



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

**Direct Marketing Ad Hoc Committee
Program Proposal**

**Requirements and Design v 0.5
Direct Marketing Program
Inspection Services**

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PROJECT BACKGROUND

This paper is designed to provide the reader with a foundational knowledge of the historical development of the Direct Marketing Program; the original intent of the Article; evolutionary modifications to Direct Marketing, and; regulatory challenges. Additionally, the Department seeks the establishment of a representational broad based ad hoc committee to identify opportunities, consistent with the California Agricultural Vision, to improve food access and promote regional markets within an appropriate regulatory framework; resolve conflicts between certain practices and existing statutes and regulations, and; develop a solution to the serious enforcement gaps surrounding Certified Farmers Markets. Well publicized fraudulent activities being conducted by a minority of participants has seriously eroded consumer confidence as well as producer confidence in an equitable market place. Without an effective and appropriate correction, the existing network and value of CFMs will likely lose their “branded value added” market share.

PROGRAM BACKGROUND

The Standardization Program is responsible for enforcing laws and regulations establishing minimum state standards for fruits and vegetables. It is accomplished by supervising county agricultural commissioners who carry out enforcement at the local level. In 1915, the Legislature began to establish in statute minimum standards for fresh fruits, nuts, and vegetables by governing such factors as weight compliance, packaging, labeling, ripeness, color, and maturity. The California Department of Food and Agriculture’s (CDFA’s) Standardization Program was first financed through the General Fund, but these costs were shifted entirely to the industry in the wake of the fiscal crisis of the early 1990s.

CDFA’s Direct Marketing Program provides opportunities for California farmers to market their products directly to consumers with Standardization Program exemptions for minimum size, labeling, standard pack, and container requirements. The Direct Marketing Program is intended to provide a viable channel for farmers to market their agricultural products directly to the consumer, thereby providing a significant source of revenue for participating farmers. These exemptions were originally promulgated in the California Code of Regulations in March 1977. Since its inception, there have been several attempts to establish appropriate regulatory control and provide adequate funding for the Direct Marketing Program. Prior to 2008, the Direct Marketing Program specifically prohibited buying and reselling practices and authorized California producers to sell their agricultural products directly to the consumer without disrupting the normal flow of commercial wholesaling.

LEGISLATIVE TIMELINE

The Direct Marketing Program was originally funded with revenue appropriated from the Standardization Program. According to a 1996 Assembly Committee on Agriculture analysis, “...in late 1994, with CDFA encouragement, the certified farmers’ market

industry established an Industry Integrity Taskforce to review possible abuses at certified farmers' markets that may have occurred from CDFAs' inability to provide enforcement and oversight due to budget cuts. The taskforce consisted of producers, market managers, agricultural commissioners, and industry affiliates." **The following pages suggest that CDFAs and the direct marketing industry are continuing to struggle with many of the same issues more than 15 years later.** These attempts have largely failed and placed CDFAs in the precarious position of administering an increasingly popular program without adequate funding.

Assembly Bill (AB) 2340 (Cannella, Ch. 606, Stats. of 1996) represented the culmination of the Industry Integrity Taskforce's efforts. AB 2340 provided for the establishment of the Certified Farmers' Market (CFM) Advisory Committee and inspection and certification of CFMs and certified producers. This bill included January 1, 2000 sunset provisions for civil penalties and violations of direct marketing provisions.

AB 593 (Strom-Martin, Ch. 833, Stats. of 1999) codified numerous regulatory authorizations for producers to sell their fresh fruits, nuts, and vegetables directly to the public. This bill continued the authorization for CFMs and created requirements for rules and procedures in order to operate such markets. This bill permanently established the CFM Advisory Committee with specified authority and authorized the Secretary and county agricultural commissioners to deny a market or producer certificate, as specified. In addition, this bill established a fee cap of sixty cents (\$0.60), to be collected and paid to CDFAs and authorized the imposition of civil penalties with a January 1, 2005 sunset for both provisions.

