Overview: Allowed Foods, Label Requirements
Farmers markets are growing in popularity across the United States and South Dakota. These markets provide a valuable market outlet for local farmers and allow consumers to purchase healthy local produce and other foods. To protect this key market, it is essential that the food sold at farmers markets is produced and processed according to the relevant governmental rules, regulations, and guidelines. This will help ensure that products are safe as possible and will help ensure that farmers markets in South Dakota has product quality and safety in mind.

If you are selling products in South Dakota, the state requirements listed in this document are what you need to follow. More information on how ensure your food is compliant with local, state, and/or federal regulations is included in this document as well as in other SDSU Extension articles. As well as using SDSU Extension resources, SDSU Extension encourages vendors of the farmers market to reach out the various agencies that regulate food in the state which includes the South Dakota Department of Health (SDDOH), South Dakota Department of Agriculture (SDDOA), South Dakota Animal Industry Board (SDAIB), South Dakota Games Fish and Parks (SDGFP). Vendors should also check with the market where they are selling, as their requirements may be more stringent than state governmental regulations. This also applies to all direct-to-consumer sales of food, including festivals, bazaars, craft shows, and similar events to the farmers markets.

**Foods ALLOWED at South Dakota Farmers Markets WITHOUT licensing, according to state regulations**

|  |  |  |
| --- | --- | --- |
| **Food Product Type** | **Examples** | **Regulatory Requirements** |
| Non-Temperature Controlled Baked goods | Cookies, breads, cakes, cinnamon rolls, muffins, scones | Must be labeled according to labeling law 34-18-37. See the “South Dakota Requirements for the Sale of Baked Goods Made Within Your Home Article” at the SDSU Extension Website. |
| Fresh (or dried) **uncut** fruits, vegetables, or herbs (not cut beyond normal harvesting) | Beans, apples, tomatoes, cucumbers, strawberries | Must be whole and intact according to 34-18-34. If a scale is used, it must be calibrated and certified by SD Weights and Measures. More requirements dependent on total dollar amount of produce sold. <https://extension.sdstate.edu/food-safety-rules-fruit-vegetable-growers-faq> |
| Intact salad greens (not cut beyond normal harvesting) | Mixed greens with only intact leaves, includes microgreens and shoots (not cut beyond normal harvesting practices) | Must be whole and intact according to 34-18-34. If a scale is used, it must be calibrated and certified by SD Weights and Measures. More requirements dependent on total dollar amount of produce sold. <https://extension.sdstate.edu/food-safety-rules-fruit-vegetable-growers-faq> |
| Home-canned fruit jams and jellies | Fruit jams and jellies | Must be labeled according to labeling law 34-18-37. Must be reviewed and approved by a 3rd party processing authority according to law 34-18-36 |
| Canned, shelf stable naturally high acid foods | Canned applesauce, canned fruits | Must be labeled according to labeling law 34-18-37. Must be reviewed and approved by a 3rd party processing authority according to law 34-18-36 |
| Acidified canned foods | Salsa, dill pickles, dilled cauliflower | Must be labeled according to labeling law 34-18-37. Must be reviewed and approved by a 3rd party processing authority according to law 34-18-36 |
| Nuts | Almonds, pecans, walnuts, cashews | Standard hygiene, GMP, and sanitation practices should be followed. **Best Practice**: Labeled according to 34-18-37 |
| Dry baking mixes | Cake mix, cookie mix | Standard hygiene, GMP, and sanitation practices should be followed. **Best Practice**: Labeled according to 34-18-37 |
| Grain Products | Home-ground flour, cornmeal, popcorn, intact grain | Standard hygiene, GMP, and sanitation practices should be followed.**Best Practice**: Labeled according to 34-18-37 |
| Candies | Lollipops, candy canes, fudge, caramels, cotton candy, truffles, rock candy | Hard candies such as lollipops, candy canes, fudge, caramels, cotton candy, truffles, and rock candy have a low water activity. Standard hygiene, GMP, and sanitation practices should be followed. **Best Practice**: Labeled according to 34-18-37. For chocolate covered fruits or other products such as cream-filled chocolates or fudge, the amount of moisture can vary so these foods should be tested for pH and water activity by the SDSU Food Safety Lab. |
| Spices | Nutmeg, cinnamon, cloves, turmeric, cumin | Standard hygiene, GMP, and sanitation practices should be followed.**Best Practice**: Labeled according to 34-18-37 |
| Barbeque sauce and similar foods |  | The product needs to be evaluated for pH and water activity and evaluated by the SDSU Extension.**Best Practice**: Labeled according to 34-18-37 |

