

Farmers markets provide an important opportunity for producers to provide fresh and wholesome food products directly to consumers located in communities throughout South Dakota. In an effort to encourage and support these markets, South Dakota has passed several “cottage” laws that allow producers to sell food products to the public without the need of a food service license. This handout is intended to help market managers, vendors, and other home food processors understand the laws and requirements pertaining to **food items sold from a home, farmers market or similar temporary sales venue**. It’s important to note that all vendors are required to produce safe, wholesome food products in a sanitary manner whether licensed or not.

Please be aware that the law only provides license exemption for specific types of food items. The law does not provide an exemption for all food products and all regulations. In addition, the law only allows for these food products to be sold directly to the consumer from a home, farmers market or similar venue.

FOOD PRODUCTS — Updated 2022

Please refer to the following list of common food products to help determine applicable licensure and regulation:

Food Product or Home Processed Food	Common Examples	State License Required	Labeling Required
Fresh, whole, uncut, fruits and vegetables	Apples, melons, cucumbers, carrots, beans, corn ears, tomatoes, potatoes, etc.	NO	NO
Intact salad greens and herbs (dried or fresh)	Mixed greens with leaves, microgreens and shoots	NO	NO
Baked goods (includes temperature controlled baked goods that are maintained at 41° F or less)	Cookies, rolls, cakes, pies, kuchen, custard or cream filled baked goods, cheesecake, confectionaries, muffins, breads, lefse, hard candies, sauces, pesto, etc.	NO	YES (if packaged)
Home canned foods with pH ≤ 4.6 (high acid foods) or Aw ≤ .85	Jams, jellies, fruit sauces, applesauce, syrups, pickled or acidified products (e.g. salsas, dill pickles), BBQ sauce, etc.	NO	YES
Frozen fruit/produce (maintained <0° F or less)	Freeze dried-sliced fruit/produce, frozen bagged fruit/produce	NO	YES (if packaged)
Nuts, grains, seeds, dry mixes (e.g. spice/season mix, baking mix, powder drink mix)	Almonds, walnuts, cake mix, cocoa mix, home ground flour, coffee beans, sunflower seeds, granola mix, intact grains, etc.	NO	YES (if packaged)
Naturally fermented foods	Kombucha, kimchi, sauerkraut etc.	NO	YES (if packaged)
Home canned foods with pH > 4.6 (low acid foods) or Aw > .85	Peas, beans, tomatoes, corn, beets, squash, soups, meats, nut butters, etc.	YES	YES
Fresh cut fruit/produce (not frozen) and sprouts	Sliced melon, shredded lettuce, diced tomatoes, tossed salad, etc.	YES	YES
Juices and ciders	Orange, apple, grape, berries	YES	YES
Take and bake products	Doughs, unbaked pizzas or unbaked fruit pies, etc.	YES	YES
Other prepared food/drink	Sandwiches, casseroles, hot dishes, stews, smoothies, potato or other salads, garlic/flavored oils, meat sauces, etc.	YES	YES

Please contact SDDOH @ **605-773-4945** for questions or inquiries concerning products which may not be listed above.

FREQUENTLY ASKED QUESTIONS

What are the label requirements for home processed foods?

Each container or package sold must have a label that contains the following:

1: Name of product, **2:** Name of the producer, **3:** Physical address of production, **4:** Mailing address of the producer, **5:** Telephone number of the producer, **6:** Date product made or processed, **7:** Ingredients, **8:** A directive to keep food refrigerated or frozen (if required) **9:** A disclaimer that states “This product was not produced in a commercial kitchen. It has been home-processed in a kitchen that may also process common food allergens such as tree nuts, peanuts, eggs, soy, wheat, milk, fish and crustacean shellfish.”

What products are not covered by the “farmers market and cottage laws”?

Products under jurisdiction of other state or federal agencies include (but are not limited to); meat, poultry, jerky, fish, dairy products, honey, eggs, and non-food items such as home-made soap or lotions.

What is required to sell canned goods, fermented, frozen and temperature controlled baked foods?

A producer selling these foods shall, every five years, complete an approved food safety course. The producer shall retain records verifying the timely completion of such training. A producer selling home-processed goods may, in lieu of the requirement for food safety training, maintain verification of each recipe from a third-party processing authority. The processing authority shall provide verification in writing to the producer. Processing authorities and approved food safety course information is provided below. **Note:** No canned good may be sold unless the pH level is 4.6 or less or the water activity level is .85 or less.

Can home processed foods be sold from home?

The law allows the sale home processed foods from a primary residence, farmers market or other temporary sale venue. Goods are to be sold in the seller’s physical presence (direct). The seller, or a person residing at the seller’s primary residence may personally deliver home processed foods to the buyer at the completion of the sale. There are no monetary limits on the amount of sales. The home processed foods must be properly labeled and **cannot** be sold wholesale (indirect). Examples of indirect sale may include sales from a retail store or via the internet. Indirect sales would require a state license.

What happens if I do not follow these regulations?

Unapproved food products, untrained producers in food safety (or products without a letter of verification) may increase the chance illness or food safety risk to the consumer. Liability issues for the vendor and/or market organization is also a concern. Ultimately, failure to comply with state law may result in a notice of closure for the vendor, prohibiting the further sale of their food item(s).

Can I provide small food samples at farmers markets for promotional or educational purposes?

Yes no license is needed, we ask that you follow food sampling requirements found at the SDDOH website.

PROCESSING AUTHORITIES

Curtis Braun

SDSU Ext. - Food Safety Specialist
2001 E. 8th St.
Sioux Falls, SD 57103
605 -782-3290 ext.265
Curtis.Braun@sdstate.edu

Jayne Stratton, Ph.D

Univ. Nebraska-Lincoln 248
Food Innovation Center
Lincoln, NE 68588
402-472-2829
jstratton@unl.edu

SDSU EXTENSION:

iGrow.org
(Please contact
Curtis Braun)

COURSE INFO.

South Dakota Codified Laws:

<http://sdlegislature.gov/statutes/>

South Dakota Dept. of Health:

<http://doh.sd.gov/food/>

SDSU Cooperative Extension Service:

<http://extension.sdstate.edu/>

WEIGHTS AND MEASURES GUIDANCE



- Any products sold by weight, must be sold from a legal for trade certified NTEP approved scale.
- Once purchased, a scale must be certified every other year by the Office of Weights and Measures.
- There is a \$28.00 fee that accompanies certification.
- You can call **605-773-3697** to schedule a time to get your scale certified.
- Registered service agents sell and repair NTEP approved scales.

Department of Public Safety The Office of Weights and Measures

dps.inspectionswminfo@state.sd.us

Registered Service Agent List

<https://dps.sd.gov/inspections/weights-measures/register-agency>