AB 1726 (Committee on Agriculture, Ch. 444, Stats. of 2004) created a late charge for failure to pay the required CFM fees and extended the sunset for both the CDFAs fee and civil penalty authorities until January 1, 2007. AB 2676 (Committee on Agriculture, Ch. 440, Stats. of 2006) extended provisions requiring every operator of a CFM to remit a fee to CDFAs equal to the number of certified producer certificates and other agricultural producers participating on each market day. In addition, this bill extended authority for civil penalties for failure to comply with the rules and regulations covering CFMs. Both of the previously mentioned provisions will sunset on January 1, 2012, unless legislation is reenacted in 2011.

The enactment of AB 2168 (Jones) (Ch. 447, Stats. of 2008) significantly changed the Direct Marketing Program. Specifically, AB 2168 expanded the Direct Marketing Program to allow some Community Supported Agriculture (CSAs) organizations, field retail stands, farm stands, and other private organizations, entities, and individuals to take advantage of these minimum size, labeling, standard pack, and container exemptions. **AB 2168 fundamentally altered the Direct Marketing Program by statutorily authorizing the buying and reselling of agricultural products, thereby removing the direct connection between the consumer and producer as well as creating inequities at the expense of the producer.** For example, a producer may use the direct marketing exemptions when selling their product at either a CFM or at or

near the point of production. However, a person or entity may now purchase product from a producer and transport and sell that same product at any location in the state.

Senate Bill (SB) 513 (Canella, 2011) extended the sunset dates for the CFM fee authority and for violations and enforcement authority for two years. Typically, sunsets are extended for five years; however, in response to well publicized media reports documenting fraudulent activities, the extension date was reduced in an effort to cause the industry to expedite discussions on how to better enforce the Direct Marketing Program's standards and statutes.

TYPES OF DIRECT MARKETING

There are several forms of direct marketing, each presenting significant challenges for enforcement. CFMs are by far the most prevalent form of direct marketing. The Direct Marketing Program provides opportunities for approximately 3,350 certified producers to sell their certifiable agricultural products directly to the public at over 700 CFMs throughout California. Since 1977, the number of CFMs and certified producers has increased exponentially.

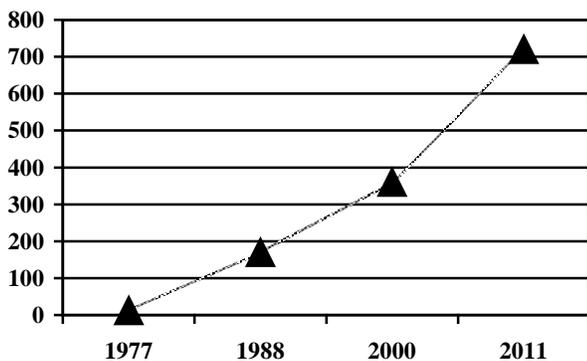


Figure 1. This chart highlights the exponential growth of CFMs from 1977–2011. In 1977, there were approximately 12 CFMs in the State of California. In 1988, there were approximately 170. In 2000, there were approximately 360 CFMs. In 2011, there are over 700 CFMs operating in the State of California.

Since the 1990s, the popularity of CSAs has increased significantly. However, there is no reliable data in regard to the number of CSAs operating in California. A review of www.localharvest.com (one of the most prominent online CSA resources in the United States) indicates that approximately 271 CSAs currently operate in California. Due to a lack of definition in the Food and Agricultural Code, significant opportunity for confusion or deception exists. According to the United States Department of Agriculture's National Agricultural Library, *CSAs are defined as a community of individuals who pledge support to a farm operation so that the farmland becomes, either legally or spiritually, the community's farm, with growers and consumers providing mutual support and sharing the risks and benefits of food production.* Several entities refer to themselves as CSAs while not meeting the previously referenced definition. For example, there are entities which purchase agricultural products at certified farmers' markets, farm stands, field retail stands, the point of production, and wholesale markets and subsequently sell a "subscription" to the public. A clear definition of CSAs would enhance consumer confidence and ensure appropriate oversight.