**Foods ALLOWED at South Dakota Farmers Markets WITH licensing, according to state regulations**

|  |  |  |
| --- | --- | --- |
| **Food Product Type** | **Examples** | **Regulatory Requirements** |
| Certain cut produce and cut herbs | Leafy greens (e.g. lettuce, cabbage), tomatoes, melons  | Must be prepared in a kitchen licensed and inspected by the SD Department of Health. Must be stored and sold ≤ 41F° |
| Nut butters | Almond nut butter, cashew nut butter, pecan nut butter | Must be prepared in a kitchen licensed and inspected by the SD Department of Health. Should be tested for water activity by the South Dakota State University Food Safety Lab.**Best Practice**: Labeled according to 34-18-37 |
| Honey |  | State law (SDCL) 38-18 requires that all apiaries must be registered with the SD Dept of Ag. The vendor must be in compliance with all Apiary laws set forth by the SD Dept of Ag. The honey must be produced by bees kept by the vendor. <https://sdda.sd.gov/ag-services/beekeeping-apiary-resources/> |
| Eggs |  | Egg Dealer License and a Candler/Grader License must be obtained from the SD Dept of Agriculture on an annual basis. Eggs must be labeled properly with producer, grade, and weight of egg, expiration date (which is 30 days from date of packing), and safe handling/preparation instructions: “To prevent illness from bacteria: keep refrigerated, cook eggs until firm, and cook foods containing eggs thoroughly.” Eggs must be sold at ≤45F° |
| Poultry <20,000 birds/year | Chicken, duck, goose, turkey, etc. | Growers selling <20,000 birds/year must ensure that they meet all the criteria by the Package Labeling of Poultry processed under PPIA. The poultry must be processed out of a licensed commercial kitchen and stored at proper refrigerated or freezing temperatures. See the “Selling Poultry at a Farmer’s Market in South Dakota” article on the SDSU Extension website |
| Alcoholic beverages (0.5% ABV alcohol by volume) | Beer, wine, possibly kombucha drinks | South Dakota Dept. of Revenue alcohol licensing requirements. [SD Dept of Revenue Alcohol License](https://dor.sd.gov/Taxes/Special_Taxes/Alcohol/Alcohol_Licenses/default.aspx) |
| Meat | Beef, sheep, goats, deer | Must be processed at a SD State Inspected facility that has been approved by the South Dakota Animal Industry Board or by a federally inspected facility. The meat must be properly labeled and stored at appropriate refrigeration or frozen temperatures. See “Regulatory Requirements for Selling Meats at Farmer’s Market” Article on the SDSU Extension Website. |
| Fish  | Catfish or rough fish | Only catfish taken in the Missouri River and its western tributaries and rough fish, may be sold. Fish must be processed out of a licensed commercial kitchen and stored at proper refrigerated or freezing temperatures. See Selling Fish at a Farmer’s Market in South Dakota” article on the SDSU Extension website. |
| Juice | Orange juice, apple juice | Juice would need to be processed out of a licensed commercial kitchen and follow FDA Juice HACCP requirements. See “Selling Juice in South Dakota” article. |
| Homemade dried pasta | Dried egg noodles | Must be processed out of a licensed commercial kitchen. **Best Practice**: Labeled according to 34-18-37 |
| Dough | Refrigerated or frozen cookie dough, pizza dough, pie dough | Doughs must be processed out of a licensed commercial kitchen and held at appropriate refrigeration and freezing temperatures when in storage or at point of sale. **Best Practice**: Labeled according to 34-18-37 |
| Temperature controlled baked good | Cheesecake, cream filled cupcakes or donuts, cream cheese-based frostings or fillings, cream or meringue pies, custards, pumpkin pie | These products be processed out of a licensed commercial kitchen and stored at appropriate refrigerated temperatures.**Best Practice**: Labeled according to 34-18-37 |
| Dairy products; milk | Milk, cheese, yogurt, etc. from cows, goats, other mammals | Pasteurized and processed at a plant manufacturing plant that has been licensed by the state of South Dakota Dept of Ag. Note that if a vendor can provide information about a vacuum packaged cheese to show that it does not require refrigeration for safety, a food establishment license would NOT be required. Product should be labeled appropriately.  |
| Sprouts | Alfalfa sprouts, bean sprouts | Requires SDDOH approval. |
| Pies | Pecan pie, strawberry pie | If the filling is determined to require temperature control based on its water activity, the food would need to be processed out of a licensed commercial kitchen and need to be stored and sold at appropriate refrigerated temperatures. **Best Practice**: Labeled according to 34-18-37 |
| Naturally fermented canned foods | Sauerkraut, kimchi | Must be labeled according to labeling law 34-18-37. Must be reviewed and approved by a 3rd party processing authority according to law 34-18-36 |

