



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE
Karen Ross, Secretary

December 5, 2014

TO: All Counties

RE: AB 1871 Changes, FAQ, Producer and Market Applications (Certified Farmers' Markets)

The passage of Assembly Bill 1871, which becomes effective January 1, 2015, has generated a number of questions. To view the full text of the bill, please visit [AB 1871 Chaptered](#). In order to reduce repetition of our answers to those questions, we have provided a synopsis of the Bill and attached the FAQs, which are posted on our website: [Frequently Asked Questions](#). Please feel free to direct the public to the site.

New Code Section 890 makes it unlawful to misrepresent the sale or availability of agricultural products with regard to the area of production, the identity of the producer selling product, or the methodology of production. Penalties for misdemeanor violations of this section are six months in jail, a fine not to exceed \$2,500 or both.

Section 891 allows for civil penalties up to \$5,000 to be levied in lieu of prosecution.

Section 892 allows either California Department of Food and Agriculture (CDFA) or the county agricultural commissioner to take a separate action if warranted for violations specific to a particular license or permit.

Section 893 requires monies collected from penalties assessed under Section 890 and 891 be deposited into a new account and used for enforcement purposes.

Section 894 states that actions for violations of Section 890 preclude any concurrent proceedings for the same act.

Section 43100 is amended to allow the same penalties created in Section 890 to be used for false or misleading use of the term "California grown".

New Section 47000.5 defines "agricultural product" and specifies that products characterized as services, arts, crafts, bakery, candies, soaps, balms, perfumes, cosmetics, pottery, clothing, fabrics, pastas, compost, fertilizers, candles, ceramics, foraged foods, and types of wares are not agricultural products for the purposes of this chapter. The Section further defines "practicing the agricultural arts" and includes animal care under this new definition. It provides a "producer" definition as a legally formed ranch or farm that produces agricultural products on land controlled with a legal right of possession.

Section 47001 is amended to allow CDFA to enter into cooperative agreements with the counties to carry out the provisions of this Chapter. It also allows certified farmers' market (CFM) operators to contract directly with the county agricultural commissioner upon reasonable suspicion of a violation of section 890.

Section 47002 is amended to allow any California farmer registered or certified to be able to transport and sell products they produced exempt from size, standard pack, container, and labeling at any location operated by any person or entity regulated under this Chapter subject to specific qualifications.

New Section 47004 requires operators of a certified farmers' market to establish a "clearly defined marketing area" where only agricultural products may be sold. It also reiterates regulations that prohibit buying and reselling of agricultural products within the defined area of a CFM. This Section requires all producers participating within a CFM to post conspicuous signage stating the ranch name, the production county, and a statement that clearly represents that the producer is only selling product which they have grown or raised. Section 47004 requires all processed products to state on the label or bulk sales signage a similar statement that those products were grown by the producer and state the city in which the farm is located. In addition every processed product shall be identified by a registration number or other identifying reference to the facility where the food was processed or another required labeling statement in accordance with California Health and Safety Code. Meat and poultry products must also have the identity of the facility in accordance with USDA or CDFA standards and dairy products must provide the identity of the facility where the products were processed. Per 47004, no sale of fresh whole fruits, nuts, vegetables or flowers shall be allowed to be sold in an area adjacent to the area known as a CFM. This Section repeals the requirement for market operators to provide market rules to CDFA or the county agricultural commissioner.

Section 47004.1 is repealed. CDFA will no longer be providing "advisory opinions" regarding disputes between a producer and a CFM. The department will still provide hearing rights afforded to producers in Sections 43003(e) and 47025.

Section 47010 is amended and will change the number of, and qualifications for, the Certified Farmers' Market Advisory Committee. The committee will now consist of 14 members including six producers or representatives of organizations that represent producers, six market operators or representatives of the operator, one public member, and one county agricultural commissioner.

Section 47012 is repealed. This section had stated the advisory committee term limits which are now found in Section 47010.