Field retail stands are producer owned and operated premises located at or near the point of production (nearest county paved road) established in accordance with local ordinances and land use codes. Farm stands are defined as field retail stands 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. Currently, no quantitative data regarding the number of field retail stands exists. However, anecdotal evidence from public comments received suggests that farm stands and field retail stands are an important source of revenue for small farmers.

Other forms of direct marketing include community gardens, individuals or entities selling directly to institutions, and restaurants selling directly to the public. Community gardens are commonly defined as public or institutional gardens where individuals have access to plots of land on which they can grow agricultural products. Some community gardens require adherence to basic rules, have self-governance policies, and participatory fees.

RECENT DEVELOPMENTS

In the fall of 2010, news reports highlighted instances of cheating at CFMs, including vendors selling fraudulently labeled products and reselling fruits and vegetables straight from wholesale markets. Evidence suggests that instances of cheating at CFMs are widespread, which may significantly impact the economic viability of CFMs if the public ultimately loses confidence in the Direct Marketing/CFM Program. In response to these media reports, CDFA held four listening sessions designed to solicit input for improving the Direct Marketing Program. These listening sessions were held from October 27, 2010 until November 8, 2010 in Sacramento, Santa Monica, Fresno, and Berkeley. The demographics of each listening session varied significantly, with some sessions composed primarily of producers while others were composed primarily of market managers and consumers. There were only three common themes echoed throughout the sessions. Specifically, that CDFA, county agricultural commissioners, and market managers should enhance enforcement, communication, and education. Accordingly, many of the participants argued that the CDFA CFM fee of sixty cents (\$.60) for each certified producer certificate on each market day does not provide adequate funding for enforcement at CFMs throughout the state.

Upon conclusion of the listening sessions, CDFA formed a CFM Technical Planning Committee for the purpose of reviewing various functions of the Direct Marketing Program (e.g., registration, enforcement, and administration) and evaluating current processes and procedures. The CFM Technical Planning Committee consisted of producers, CFM managers, agricultural commissioners, and industry affiliates. The CFM Technical Planning Committee identified mechanisms to prevent possible abuses at CFMs that may be occurring due to CDFA's inability to provide adequate enforcement and oversight on its nominal annual budget of approximately \$221,000.

The CFM Technical Planning Committee recommended statutory changes to alleviate discrepancies in how current inspection and enforcement provisions are applied from county to county and to provide uniform funding mechanisms at both the state and local level. Additional statutory changes were deemed necessary to enhance compliance at CFMs by creating three CDFA Special Investigator positions to assist in cross-jurisdictional enforcement activities, creating a significant funding source for counties to utilize for complaint investigations, allowing the state to train and certify all CFM managers on an annual basis, provide training of county personnel, and develop and share educational material. In addition, the CFM Technical Planning Committee recommended that full cost recovery for county inspections should be legislatively mandated in an appropriate section of the Food and Agricultural Code. On March 10, 2011, the CFM Technical Planning Committee presented its recommendations to the CFM Advisory Committee, which endorsed the recommendation by an 11 to 3 vote. In addition, the CFM Advisory Committee expressed support for a CDFA CFM fee that shall not exceed four dollars (\$4.00) for each certified producer certificate on each market day. These recommendations did not materialize during the 2011 legislative session due to a lack of significant industry support.

ISSUES

The role of direct marketing has changed considerably since it was originally established in 1977. Accordingly, the line between directly marketing products grown by a producer and buying and reselling products has been rendered indistinguishable due to statutory changes. The changing role and definition of direct marketing has created significant challenges for enforcement. A sampling of the enforcement challenges and issues related to direct marketing are outlined below.

Although CFMs are a heavily regulated sector of the Direct Marketing Program, there is currently limited funding for enforcement. This presents several problems as consumers and participants are led to believe that CDFA is ensuring appropriate regulatory control. In reality, CDFA and county agricultural commissioners only have the funding to conduct minimal enforcement activities. Lack of funding and significant growth in the CFM industry has further exacerbated enforcement efforts and threatens to delegitimize the Direct Marketing Program. Consequently, a lack of consumer confidence in CFMs would limit opportunities for California producers to directly sell their product to the public at CFMs.

