



Pacific Coast Farmers' Market Association

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Rules & Regulations for Certified Farmers' Markets - 2010

STATEMENT OF INTENT

NATURE OF THE MARKET: The Certified Farmers' Markets (CFM) are diversified markets offering for sale to the general public certifiable agricultural products and non-certifiable agricultural products, as well as non-agricultural products in an area adjacent to the CFM.

The CFM provides producers with the opportunity to sell their fresh, California Grown products directly to the consumers without the intervention of a middleman.

Each CFM is operated in accordance with regulations established in the California Administrative Code (Title 3, Article 6.5) pertaining to Direct Marketing. Each market is certified by the County Agricultural Commissioner as a direct marketing outlet for producers to sell their products directly to consumers without meeting the usual size, standard pack and container requirements for such products. However, all produce must meet minimum quality standards.

The non-certifiable agricultural products and non-agricultural products add variety and enhance the festive ambiance of the Farmers' Market. Although the State Direct Marketing regulations require the producers of fresh fruit, nuts, vegetables, flowers, honey, eggs, nursery stock, and plants be certified, producers of non-certifiable agricultural products and non agricultural products are not certified, but the same producer-to-consumer philosophy applies for all items sold at the Market.

Each CFM is managed, operated and controlled by the Pacific Coast Farmers' Market Association.

In order to ensure the successful maintenance of the CFM as an efficient outlet for producers to sell their products directly to consumers, PCFMA has established the following set of Rules & Regulations.

The Pacific Coast Farmers' Market Association Board of Directors, the PCFMA Director and the PCFMA Market Manager will have the final authority in interpreting and enforcing these Rules & Regulations.

PCFMA reserves the right to make additions or deletions to these rules when deemed necessary. Written notice of these changes will be provided to the producers.

I. INTENT AND IMPLEMENTATION

The purpose of this set of rules is to govern the operation, administration and management of the Certified Farmers' Markets under the control of this organization.

The Board of Directors of this organization, its management and its designated agents will implement and enforce all Rules & Regulations pertaining to the operation of the Certified Farmers' Markets under its control in a fair and equitable manner.

II. STATE REGULATIONS

CALIFORNIA ADMINISTRATIVE CODE:

- (a) Except as provided in subsection (f) below, producers or certified producers may sell or offer to sell only agricultural products which they have produced to consumers at a certified farmers' market. The certified producer's immediate family or employee(s) may also act for and sell the certified producer's agricultural products. No certifiable agricultural products may be sold at a certified farmers' market unless such products are listed on the certified producer's certificate.
- (b) All agricultural products, when sold or offered for sale at a certified farmers' market or at or near the point of production, shall comply with all applicable requirements of Article 1 (beginning with Section 113700), 2, 3, 4, 5, 6, 7, 11, 13, and 15 of Chapter 4 (California Uniform Retail Food Facilities Law), Division 104, Part 7, of the California Health and Safety Code, and Chapters 1 (beginning with Section 109875), 2, 4, 5, and 8 (California Sherman Food, Drug, and Cosmetic Law), and Division 104, Part 5, of the California Health and Safety Code.
- (c) Only agricultural products may be sold or offered for sale at a certified farmers' market. The sale of nonagricultural products shall not be permitted in the area designated as a certified farmers' market.
- (d) The certified producer's embossed photocopy certificate shall accompany the certified agricultural products during transportation and shall be conspicuously posted at the point of sale.
- (e) When any agricultural products are sold by weight, the type of scale used shall be approved by the Department of Food and Agriculture, and shall be tested and sealed for use by the county sealer-director of weights and measures.
- (f) A certified farmers' market may allow, or prohibit, a certified producer or his/her immediate family member or employee to sell at that market certified agricultural products on behalf of a maximum of two other certified producers including, but not limited to, separate entities, such as partnerships, in which the certified producer has an interest as an individual member. If such a practice is allowed, the following provisions shall be met by the certified producer and shall be specified in the certified farmers' market's rules and regulations:
 - (1) A certified producer shall not represent, nor be represented by more than two other certified producers in a 12-month period.
 - (2) Each certified producer's certified agricultural products to be sold or offered for sale shall be separated and identifiable by each certified producer's valid certificate at the point of sale.
 - (3) The name of the certified producer for whom another certified producer is selling shall appear on the certificate of the certified producer that is conducting sales at a certified farmer's market.
 - (4) The name of the certified producer who is selling the products of another certified producer shall appear on the certificate of the person or entity for whom the certified producer is selling.
 - (5) The certified producer selling for another certified producer shall be selling or offering for sale, at the same certified farmers' market on the same day, certified agricultural products which the certified producer conducting the sales has produced and which are in greater volume than the volume offered for sale for the other certified producer. For purposes of this section, the volume shall be measured by the weight or dollar value of the products at the time and point of sale. This volume requirement shall apply only at the beginning of each day of sale.

