

FOOD AND AGRICULTURAL CODE
SECTION 47000-47026

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.

(c) The marketing potential of a wide variety of California-produced agricultural products should be maximized.

(d) The department should maintain a direct marketing program and the industry should continue to encourage the sale of California-grown fresh produce.

(e) A regulatory scheme should be developed that provides the flexibility that will make direct marketing a viable marketing system.

(f) The department should assist producers in organizing certified farmers' markets and other forms of direct marketing by providing technical advice on marketing methods and in complying with the regulations that affect direct marketing programs.

(g) 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.

47001. (a) The secretary may adopt regulations to encourage the direct sale by farmers to consumers of all types of California agricultural products.

(b) These regulations may include provisions to ensure and maintain quality and wholesomeness of the products.

47002. California farmers may transport for sale and sell California-grown fresh fruits, nuts, and vegetables that they produce, directly to the public, which produce shall be exempt from size, standard pack, container, and labeling requirements, at a certified farmers' market or at a retail stand located at or near the point of production, 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.

47003. The secretary may establish qualifications for persons selling products directly to consumers whenever the sales involve the use of any exemption granted by this chapter. Certified farmers' markets and producers' sales outlets, at or near the location of production, may likewise be subject to qualifications.

47004. (a) Certified farmers' markets may establish rules and procedures that are more restrictive or do not violate state law or regulation governing or implementing this chapter.

(b) Certified farmers' markets are locations established in accordance with local ordinances, where California farmers may transport and sell to the public California agricultural products that they produced, that are exempt from the established grade, size, labeling, packaging and other such requirements for fruits, nuts, and vegetables, and operated in accordance with this chapter and regulations adopted pursuant to this chapter.

(c) The governing body of any certified farmers' market operating with more than one participating certified producer shall adopt written rules and procedures pertaining to the operation of the market. The rules shall include a requirement that the governing body and its designated agents establish, implement, and enforce all rules and procedures pertaining to the operation of the certified farmers' market in a fair, nondiscriminatory, and equitable manner.

47004.1. (a) Any certified producer aggrieved by a rule or procedure of a certified farmers' market may submit a written request to the department for an advisory opinion as to whether, as a question of law, the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. Not later than 15 calendar days after the date on which the written request is received, the department shall undertake its review and issue an advisory opinion. The request for and issuance of an advisory opinion is not a prerequisite to the pursuit of any civil litigation. However, the advisory opinion shall be given substantial

weight in any subsequent civil or administrative proceeding involving the parties and subject matter of the advisory opinion. The department may adopt regulations providing for the precedent value of its advisory opinions issued pursuant to this section. Notwithstanding any other provision of law, the department shall not incur liability in connection with the preparation and issuance of any advisory opinion issued pursuant to this section.

(b) The department shall provide for an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code, with regard to any grievance of a certified producer involving questions of fact concerning any action taken by a certified farmers' market against the producer, or any implementation of a rule or procedure established by certified farmers' market against the producer, or any other related issue, as to whether application of the rule or procedure in dispute is consistent with this chapter and the regulations implementing this chapter. The informal hearing shall proceed without the option of conversion to a formal hearing. The request for an informal hearing to resolve issues involving disputes of fact is not a prerequisite to the pursuit of any civil litigation.

(c) In addition to, or in lieu of, the alternatives set forth in subdivisions (a) and (b), the parties may agree to employ mediation. If mediation fails to resolve the dispute, the parties may agree to employ binding arbitration. The department and the county agricultural commissioners shall incur no expense or liability for mediation or binding arbitration.

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.

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.

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.

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.

47010. (a) The secretary shall establish a committee which shall be known as the Certified Farmers' Market Advisory Committee. The primary goal of the committee shall be to ensure the integrity of certified farmers' markets.

(b) The committee shall be composed of 17 members and their alternates. The secretary shall appoint the members of the committee from a list of nominees provided by the industry subject to this chapter. The secretary shall appoint eight members and their alternates who shall be active certified producers, four members and their alternates who shall be certified farmers' market managers or representatives, two representatives from different major state direct marketing associations, one public member, and two members and their alternates who shall be county agricultural commissioners. 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.