Direct marketing was not originally intended to be a business venture. As referenced previously, direct marketing was originally intended to be a marketing channel for California producers without the need for a third party (e.g., packers, handlers, etc.). Due to the obfuscated trajectory of the Direct Marketing Program, California producers are arguably at a disadvantage in comparison with individuals that buy and resell agricultural products. For example, while California certified producers are mandated to sell only the products they grow at CFMs, individuals, organizations, and entities are authorized under the Food and Agricultural Code to purchase product at a CFM or the point of production and sell the product directly to end users with exemptions for

minimum size, labeling, standard pack, and container requirements. The lack of a clear definition of direct marketing has the potential to impact California certified producers as they must compete with individuals buying and reselling products. Ergo, a private business may be formed to buy product from various farms and call it a farmers' market.

There are several potential food safety issues for CSAs and other subscription based services. The mixing and reusing of containers with high-risk commodities such as tomatoes and melons increases the potential for E. coli and salmonella contamination, respectively. In addition, the mixing of produce with meat, dairy, and egg products further exacerbates food safety concerns.

In addition, CDFA may wish to define the term "locally grown" as there is currently no definition in the Food and Agricultural Code. Due to production scale diversity within California, locally grown for one operation may be defined as 30 miles from the point of production while another operation may consider locally grown to be from western United States. Defining locally grown may benefit both the consumer and producers by enabling additional purchasing and marketing opportunities, respectively.

Approaching oversight of the Direct Marketing Program from a holistic view that encompasses all of the previously identified marketing outlets could create a significantly broader base that would provide the stability to resources necessary to support industry and consumer expectations.

NEXT STEPS/DIRECT MARKETING PROGRAM REDESIGN

Building upon the work completed by the CFM Technical Planning Committee, Inspection and Compliance proposes to establish a taskforce composed of representatives from a variety of industry representatives. This taskforce would be charged with:

- Ascertain industry support for developing public-private partnerships designed to enhance access to fresh fruits and vegetable in food deserts.
- Evaluating mechanisms to appropriately fund, support, and enforce the Direct Marketing Program.
- Evaluating current Direct Marketing statutes and regulations to determine appropriate regulatory and statutory action (e.g., repealing, amending, or adding).
- Expand the availability of affordable and locally grown produce
 - Explore methods to make it easier for small/local farmers to consolidate produce in order to sell to institutions.
 - Farm to school programs.

- Determining an appropriate role for the Direct Marketing Program as a regulating entity. Accordingly, the task force would be charged with determining what level of regulatory oversight the direct marketing industry desires.
- Determining whether there is a desire to define the term “locally grown” in the Food and Agricultural Code.
- Determining whether buying and reselling is an acceptable method of direct marketing.
- Determining whether there is industry support for defining CSAs in the Food and Agricultural Code.