- (6) The producer applying for certification shall obtain and submit to the agricultural commissioner, prior to certification, written authority from said other certified producers to sell on their behalf.
 - (7) Commission sales and buying and selling between certified producers is prohibited. Any payment made for the service of one certified producer selling for another certified producer shall not be related to the volume or value of the products sold.
 - (8) The operator of a certified farmers' market may prohibit or otherwise establish rules regarding sales permitted under this subsection that are more restrictive, provided that such prohibition or restriction is contained in the market's written rules and regulations.
 - (9) A certified producer who sells certified agricultural products on behalf of another certified producer or whose products are sold by another certified producer at a certified farmers' market shall keep for a period of not less than three years, the following records relating to such products:
 - (i) Date of transfer to seller and accurate amount of products, by weight, dry measure, or count, transferred. Each separate product and amount shall be recorded according to variety.
 - (ii) Date of sale and accurate amount of products, by weight, dry measure, or count, sold. Each separate product and amount shall be recorded according to variety.
 - (iii) Names of both certified producers involved.
 - (10) A certified producer subject to this subdivision shall produce, for inspection, records required by this section upon demand of a representative of the department or county agricultural commissioner.
- (g) The provisions of this section, and any amendments thereof, shall apply to all new certified producer's certificates, including renewals, upon filing with the Secretary of State, unless another effective date has been designated by the Office of Administrative Law. Certified producer's certificates already issued shall conform to the requirements of this section, and any amendments, within twelve (12) months of the certificate issue date.
- (h) Any person selling organic products or representing products as organic at a certified farmers' market shall conspicuously post at the point of sale a photocopy of his or her current State of California organic registration and, if applicable, documentation of his or her organic certification. Prior to posting organic documents, it is permissible to conceal from public view acreage and dollar amounts pertaining to annual sales. A complete photocopy of the original, unaltered, current organic document(s) shall, upon the request of an enforcement officer, be made available for review at any time during participation in a certified farmers' market.
- (i) Any person selling organic products or representing products as organic on behalf of another certified producer at a certified farmers' market shall conspicuously post at the point of sale a photocopy of the represented certified producers' current State of California organic registration and, if applicable, documentation of the represented certified producers' organic certification. Prior to posting organic documents, it is permissible to conceal from public view acreage and dollar amounts pertaining to annual sales. A complete photocopy of the original, unaltered, current organic document(s) shall, upon the request of an enforcement officer, be made available for review at any time during participation in a certified farmers' market.

- (j) A certified producer shall not sell or represent sprouts as his or her own production resulting from practicing the agricultural arts if less than 50 percent of the seeds, legumes or nuts in any package or container have sprouts that have emerged from the seed, legume or nut coat, husk, pericarp or other type of covering.

CALIFORNIA RETAIL FOOD CODE:

When selling at the markets, the producer and the producer's agricultural products shall comply with all applicable requirements of the California Retail Food Code and the California Sherman Food, Drug and Cosmetic Law, specifically:

- (1) All food shall be stored at least six inches off the floor or ground or under any conditions that are approved.
- (2) Food preparation is prohibited at Certified Farmers' Markets with the exception of food samples. Distribution of food samples may occur provided that the following sanitary conditions exist:
 - (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) Notwithstanding Section 114205, potable water shall be available for hand washing and sanitizing as approved by the enforcement agency.
 - (f) Potentially hazardous food samples shall be maintained at or below 45 degrees F and shall be disposed of within two hours after cutting.
 - (g) Wastewater shall be disposed of in a facility connected to the public sewer system or in a manner approved by the enforcement agency.
 - (h) Utensils and cutting surfaces shall be smooth, nonabsorbent, and easily cleanable or single use articles shall be used.
- (3) Processed foods must be processed in an approved facility, properly packaged and labeled under clean and sanitary conditions.
- (4) Dried fruit and shelled nuts sold in an unpackaged bulk form must be displayed with a cover and conform to dispensing methods approved by the local health department.
- (5) No live animals, birds or fowl may be kept or allowed within 20 feet of any area where food is stored or held safe.
- (6) Vendors selling nonagricultural food products are required to have a valid Health Permit from the local jurisdiction and are not considered part of the Certified Farmers' Market.
- (7) All products grown produced or processed as organic must be labeled according to the requirements of the Organic Foods Production Act of 1990. Organic product must be registered with California Department of Food and Agriculture. Registration must be prominently displayed.

In addition, product requiring certification by an USDA accredited certification agency must also prominently display the certification seal.

- (8) Smoking is not permitted in produce display and immediate sales area.

III. ADMISSION OF A PRODUCER TO THE MARKET

No producer who was not an active producer with PCFMA in the previous year shall be admitted to sell at any market until the producer has successfully completed an inspection by the Association's designated inspector to verify the authenticity of the producer's certified production of agricultural products. Any producer who disagrees with the result of the inspection report may file a written appeal with the Board of Directors within thirty (30) days of the date of that report. The decision of the Board, made at the next regular scheduled meeting, shall be final.

Admission to sell at any market shall be at the reasonable discretion of PCFMA. In making this determination, a manager should consider the following:

- A. Producer's positive or negative history of the compliance with state, local government and market Rules & Regulations.
- B. Producer's history of market participation. When practical, significant weight, priority, and preference should be given to producers returning from previous seasons.
- C. The competitive availability and number of sellers of producer's product present within the market. If practical, monopolies and surfeits (gluts) should be avoided.
- D. Whether the present number of sellers of producer's product is adequately supplying consumer demand.
- E. The number of unreserved spaces and other limitations of the market.
- F. A Certified Producer shall not represent, nor be represented, by more than one other Certified Producer at any PCFMA market in a 12-month calendar year unless approved in writing.

Change of business ownership requires submission of a new application to PCFMA, which will be processed as a new admission. The transfer or change of ownership does not grant or guarantee the new owner the same admission or current stall space assignment as the previous owner.

Admission of a producer may be conditioned by period of attendance time and type of product allowed limitations.

Any producer aggrieved by the manager's decision may appeal in writing for review by the Director of the Association. The Director may refuse to review, agree to review, and may uphold, modify, or negate a manager's decision. A decision by the Director can be appealed in writing to the Board of Directors within thirty (30) days. A decision by the Board of Directors made at the next regular scheduled meeting shall as to this association be final.

IV. ADMISSION OF PRODUCTS TO THE MARKET

Unless otherwise specifically listed as an additional authorized agricultural, processed agricultural or nonagricultural product in this section, only fresh fruits, nuts, vegetables, shell eggs, honey, flowers and nursery stock listed on a producer's certificate may be sold at the markets.

Admission of any certifiable agricultural or non-certifiable agricultural product to the market or nonagricultural product (with Board approval) to an area adjacent to the market shall be at the reasonable discretion of PCFMA. In making any determination in this regard, the Market Manager shall consider the following:

- A. Producer's history of selling such product within or adjacent to the market. When practical, significant weight and preference should be given to products sold by producer in previous seasons.
- B. The present competitive availability (number of sellers) of producers product within or adjacent to the market. If practical, monopolies and surfeits (gluts) should be avoided.
- C. The type of relative quality of the product intended to be offered for sale by the producer. Field run produce shall be encouraged. Culls or lowest grade only sales shall be discouraged and may be prohibited.
- D. Other limitations and market policies affecting product admission. Admission of a product to be sold by a particular producer may be conditioned by period of sale, location of sale, variety, quality and other general or specific limitations.

All such products must have been produced by the producer by the practice of the agricultural arts upon land, which the producer farms and owns, rents, leases, or sharecrops.

