

CALIFORNIA CONFERENCE OF
DIRECTORS OF ENVIRONMENTAL HEALTH

**ENVIRONMENTAL HEALTH REQUIREMENTS FOR
CERTIFIED FARMERS' MARKETS**

revised July 2008

BACKGROUND

This guideline was originally created in September of 1997 and first revised in June 1999. This second revision was completed by the Bay Area Food Technical Advisory Committee in response to the adoption of the California Retail Food Code (CRFC). It is intended for environmental health agency use in the regulation of certified farmers' markets (CFMs) and is the result of a cooperative effort between the CCDEH Bay Area Food Technical Advisory Committee, the California Department of Food and Agriculture, and directors of CFMs throughout California.

The Bay Area Food Technical Advisory Committee acknowledges the valuable contributions to this guideline from the Southern California, Central Valley, and Northern California Food Technical Advisory Committees, the California Conference of Directors of Environmental Health, and the California Department of Public Health.

Local environmental health agencies are encouraged to adopt this guideline and reprint it along with information pertinent to their business procedures. Statewide uniformity of interpretation and enforcement will benefit both the regulatory and business communities.

SCOPE

- Part 1** **Laws and regulations governing certified farmers' markets** – Part 1 brings together all the code sections which cover an environmental health agency's regulatory responsibility at a CFM. Environmental health agencies are not responsible for enforcing the Direct Marketing Regulations of the Food and Agriculture Code. References to CCR, Title 3, have been included to provide clarification.
- Part 2** **Questions and answers regarding environmental health agency regulation of Certified Farmers' Markets** – Part 2 is intended to promote uniformity of interpretation and enforcement throughout California.
- Part 3** **Regulatory authority for agricultural products sold at Certified Farmers' Markets** – Part 3 provides a guideline for determining the appropriate regulatory authority for the production of various foods sold at a CFM.

PART 1

LAWS AND REGULATIONS GOVERNING CERTIFIED FARMERS' MARKETS

The following laws are excerpted from the California Health and Safety Code, Part 7, California Retail Food Code (CRFC). Section numbers are included in parentheses for reference at the end of each excerpt. Regulations from the California Department of Food and Agriculture are also included for reference. Section numbers designated "CCR" are excerpted from the California Code of Regulations (CCR), Title 3, Food and Agricultural Code, Article 6.5, Direct Marketing.

DEFINITIONS

1. **Agricultural products** mean certified and non-certifiable agricultural products, as defined by the California Department of Food and Agriculture. [CCR 1392.2 (k)]
2. **Approved** means acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, current public health principles, practices, and generally recognized industry standards that protect public health. (113734)
3. **Approved source** means a food source allowed under Article 3 (commencing with Section 114021) of Chapter 4, or a producer, manufacturer, distributor, transporter that meets the requirements of Section 113982, or food facility that is acceptable to the enforcement agency based on a determination of conformity with applicable laws, or, in the absence of applicable laws, with current public health principles and practices, and generally recognized industry standards that protect public health. (113735)
4. **Certified agricultural products** means agricultural products, which are certified under the jurisdiction of the county agricultural commissioner relative to inspection and verification of compliance with the provisions of the Direct Marketing regulations. They include fresh fruits, nuts, vegetables, shell eggs, honey, flowers, and nursery stock. [CCR 1392.2 (l)]
5. **Certified Farmers' Market** means a location certified by the County Agricultural Commissioner and operated pursuant to Chapter 10.5 (commencing with Section 47000) of Division 17 of the Food and Agricultural Code and regulations adopted pursuant to that chapter. (113742)
6. **Community event** means an event that is of a civic, political, public, or educational nature, including state and county fairs, city festivals, circuses, and other similar events as determined by the local enforcement agency. (113755)

NOTE: Community events that do not meet this definition typically include a swap meet, flea market, swap mall, seasonal sporting event, grand opening celebration, anniversary celebration or similar function

