

To: Farmer's market managers and vendors
From: SD Department of Health (DOH)
Subject: Farmer's markets – food product requirements

The state of South Dakota has several laws that allow the public to sell food products without the need of a food service license. These food items include fruits/vegetables, home canned goods, and home baked goods that are directly sold to the public. DOH has written this memo in an attempt to help food vendors and home food processors understand the requirements pertaining to food items sold at a farmer's markets, road side stands or similar venues.

Below, is a list of food items that are allowed to be sold at a farmer's market. There is also a list of food items that are not allowed to be sold at a farmer's market and will require a state food service license. The lists are not all inclusive but cover a majority of common food items found at farmer's markets. For questions or inquiries concerning any food items please contact DOH. On page 2 there are several frequently asked questions and answers on laws relating to farmer's markets and home canned or baked goods. Finally, there is website information for your reference.

Food safety is a serious issue and is the primary objective for the requirements addressed in these laws. Regulatory oversight of these laws and farmer's markets will be limited and prioritized on an as needed basis. It is the intention of DOH to primarily provide guidance to managers, organizers and vendors regarding food safety. Vendors of farmer's markets, road side stands and other venues are therefore asked to be responsible in providing safe food items to the consumer.

CAN SELL without food service license:

- Whole, intact fresh fruit or vegetables (not cut or sliced)
- Non-temp controlled baked goods – **label required** (e.g. cookies, cakes, fruit pies, confectionaries, candies, bread, lefsa etc...)
- Home canned foods with a pH below 4.6 OR Aw of .85 or less – **label required and letter of verification** (e.g. jams, jelly, syrup, fruit sauces, salsa, tomatoes, pickled products, sauerkraut, chutneys, some fermented pickles etc...)
- Properly dried fruits, vegetables and herbs

CAN NOT SELL without food service license:

- Home processed, fresh squeezed apple cider and other fruit juices
- Home canned foods above pH of 4.6 or "low acid foods" (e.g. peas, green beans, kidney beans, corn, beets, carrots, squash, horseradish, soups etc...)
- Refrigerated foods or foods with milk and eggs (e.g. pumpkin pie, fresh salsa, kuchen, etc...)
- Garlic and oil mixtures or flavored oils
- Take and bake products (e.g. unbaked pizza or fruit pies, apple crisp, coffee cake etc...)
- Prepared food (e.g. sandwiches, casseroles, hot dishes etc..) or drinks (e.g. smoothies, kombucha etc...)

Frequently Asked Questions

What are the label requirements?

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

1 - Name of product, **2** - Name of producer/contact information, **3** - Date product made or canned, **4** - Ingredient list, largest to smallest in weight or volume, **5** - Disclaimer stating the following: "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 is a letter of verification?

This letter is provided to the individual selling home processed (canned) foods once that food has been tested and the recipe and process have been reviewed by a 3rd party processing authority. This letter is needed for each product sold and a copy of the approved process must be present at the sale location.

Where do I find a processing authority?

Curtis Braun
SDSU Extension
Food Safety Specialist
2001 E. 8th St.
Sioux Falls, SD 57103
605-782-3290

Level 2 Authority (acidified foods)
Jayne Stratton, Ph.D
University of Nebraska-Lincoln
143 Food Industry Complex
Lincoln, NE 68583
402-472-2829

Can home processed foods be sold from home?

The law referred to as the "Cottage Law" only allows the sale of non-temp controlled baked goods from a primary residence. These goods can be sold from home provided that yearly sales do not exceed \$5000 (gross) and are consumed off the premises. The baked goods must be properly labeled and can't be sold to or from a retail store or via the internet.

What products are not covered by the "Farmer's 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, and eggs.

What happens if I do not follow these regulations?

Failure to comply with state law may result in a notice of closure for the vendor, prohibiting the further sale of their food items.

Where can I find more information?

Visit the following web links for detailed information and understanding on this subject.

South Dakota Codified Laws:

<http://legis.state.sd.us/statutes/DisplayStatute.aspx?Statute=34-18&Type=Statute>

South Dakota Dept. of Health:

<http://doh.sd.gov/food/farmers-markets.aspx?>

SDSU Cooperative Extension Service:

<http://igrow.org/community-development/local-foods/south-dakota-farmers-market-online-guidebook/>

USDA:

<http://uga.edu/nchfp/>