Additional authorized non-certifiable agricultural products, which may, be admitted by the Market Manager for sale within the Certified Farmers' Market, are:

- A. Dried beans, grains, fruits, nuts, and vegetables listed on producer's certificate.
- B. Shelled nuts, including those, which have been roasted, salted or flavored, but not candied, coated or covered.
- C. Dried herbs and spices.
- D. Fresh fruit juices.
- E. Flower arrangements and wreaths.

All non-certifiable agricultural products must have and be accompanied by a verifiable listing of the fresh product on producer's certificate of the producer selling.

Producer must be able to show location and capability of processing or, if processing is done by a second party, the method used to insure that the processed product returned is the original source product submitted by the producer for processing. Receipts, volume data, and letters verifying methodology may be requested or required.

Producer must show that all processing was accomplished under safe and sanitary conditions and, if applicable, obtain, furnish and display any and all health permits necessary.

Producers wishing to sell a product other than those listed immediately above must submit a written application for approval to the Association.

Any producer aggrieved by the manager's decision may appeal in writing for review by the Director of the Association. A decision by the Director can be appealed in writing to the Board of Directors within

thirty days. The decision of the Board of Directors made at the next regular scheduled meeting shall as to this association be final.

V. ASSIGNMENT OF SELLING SPACE

The producer's location, space size and other factors of assignment of selling space within a market shall be at the reasonable discretion of the Market Manager. Sellers must accept the stall space assigned to them by the Market Manager. In making any determination of the assigned space, the Market Manager shall consider the following:

- A. The maintenance of present and past consumer-producer relationships.
- B. Causing or maintaining an unsafe or unsanitary condition at the market.
- C. Unreasonable or outrageous conduct considered detrimental or prejudicial to the purposes and interest of the market or the Association.
- D. Failure to attend at a previously reserved market space without adequate prior notification.
- E. The occurrence of any condition or limitation, which was placed on the admission of the producer or the producer's product to any market.
- F. The following Rules and Regulations apply to stall space assignments:
 - 1) A producer's selling privileges shall be suspended by the Market Manager if the producer's certificate is revoked, or if the producer fails to pass the Association's inspection. The first such suspension will be for a period of thirty (30) days, commencing upon the effective date of the Notice of Suspension. The second such suspension will be for a period of sixty (60) days commencing upon the effective date of the Notice of Suspension. A third such suspension, at any time during a producer's affiliation with the Association, will result in expulsion from the Association.
 - 2) Whenever a producer does not adhere to Market arrival and departure times or fails to notify the manager of his/her intention to sell at the CFM on a specific day, the manager may revoke the producer's stall space reservation for two weeks. The arrival time for each market is no earlier than 2 hours or no later than 30 minutes before the published opening time, unless specified in a S.O.P.

VI. OTHER MARKET RULES, POLICIES AND REQUIREMENTS

These additional rules shall apply to all producers within the Market:

- A. **Product Limitations.** Sales of out-of-season produce are allowable only to the extent of their reasonable and normal storage life or upon proof that such produce was produced by producer in greenhouse facilities operated by such producer.
- B. **Certificates.** Producer certificates with two or more names listed, as producer must provide acknowledged evidence of partnership or other legitimate business agreement.
- C. **Prices.** All prices must be clearly marked or posted. Collusion and deceptive pricing practices are prohibited. Bargaining with the consumer is specifically allowed.