(c) The secretary shall appoint only one certified producer, certified farmers' market manager, or representative to represent any one farm or certified farmers' market and shall make every effort to ensure that there is a diverse representation from major production and market areas.

(d) The committee shall meet at the request of the secretary, the committee chairperson, or upon the request of four committee members. It shall meet at least once each year.

(e) The committee shall 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.

47011. The committee shall be advisory to the secretary on all 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 administration and enforcement of this chapter.

(b) Administrative policies and procedures that relate to the inspection of certified producers and certified farmers' markets.

(c) Administrative civil penalties for violations of direct marketing regulations.

(d) Certification fees collected pursuant to Section 47020.

(e) Statewide review of enforcement actions.

(f) The annual budget of the department to carry out this chapter and the assessment of fees to pay for the costs incurred by the department to carry out this chapter.

(g) Alternative strategies for certification and investigation methodology, and methods for industry self-regulation and commission formation.

47012. (a) Except as provided in subdivisions (b) and (c), the term of any member of the committee shall be two years.

(b) With respect to the terms of initial members of the committee, eight members shall serve for one year and nine members shall serve for two years, with the determinations of the term of each member to be made by lot. No member of the committee shall serve more than four full consecutive two-year terms.

(c) Any vacancy that occurs during an unexpired term shall be filled by appointment for the unexpired term.

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.

47020. (a) A certified farmers' market certificate issued by a county agricultural commissioner shall be valid for 12 months from the date of issue. The county agricultural commissioner shall inspect every certified farmers' market within his or her jurisdiction at least once, in every six months of operation. The county agricultural commissioner may charge a certification and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided

to the certified farmers' market manager prior to the payment of the fee.

(b) A certified producer's certificate issued by a county agricultural commissioner may be valid for up to 12 months from the date of issue. The county agricultural commissioner in each county shall perform at least one annual onsite inspection of the property or properties listed on every certified producer's certificate issued in their county to verify production of the commodities listed on the certificate or the existence in storage of the harvested production, or both. If the certificate is issued for a period of seven months or more, the county agricultural commissioner in each county shall perform at least one additional onsite inspection or other equally appropriate measure to verify production or storage, or both. The county agricultural commissioner may charge a certificate and inspection fee up to a maximum rate of sixty dollars (\$60) per hour, unless the county board of supervisors elects not to charge inspection and certificate costs. Inspections shall be required notwithstanding a county board of supervisors' election not to charge certificate and inspection fees. If a fee is charged for conducting the certification and inspection, it shall include either the itemized actual costs, or the weighted average hourly rate, as determined on an annual basis by the county, which shall be provided to the producer prior to the payment of the fee.

(c) 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 certified producer is delinquent in the payment of the required state fee or any county certification and inspection fee or administrative civil penalty authorized under this chapter. The certificate shall 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.

47021. (a) Commencing January 1, 2000, 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 certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall not exceed sixty cents (\$0.60) for each certified producer certificate and other agricultural producers participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any 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, 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 carry out this chapter, including all of the following actions undertaken by the department:

- (1) The coordination of the 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 this chapter.
 - (4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.
 - (5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.
 - (6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.
 - (7) The maintenance of a current statewide listing of certified producers.
 - (8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.
 - (9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.
- (d) This section shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.

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.

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.

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.

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.

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.

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.

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.

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.

47025. (a) In lieu of prosecution, but not precluding suspension or revocation of certified producer's certificates or certified farmers' market certificates, the secretary or the county commissioner may levy a civil penalty against a person who violates this chapter or any regulation implemented pursuant to this chapter. Actions to administer administrative civil penalties, suspensions, or both, against a certified producer may be made by the county agricultural commissioner who either issued the certified producer's certificate or issued the violation, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated. The secretary may take action to administer administrative civil penalties, suspensions, or both, against a certified producer, regardless of the county or counties where the violation occurred, or where the certified producer's certificate originated.

(b) Civil penalties 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 is levied 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 the amount of the proposed 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 levied a civil penalty, 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 penalty levied 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 penalty assessed 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, 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), 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.

47026. This article shall remain in effect only until January 1, 2005, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2005, deletes or extends that date.