7. **Enforcement officer** means the director, agents, or environmental health specialists appointed by the Director of Health Services, and all local health officers, directors of environmental health, and their duly authorized registered environmental health specialists and environmental health specialist trainees. (113774)
8. **Food preparation** means packaging, processing, assembling, portioning, or any operation which changes the form, flavor, or consistency of food, but does not include trimming of produce. (113791)
9. **Non-certifiable agricultural products** means all certified agricultural products that have been processed, those products other than certified agricultural products noted in (4) 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. [CCR 1392.2 (m)]
10. (a) **"Potentially hazardous food"** means a food that is natural or synthetic and that requires temperature control because it is in a form capable of supporting the rapid and progressive growth of infectious or toxigenic micro-organisms, the growth and toxin production of *Clostridium botulinum*, or, in raw shell eggs, the growth of *salmonella enteritidis*.

(b) **"Potentially hazardous food"** includes a food of animal origin that is raw or heat-treated, a food of plant origin that is heat-treated or consists of raw seed sprouts, cut melons, and garlic-in-oil mixtures that are not acidified or otherwise modified at a food processing plant in a way that results in mixtures that do not support growth as specified under subdivision (a), above.

(c) **"Potentially hazardous food"** does not include any of the following:
 - (1) A food with an aw value of 0.85 or less.
 - (2) A food with a pH level of 4.6 or below when measured at 75°F.
 - (3) A shell egg that is not hard-boiled but has been treated to destroy all viable salmonellae.
 - (4) A food in an unopened, hermetically sealed container that is commercially processed to achieve and maintain commercial sterility under conditions of non-refrigerated storage and distribution.
 - (5) A food that has been shown by appropriate microbial challenge studies approved by the enforcement agency not to support the rapid and progressive growth of infectious or toxigenic micro-organisms that may cause food infections or food intoxications, or the growth and toxin production of *Clostridium botulinum*, such as a food that has an aw and a pH that are above the levels specified under paragraphs (c) (1) and (2), and that may contain a preservative, other barrier to the growth of micro-organisms, or a combination of barriers that inhibit the growth of micro-organisms.
 - (6) A food that does not support the rapid and progressive growth of infectious or toxigenic micro-organisms, even though the food may contain an infectious or toxigenic micro-organism or chemical or physical contaminant at a level sufficient to cause illness. (113871)
11. **Produce** means any whole fruit or vegetable in its raw or natural state.(113877)

OPERATIONAL GUIDELINES

1. A certified farmers' market is a food facility, as defined by CRFC, and shall not be open for business without a valid health permit. The health permit shall be posted in a conspicuous place at the CFM. [113789(b)(9), 114381(e)]
2. Only agricultural products may be sold or offered for sale at a CFM.
[113742; CCR 1392.4 (c)]
3. All food sold at a CFM shall be produced, packed, stored, transported, and kept for sale so as to be pure, free from contamination, adulteration, and spoilage; shall have been obtained from approved sources; shall otherwise be fully fit for human consumption; and shall conform to the applicable provisions of the Sherman Food, Drug, and Cosmetic Law (Part 5 commencing with Section 109875). (113980)
4. All food shall be stored at least 6 inches off the floor or ground or under any other conditions which are approved. [114371 (a)]
5. Food preparation is prohibited at certified farmers' markets with the exception of the food samples. Distribution of food samples is allowed provided that the following sanitary conditions exist:
 - A. Samples shall be kept in approved, clean covered containers.
 - B. The producer shall distribute all food samples in a sanitary manner.
 - C. Clean, disposable plastic gloves shall be used when cutting food samples.
 - D. Food intended for sampling shall be washed, or cleaned in another manner, of any soil or other material by potable water in order that it is wholesome and safe for consumption.
 - E. Potable water shall be available for handwashing and sanitizing as approved by the local enforcement agency.
 - F. Potentially hazardous food samples shall be maintained at or below 45 °F and shall be disposed of within two hours after cutting.
 - G. Utensil and handwashing water shall be disposed of in a facility connected to the public sewer system or in a manner approved by the local enforcement agency.
 - H. Utensils and cutting surfaces shall be smooth, non-absorbent, and easily cleaned or single-use articles shall be utilized. [114371(b)]
6. Processed foods must be produced and stored in an approved facility and properly packaged and labeled. (113980) [114021(b)]
7. Dispensing methods for bulk sales of ready-to-eat, non-certifiable agricultural products, such as dried fruit and shelled nuts, shall be approved by the local enforcement agency. (113980)
8. Approved toilet and hand washing facilities shall be available within 200 feet of the premises of the CFM, or as approved by the enforcement officer. [114371(c)]
9. No live animals, birds, or fowl are kept or allowed within 20 feet of any area where food is stored or held for sale. This subdivision does not apply to guide dogs, signal dogs, or service dogs when used within the meaning specified by Section 54.1 of the Civil Code. [114371(d)]