- D. **Market Hours: Arrival and Departure.** The hours for any market shall be set by PCFMA. *Sellers must arrive no earlier than 2 hours prior to and no later than 30 minutes prior to the published opening time of the market and leave within one hour after the published closing time of the market or as published in the market's published Standard Operating Procedures.* Sales prior to the posted opening hours of the market or after the posted closing hours of the market are allowed only at the discretion of the market manager. Sellers may leave the market site prior to the published closing time only upon the approval of the Market Manager who will assess public safety and welfare.
- E. **Market Attendance: Cancellations:**
- 1) Producers are required to cancel two (2) days (48 hours) prior to market day to avoid stall fee charges. Producers who cancel less than two (2) days before market day, regardless of the reason, (i.e. truck breakdowns, employee availability, etc.) are responsible for the stall fee unless the Association can fill the stall. Generally, a two- (2) day notice may be sufficient to allow for filling the space. One day notice is not sufficient.
 - 2) Producers who fail to notify the Market Manager of a cancellation twice in a three (3) month period or cancel a market 3 times in a 3-month period may permanently lose their stall space for that market.
- F. **Setups, Safety and Sanitation:**
- 1) All display table frontage must be behind the setup line designated by the Market Manager. No boxes or produce displays may extend into the common customer traffic aisle way. Producers who display produce on a side table must allow at least 24 inches of side aisle in producer's space for customer ingress and egress. Tables and other display fixtures must be sturdy, stable and not overloaded. All shades and shelters must be tied down and completely secured in windy conditions or be subject to immediate and uncompromised removal.
 - 2) Before any sales transactions are allowed, the producer's area must be cleared and cleaned of any produce trimmings or debris of any type. Absolutely no rubbish of any type will be allowed on the stall grounds, the consumer area directly surrounding the stall, or in any other contiguous area that could constitute a health or safety issue. Any waste water generated during the market for washing of produce or utensils must be collected by the producer, removed from the market area in a container with a lid, and properly disposed of at the producer's farm or business through the approved plumbing system which shall discharge into the public sewerage, into an approved private sewage disposal system, or as approved by the enforcing officer.
 - 3) Before the producer may leave the market, both the stall section and the surrounding area must be totally free of any produce and debris. Producers' trash shall be removed by the producer and disposed of properly. Failure to follow the above referenced issues will result in revocation of the sellers stall space and a \$50.00 fine.
 - 4) All producers shall observe all fire lanes while loading and unloading.
- G. **Sampling:** Sampling of products is allowed only so long as the sampling procedures are in compliance with state and county regulations concerning the safe distribution of food products. PCFMA may issue its own sampling guidelines that are more restrictive than those of the state or county.

- H. Noise, Disturbance and Intrusion. With few exceptions, no radios are allowed to be played during market sales hours. No loud hawking, barking or shouting to promote product is allowed. All product promotion must occur within the space assigned to the producer and not in any common area. Disruptive action in the market is prohibited.
- I. Identification Signs.
- 1) All producers must display a sign identifying their name or the name of their establishment and the city or town where their production occurs.
 - 2) Signs posted by producers are subject to approval of the Market Manager. Signs that state “No Pesticides” and or “No Sprays” are not permitted.
- J. Bags, packaging and litter. Sellers using plastic bags for the convenience of their customers shall insure that such bags do not litter the market under windy conditions. Sellers using T-Shirt style plastic bags shall insure that the connecting tabs are fastened securely or are removed prior to the presentation for customer use. Sellers shall not use expanded polystyrene foam (Styrofoam) in any packaging at the farmers’ market.
- K. Conduct:
- 1) Any statement and/or action which is deemed to be offensive, abusive, or otherwise inappropriate to a customer, market manager, market staff person, attending producer, PCFMA staff person, sponsor, or any official from a city, county or state agency conducting business within the Market parameters, will be considered a violation to these market rules and will be subject to any or all disciplinary steps indicated in these market rules.
 - 2) All producers shall sell/market their products in a manner satisfactory to the Market Manager and in an honest, conscientious and business-like manner.
 - 3) Producers must wear shirts and closed-toe shoes while on the market premises.
- L. Insurance:
- 1) Producers must, at all times while selling in a PCFMA market, take out and maintain in full force and effect a current policy or policies of general public liability and product liability. These policies must name PCFMA as an Additional Insured; give PCFMA ten (10) days advance written notice prior to its cancellation, if canceled during the operating season; and provide coverage of \$500,000 each or greater. A certificate showing proof of insurance naming PCFMA as an additional insured shall be filed with the Association before entry into a Market.
 - 2) A current copy of automobile insurance must also be on file.
- M. Sales of Organic Products: The only products that may be promoted, represented or sold as organic are those that meet the requirements of the Organic Foods Production Act of 1990. The promotion, representation or description of products as organic that do not meet the requirements of the Organic Foods Production Act of 1990 is a violation of the law and these Rules and Regulations. If a producer is selling both Organic and Conventionally grown products at the same stall, clear and concise separation of the products and signage shall be required.
- N. Standard Operating Procedures: Each individual market location may develop and issue a set of Standard Operating Procedures (SOP) to address market-specific issues such as downloading

procedures, parking, set-up, or other issues. Acceptance of a stall space within a market is an indication of the producer's agreement to comply with the SOP for that market. Each market-specific SOP shall be considered a part of these Rules and Regulations and enforceable as such.