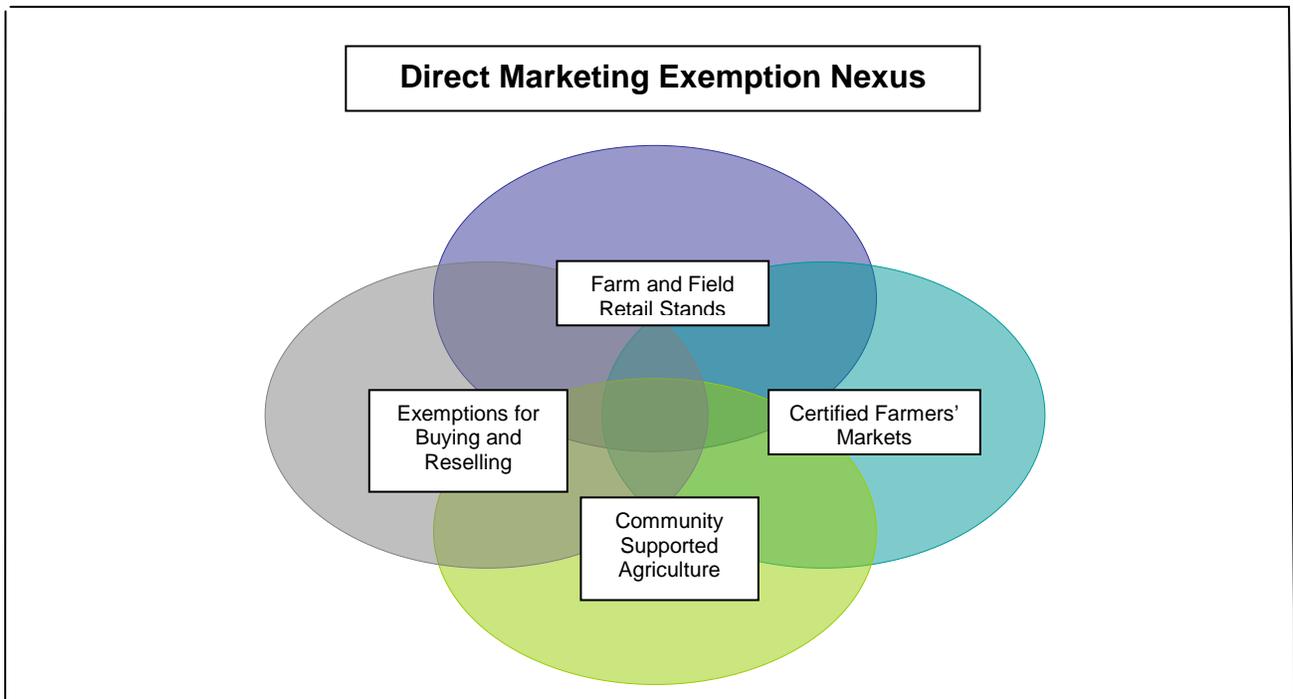


Figure 2. This diagram illustrates potential shared regulatory responsibilities within direct marketing, including exemptions for standardization.

ASSUMPTIONS AND CONSTRAINTS

1. The scope of the program may develop beyond what has been commented on in the preceding document.

Requirements – Definitions

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal
 Comment: Comment or reference to supporting documentation or provides additional detail.

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
1	Direct Marketing			
2	Community Supported Agriculture (CSAs)			
3	Locally/Regionally Grown			

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Requirements – Direct Marketing

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal
 Comment: Comment or reference to supporting documentation or provides additional detail.

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
1	Community Supported Agriculture (CSAs)			

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
2	Certified Farmers' Markets (CFM)			
3	Field/Farm Stands			
4	Farm to School, victory gardens, etc			
5	Buying and reselling			

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Requirements – Expand Availability of Fresh Produce

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal
 Comment: Comment or reference to supporting documentation or provides additional detail.

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
1				

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Requirements – Level of Enforcement

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
1				

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Requirements – Laws and Regulations

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal
 Comment: Comment or reference to supporting documentation or provides additional detail.

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
1				

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Requirements – Funding

FIELD

ID #: Design Number (unique number for each item).
 Action: Type of Action or Event
 Committee Proposal: Idea put forth by committee members
 Add'l Requirements: Action items to carry out Committee Proposal
 Comment: Comment or reference to supporting documentation or provides additional detail.

ID #	Action (Who/What)	Committee Proposal (How)	Add'l Requirements (including Funding if appropriate)	Comment
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APPENDIX A – REFERENCED DOCUMENTS

The documents identified below are source documents to support proposals listed in the Requirements section.

Number	Document	Control No.	Comment
A-1			
A-1			
A-2			

Direct Marketing Ad Hoc Committee
Requirements and Design Document

Number	Document	Control No.	Comment
A-3			
A-4			
A-5			
A-6		Version 0.2	
A-7		Version 0.1	Provided 3/10/11