10. All garbage and rubbish shall be stored, and disposed of, in a manner approved by the enforcement officer. [114371(e)]
11. Potentially hazardous food shall be stored and displayed at or below 45°F. at all times. section 110960 (Sherman Law). [113996(c)(5)]
12. All products sold as organic must be grown, produced, processed and labeled in accordance with the Health and Safety Code beginning with Section 110810 (California Organic Foods Act of 1990.) This act is a portion of the California Sherman Food, Drug, and Cosmetic Law, which is contained in the Health and Safety Code. (113980)
13. Uninspected, processed red meat, poultry, fowl, or rabbits may not be sold. (113980)[114021(a)]
14. Raw shell eggs may be stored and displayed without refrigeration if all of the following conditions are met:
 - A. The eggs were produced by poultry owned by the seller and collected on the seller's property.
 - B. The eggs are not placed in direct sunlight during storage or display.
 - C. Retail egg containers are prominently labeled "REFRIGERATE AFTER PURCHASE" or the seller posts a conspicuous sign advising consumers that the eggs are to be refrigerated as soon as practical after purchase.
 - D. Retail egg containers are conspicuously identified as to the date of the pack.
 - E. The eggs have been cleaned and sanitized.
 - F. The eggs are not checked, cracked, or broken.
 - G. Any eggs that are stored and displayed at temperatures of 90°F or below and that are unsold after four days from the date of pack shall be stored and displayed at an ambient temperature of 45°F or below, diverted to pasteurization, or destroyed in a manner approved by the enforcement agency.
 - H. Any eggs that are stored and displayed at temperatures above 90°F that are unsold after four days from the date of pack shall be diverted to pasteurization or destroyed in a manner approved by the enforcement agency. (114373)
15. Vendors selling non-agricultural food products are required to have a valid permit from the local environmental health agency and are not considered part of the CFM. (114387)(114381)

<p><i>Note #1:</i> Non-agricultural products are food items other than certified agricultural products or non-certifiable agricultural products, such as bakery products.</p> <p><i>Note #2:</i> "Vendors" refers to "Mobile Food Facilities" and not to "Temporary Food Facilities".</p>

16. Notwithstanding Chapter 10 (commencing with Section 114294), vendors selling food adjacent to and under the jurisdiction and management of a certified farmers' market may store, display, and sell from a table or display fixture apart from the mobile food facility, in a manner approved by the local environmental health agency. [114371(f)]
17. Temporary food facilities may be operated as a separate community event adjacent to, and in conjunction with, certified farmers' markets that are operated as a community event by a nonprofit organization or a local government agency. The organization in

control of the event at which one or more temporary food facilities operate shall comply with Sections 114371(g) and 114381.1.

PART 2

QUESTIONS AND ANSWERS REGARDING HEALTH DEPARTMENT REGULATION OF CERTIFIED FARMERS' MARKETS

1. Who is responsible for regulating Certified Farmers' Markets?

Local environmental health agencies are responsible for regulating CFMs as defined in the California Retail Food Code, Section 113742. Health requirements for CFMs are contained in CRFC, Chapter 12

County Agricultural Commissioners are responsible for enforcing the California Code of Regulations, Title 3, Article 6.5, Direct Marketing Regulations.