Section 47020 requires county agricultural commissioners to provide a fee schedule reflecting estimated inspection costs for both CFMs and certified producers prior to the certification charge which may be at the actual expense incurred. Commissioners must also perform at least one production site inspection on all new producers. This Section requires the application to include a declaration by the producer that they are knowledgeable and intend to produce in accordance with Good Agricultural Practices as outlined in the [Small Farm Food Safety Guidelines](#) published by CDFA.

Section 47021 is amended to require CFM operators to remit a quarterly fee of \$2.00 for each "vendor" participating and selling goods each market day under the authority and the management of the CFM. Vendors include not only the producers operating in the area designated as a CFM but also any sellers in the ancillary section such as food or craft vendors.



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This Section also allows a CFM to petition the Secretary for a reduced fee of \$1.00 provided the local agricultural commissioner's office verifies the market only allows agricultural products produced by producers in the same county as the market and is located in a county with a population of less than 400,000.

Within the Bill, Section 47020 requires all producers to declare they are aware of and are practicing food safety. In order to satisfy the Bill's provisions, the Department has created a new application. In addition the CFM operator's application was also changed. The new applications are attached.

The Department is going through the procurement process to have triplicate padded applications available for all counties. However, until such time that we are able to get them printed, the Department is asking all counties to make copies of the new forms and utilize them starting January 1, 2015.

If you have any further questions about the changes, feel free to contact our Certified Farmers' Market Program Supervisor, John Pedigo at (916) 900-5210.

Sincerely,

A handwritten signature in blue ink that reads "Steve Patton" with a stylized flourish above the name.

Steve Patton
Branch Chief



Frequently Asked Questions Assembly Bill 1871

- Q:** When do the changes take effect?
A: The bill's provisions become effective January 1, 2015
- Q:** Is the producer fee being raised from .60 cents to \$2.00?
A: The fee paid to the California Department of Food and Agriculture by the market operator will increase to \$2.00 per every vendor under market control. This includes food, crafts, and other types of wares or services.
- Q:** What kind of signage will producers need to post?
A: Producers will be required to post a conspicuous sign that contains the farm or ranch name, the county of production, and a statement that they only sell what they grow or similar representation. They will still be required to post their certified producer's certificate.
- Q:** Can produce not grown in California, such as bananas or papayas, still be sold in the community events section?
A: No, the new law states no fresh fruits, nuts, vegetables, or flowers may be sold in an area adjacent to the certified farmers' market (CFM). The law does not exempt produce or flowers based on their origin.
- Q:** Mushrooms are not technically a fruit or vegetable. Are they approved for sale in the area adjacent to the CFM?
A: Yes. AB 1871 specifically lists fresh whole fruits, nuts, vegetables, and flowers as not allowable for sale in the area adjacent to the CFM. Agricultural products, such as eggs, honey, grains, mushrooms, and herbs would be allowed for sale in the area adjacent to the CFM.
- Q:** What does the new definition of "Agricultural Products" mean?
A: It clarifies what may or may not be sold in the area designated as a CFM. Products such as soaps, candles, crafts and others are now defined as non-agricultural and may not be sold in the area designated as a CFM. Nonagricultural products may still be allowed to be sold in the community event section.



- Q: Can the markets now directly pay the Agricultural Commissioners to perform investigations?
- A: Yes, markets that have reasonable suspicion of producer misrepresentation may directly contract with county agriculture commissioners provided the county allows such contractual arrangements.
- Q: Can nursery stock still be sold in the CFM?
- A: Yes, but there is a new definition of "practicing the agricultural arts" that states the producers must encompass the various phases of producing the agricultural product. This would eliminate individuals that purchase a plant, water it once and declare that they have practiced the agricultural arts in order to get that product certified.
- Q: Are there any changes to the quarterly report?
- A: Yes, markets will now be required to report every producer's attendance for each market event.
- Q: Is it true that certification costs will rise?
- A: The county agricultural commissioner is now allowed full cost recovery, but they are required to provide a cost estimate prior to certification.
- Q: Can producers still be suspended and/or fined?
- A: Yes, anyone caught misrepresenting the area of production, the producer's identity, or the methodology of production is subject to a fine of up to \$5,000.00 and an 18 month suspension.

