d), (c) to (e), (i) to (f), (d) to (g), (e) to (h), (g) to (i), (f) to (j), (h) to (m) and (j) to (n), with new subsections (b), (k), (l), (o), (p) and (q) filed 7-26-91; operative 7-26-91 pursuant to Government Code section 11346.2(d) (Register 91, No. 47).
3. New subsection (r) and amendment of Note filed 12-9-99; operative 1-8-2000 (Register 99, No. 50).
4. Amendment of subsections (d) and (f), new subsection (s) and amendment of Note filed 2-4-2002 as an emergency; operative 2-4-2002 (Register 2002, No. 6). A Certificate of Compliance must be transmitted to OAL by 6-4-2002 or emergency language will be repealed by operation of law on the following day.
5. Amendment of subsections (d) and (f), new subsection (s) and amendment of Note refiled 7-3-2002 as an emergency; operative 7-3-2002 (Register 2002, No. 27). A Certificate of Compliance must be transmitted to OAL by 10-31-2002 or emergency language will be repealed by operation of law on the following day.
6. Certificate of Compliance as to 7-3-2002 order, including amendment of subsection (s), transmitted to OAL 10-25-2002 and filed 12-2-2002 (Register 2002, No. 49).
7. New subsection (t) and amendment of Note filed 5-9-2005; operative 6-8-2005 (Register 2005, No. 19).
8. Amendment of subsections (a), (b), (e), (g)-(h)(3), (j) and (s) and new subsections (u)-(z) filed 8-18-2011; operative 9-17-2011 (Register 2011, No. 33).

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