2. Does a CFM need a health permit?

Yes. A CFM is defined in CRFC as a food facility and therefore is required to have a valid health permit, including a CFM where only certified agricultural products are sold.

Fees for the permit and related services shall be determined by the local environmental health agency. Fees shall be sufficient to cover the actual expenses of administering and enforcing this program.

3. Do I need a separate sponsor permit to have temporary food facilities adjacent to my CFM?

Yes. CRFC requires **temporary food facilities** to be organized and controlled by a sponsor and also requires a separate health permit for the sponsor.

[114371(g)]

4. Is a permit required for each producer selling agricultural products?

No. Since a CFM is defined in CRFC as a food facility, all agricultural products (certified and non-certifiable) sold at a CFM are part of that facility and covered under the health permit for the CFM.

Prior to the July 1991 change in the Direct Marketing Regulations, vendors selling processed food were required to have individual health permits. Now, products meeting the definition of non-certifiable agricultural products have been added to those foods which can be sold at a CFM. However, non-certifiable agricultural products must still be produced under inspection by the appropriate regulatory authority. Proof of an approved source for each food product is also still required. The CFM manager should maintain a copy of each vendor's documentation, at the CFM location, for review by the enforcement officer.

Since one health permit will cover all vendors that are part of the CFM, the CFM permit holder is responsible for ensuring that each vendor complies with all applicable health codes. Noncompliance by a single vendor may be cause for suspension or revocation of the permit.

Vendors selling food other than agricultural products, such as bread, are not considered part of the CFM. Each vendor selling nonagricultural food products must have their own health permit.

5. What is a "non-certifiable agricultural product" and what are some of these products that may be found in a CFM?

These products are part of the definition of agricultural products, but are not certified by

the agricultural commissioner. Products that are considered non-certifiable include processed products from certified agricultural products such as fruit and vegetable juices, shelled nuts, jams and jellies, and wine. Other examples include catfish, trout, and oysters from controlled aquaculture operations, livestock and livestock products, and poultry and poultry products.

Though these products are not "certified," they must have been produced or derived from plants or animals raised or produced by the producer. These non-certifiable processed agricultural products may include, or have added to them, a limited number of ingredients or additives which act only as preservatives or are essential in the preparation of the product. Examples include pickles and cucumbers in a brine or vinegar solution for curing or pickling, natural smoking of meat or poultry for drying and preserving, flavorings such as smokehouse, hickory, or jalapeno added to shelled nuts which do not change the visual identity of the product, sulfites added to dried fruits and vegetables, and sugar, fruit juices, and pectin added to fruits to make jams and jellies.

Non-certifiable agricultural food products must be from an "approved source."

6. What is considered an "approved source?"

Facilities that possess a valid Certified Producer Certificate by the seller are considered an approved source for certified agricultural products. For non-certifiable agricultural food products, the processing and storage location must be under regulation by an authority acceptable to the State Department of Public Health or local environmental health agency.

Examples of approved sources include facilities that possess:

- A Food Registration from the State Food and Drug Branch (FDB).

NOTE: Hermetically sealed (canned) products must be produced at a facility registered by FDB. Manufacturers of all such products must possess an authorization (know as an "S" letter) from FDB for each product.

- A local environmental health agency permits from the jurisdiction where production takes place.
- A federal inspection certificate.

For more information on approved sources, see Part 3 of this document: "REGULATORY AUTHORITY FOR AGRICULTURAL PRODUCTS SOLD AT CERTIFIED FARMERS' MARKETS."

7. Can nonagricultural products be sold at a CFM?

No. Only certified and non-certifiable agricultural products may be sold in the "designated area" of the CFM. The exclusion of nonagricultural products is intended to maintain the intent and integrity of a CFM, which is the direct sale of products produced solely by the producer. Enforcement of the separation rule is the responsibility of the local agricultural commissioner.

However, nonagricultural products may be sold adjacent to a CFM. Notwithstanding Chapter 10 (commencing with Section 114294), operators of mobile food facilities selling food adjacent to and under the jurisdiction and management of a certified farmers' market may store, display, and sell from a table or display fixture apart from the vehicle, in a

manner approved by the local enforcement agency, consistent with Chapter 10 of CRFC.