- O. Acceptable forms of payment. All producers shall accept PCFMA approved methods of customer payment which include; WIC coupons, EBT script and Carrot Cash.

Violations of these rules or policies may result in a fine, penalty or other disciplinary action. The severity of any penalty or discipline imposed shall be directly related to the gravity or repetition of the violation. The following disciplinary steps being issued by the Director or the Market Manager. Severity of penalties will be dependent upon the nature and intent of the offense and may not necessarily follow in the order below:

- A. An oral warning
- B. A written notice of violation
- C. A written notice of violation with a \$25.00 fine
- D. A written notice of violation with a fine determined by violation
- E. Market suspension of any length, up to eighteen months

A producer is responsible for the actions of the producer's representatives, employees or agents.

If possible and reasonable under the circumstances, a Market Manager must attempt to give adequate warning and notice of consequential action prior to the actual action of removal or other disciplinary action.

The Board of Directors will review all disciplinary actions at a regularly scheduled meeting.

Any producer removed or disciplined by the action of the Market Manager shall have the right of written appeal and review by the Director of the Association.

The Director after review may uphold, modify, or negate any decision by the market manager. Decisions by the Director may be appealed in writing to the Board of Directors within thirty (30) days. The decision by the Board of Directors at the next regular scheduled meeting in regard to all above matters shall as to this association be final.

If a producer challenges PCFMA in a court of law and the court finds in favor of PCFMA, said producer agrees to pay all costs associated with the legal action.

The penalty for producers who sell products not of their own production is suspension and/or a fine subject to the discretion of the Board of Directors. This applies to the owner(s), producer(s), employee(s) or other representatives associated with the business. The maximum suspension period shall be eighteen months and withdraw all consideration with respect to past participation for same. Suspended party(s) shall not sell for her (himself) or on behalf of any other producer during the suspension period at any market operated by PCFMA. A fine of \$250.00 will be due upon suspension. Conditions for re-entry will include the costs of two (2) inspections by designated representatives to the farm or other location(s) where products are produced, processed or held.

A second violation will cause permanent disqualification from all PCFMA markets.

A Producer that is cited by the Department of Agriculture or the Environmental Health Department and/or causes a re-inspection will be responsible for the re-inspection fees. A producer whose violation results in a penalty or fine against PCFMA or one of PCFMA's markets will be responsible for reimbursement of the penalty or fine.

VII. APPLICATION AND RESERVATION PROCESS

- A. A prospective producer must initiate and complete an Application-to-Sell packet, which includes:
- 1) A current Application-to-Sell.
 - 2) Copies of Certified Producer Certificates and all other appropriate agreements and permits, submitted annually.
 - 3) In addition to completion of an Application-to-Sell packet, a producer shall supply the required forms to the Association and successfully complete an inspection by the designated inspector to verify the authenticity of the applicant's certified production of agricultural products.
- B. All producers must pay stall fees according to the current fee schedule set by the Board. Stall fees are collected by the Market Manager each market day and a receipt issued. Association dues are collected on an annual basis, January 1 through December 31.
- C. The following Rules & Regulations apply to stall space assignments:
- 1) Whenever a producer does not adhere to Market arrival and departure times or fails to notify the manager of his/her intention to sell at the CFM on a specific day, the manager may revoke the stall space reservation for two weeks. The arrival time for each market is no later than 30 minutes before the published opening time of the market.
 - 2) The number of stall spaces for each category of products is set by the Board of Directors.
- D. The following Rules & Regulations apply to producers who are in violation of any of the rules of the PCFMA.
- 1) If the Director, after a review determines that the producer has in fact violated the permit conditions, the suspension period may be extended to a maximum of sixty (60) days or the Director may refer the matter to the Board of Directors. The Board of Directors may indefinitely suspend or revoke the privilege of any seller whose privileges have been suspended more than twice in a one (1) year period.

VIII. DEFINITIONS

California Retail Food Code

113871.

(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).

(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 nonrefrigerated 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 (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.

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