8. What does “vendors selling food adjacent to and under the jurisdiction and management of a certified farmers’ market” mean?

This phrase means vendors who are selling nonagricultural products on property controlled by the CFM manager and who contract with the CFM manager for a sales space. Vendors who meet these requirements may store, display, and sell from a table or display fixture apart from the vehicle, in a manner approved by the local enforcement agency, consistent with CRFC, Chapter 12, [114371(f)]

9. Can Mobile Food Facility (MFF) foods be sold from a table?

Tables or other approved display fixtures that are apart from the vehicle may be used only for storage, display, and sale of food. Approval of the local jurisdiction must be obtained prior to selling any foods from a table.

10. What are acceptable ways of displaying agricultural products at a CFM?

In most cases, certified and non-certifiable agricultural products are displayed on tables. Section 114371(a) requires that food shall be stored at least 6 inches off the floor or ground or under any other conditions which are approved.

Bulk ready-to-eat foods, such as shelled nuts and dried fruit, shall be protected from contamination. Acceptable methods include prepackaging food at an approved facility, or displaying food in approved containers with lids. Dispensing methods shall avoid direct hand contact with ready-to-eat food, and be approved by the local environmental health agency.

11. What are acceptable ways of selling “salad mixes?”

Certain types of lettuce are harvested as single leaves and can be combined to create a “salad mix.” However, any processing of produce beyond trimming, such as chopping or shredding, or selling a salad mix as “washed, ready-to-eat,” would be considered food preparation and subject to CFRC requirements for processed food.

12. Is sampling permitted at a CFM?

Yes. Preparation and distribution of food samples from agricultural products is allowed provided that the following sanitary conditions exist: [114371(b)]

- A. Samples shall be kept in approved, clean covered containers.
- B. All food samples shall be distributed by the producer in a sanitary manner.
- C. Clean, disposable plastic gloves shall be used when cutting food samples.
- D. Food intended for sampling shall be washed, or cleaned in another manner, of any soil or other material by potable water in order that it is wholesome and safe for consumption.
- E. Potable water shall be available for hand washing and sanitizing as approved by the local enforcement agency.
- F. Potentially hazardous food samples shall be maintained at or below 45°F. All other food samples shall be disposed of within two hours after cutting.
- G. Utensil and hand washing water shall be disposed of in a facility connected to the public sewer system or in a manner approved by the local environmental health agency.
- H. Utensils and cutting surfaces shall be smooth, nonabsorbent, and easily cleaned or single-use articles shall be utilized.

13. Are hot samples of potentially hazardous food permitted at a CFM?

No. Section 114371(b)(6) states that potentially hazardous food samples shall be maintained at or below 45° F.

14. Is sampling permitted by vendors operating adjacent to a CFM?

Vendors operating mobile food facilities or mobile food preparation units may provide samples if they are in compliance with CRFC Chapter 10 and 11. These requirements may be more restrictive than the sampling requirements for vendors of agricultural products at the CFM.

15. Can uninspected, processed poultry be sold at a CFM?

No. The Department of Food and Agriculture exemption from State law that requires inspection and licensing of poultry slaughter plants does not apply to sales at retail food facilities. Since the CFM is a retail food facility and the Direct Marketing Regulations require compliance with CRFC, uninspected poultry and rabbits would not be from an approved source. Therefore they could not be sold at a CFM.

Producers raising poultry for sale at a CFM should request inspection and licensing from the California Department of Food and Agriculture, Meat and Poultry Inspection Branch, or have their poultry processed at a licensed facility.

16. Can uninspected red meat be sold at a CFM?

No. All red meat must be from an approved source. A "custom cut" operation under inspection by the State Department of Food and Agriculture is not an approved source for retail sales of red meat. The United States Department of Agriculture is the recognized regulatory authority for inspection of cattle, calf, sheep, swine and goat processing plants.

17. Can food facilities such as restaurants purchase agricultural products at a CFM?

Yes. However, fresh fruits, nuts, and vegetables may only be sold to "food facilities" when complying with all applicable regulations, including standard pack, standard containers, and labeling requirements. The local agricultural commissioner enforces these requirements.

18. Can potentially hazardous foods be sold at a CFM?

Yes. Potentially hazardous foods, including but not limited to, raw shell eggs (see item #14 under "Operational Guidelines"), pasteurized milk products, live molluscan shellfish, and potentially hazardous food samples, must be stored and displayed at or below 45°F at all times. CRFC currently only requires that CFMs meet the provisions of Chapter 4 and 12 of CRFC, the Direct Marketing Regulations require that CFMs shall also comply with the applicable requirements of Chapter 4. Since there is generally only short-term holding of potentially hazardous foods at CFMs, the 45°F requirement rather than 41°F is appropriate for periods not exceeding 12 hours in any 24 hour period, except that 45°F is appropriate for those foods noted above.

Ice chests may be used for refrigeration purposes with the approval of the local enforcing agency only if the potentially hazardous foods contained therein can be held at the required temperatures.

19. What type of seafood can be sold at a CFM?

Only fish and shellfish produced under controlled conditions in waters or ponds located in California may be sold at a CFM. The agricultural commissioner enforces this requirement. Seafood, including live molluscan shellfish, is considered a potentially hazardous food and must be held at or below 45°F. No cutting or filleting is allowed at a CFM. (see #18 above)

20. What is required on a label for packaged food?

Labeling of packaged foods must include: name and address of the manufacturer, producer, or distributor; accurate statement of quantity of the contents in terms of weight, measure or numerical count; common name of product; ingredients, if two or more ingredients are present, listed by order of their predominance by weight, e.g. peanuts, salt.

For the complete list of requirements for food labels, contact the Food and Drug Branch, California Department of Public Health.

21. Can a temporary food facility operate at a CFM?

No. But a temporary food facility may legally operate as a part of a community event adjacent to and in conjunction with a CFM if: [114371(g)]

- A. Each temporary food facility has a separate health permit, and
- B. The CFM organizer obtains a sponsor health permit for the community event if there is no other permitted person or organization that is in control of the community event, and
- C. The temporary food facilities comply with all applicable requirements of Chapter 11 and Article 13.5

PART 3

REGULATORY AUTHORITY FOR AGRICULTURAL PRODUCTS SOLD AT CERTIFIED FARMERS' MARKETS

The California Retail Food Code requires that all food at a certified farmers' market be obtained from approved sources. The following agencies regulate the growing or processing of the indicated food products. Acceptance of an approved source is up to the local environmental health agency.

- 1. County Agricultural Commissioner
- 2. California Department of Public Health , Food and Drug Branch
- 3. California Department of Fish and Game
- 4. California Department of Food and Agriculture, Meat and Poultry Inspection Branch
- 5. California Department of Food and Agriculture, Milk and Dairy Food Safety Branch
- 6. United States Department of Agriculture, Food Safety Inspection Service
- 7. Local Environmental Health Agency

PRODUCT		REGULATORY AUTHORITY
FRUITS AND VEGETABLES:	fresh, whole	1
	processed	2 or 7*
NUTS:	fresh, whole	1
	processed	2 or 7*
SPROUTS		1
SHELL EGGS		1
HONEY		1
JUICES		2 or 7*
JAMS AND PRESERVES		2 or 7*
LOW ACID CANNED FOODS		2
POULTRY:	live	none
	processed	4** or 6
FISH AND SHELLFISH		2 & 3
RED MEAT:	fresh	6
	processed (cured, smoked)	6 & 4
DAIRY PRODUCTS		5

*In most cases, the Food and Drug Branch regulates wholesale operations. Food Processors who sell only at retail are usually regulated by the local environmental health agency.

**The exemption from CA Dept. of Food and Agriculture (CDFA) inspection of poultry does not apply when sales occur at CFMs. Inspection must be requested from CDFA.