**How do I ensure that I am compliant I am compliant with the requirements listed above?**Depending on what you are selling, you may need to get in contact with one or several different regulatory agencies. The South Dakota Department of Health website can be contacted for food safety questions regarding special process, food risk assessment, or processing out of a licensed commercial kitchen contact you can call 605-773-4945 or DOH.Info@state.sd.us. For questions related to selling meat and poultry, you can contact the South Dakota Animal Advisory Industry Board at 605-773-3321 or aibmail@state.sd.us or the USDA/FSIS Deputy District Manager, Peter Duryea, at 515-727-8960 or Peter.Duryea@fsis.usda.gov. For questions related to selling fish, you can contact the South Dakota Games, Fish and Park at 605-773-4501 or wildinfo@state.sd.us. For questions related to selling dairy and eggs, you can contact the South Dakota Department of Agriculture at SDDAAgronomy@state.sd.us. The South Dakota State University Extension – Food Safety Specialist will also be able to provide guidance related to the food you are trying to sell.

**What if I produce (and/or process) my food in South Dakota and want to sell in a neighboring state?**
If you are selling your product across state lines, you need to meet Federal requirements, as well as the retail regulations of the state in which you are selling (and South Dakota).

* If you are selling a processed (non-meat) product, you will need to initially register online (at no cost) your processing facility with the FDA, and then re-register it every 2 years (October-December of the even numbered years (i.e. 2018, 2020, etc., at: [www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/default.html](http://www.fda.gov/Food/GuidanceRegulation/FoodFacilityRegistration/default.html). FDA may then come to inspect your facility, when they will check to see if you are meeting their current Good Manufacturing Practices (GMPs – Code of Federal Regulations (CFR) Title 21 Part 110: [www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRsearch.cfm?CFRPart=110](http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRsearch.cfm?CFRPart=110) and any other applicable regulations such as Acidified Foods or Low Acid Canned Foods regulations. Such products may also need to follow the requirements of the Federal Food Safety Modernization Act (FSMA) Preventive Controls Rule, [www.fda.gov/fsma](http://www.fda.gov/fsma) (depending on the volume of product sold).
* If you are selling a meat product, your product will need to be USDA FSIS, rather than state Meat and Poultry inspected.
* If you are selling fresh, whole product, you may be impacted by the Food Safety Modernization Act (FSMA), regardless if you only selling in-state or across state lines. For more information, you can contact the SDSU Produce Food Safety Specialist, Rhoda Burrows at 605-394-2236 or Rhoda.Burrows@sdstate.edu.

**In addition to food safety, what other regulatory requirements do I need to follow to sell at a farmers market?**

* Sales tax: Every vendor is responsible for his or her own sales tax license and sales tax payments. More information is available from the South Dakota Department of Revenue <https://dor.sd.gov/>. or by calling 605-773-3311.
* Scale testing; Farmers market vendors using a scale to sell products by weight must have a licensed service company test their scales. More information is available from the South Dakota Weights and Measures website at <https://dps.sd.gov/inspections/weights-measures> or by calling 605-773-3697.
* Filing as a business entity: The Office of the Secretary of State has the appropriate forms available online or by visiting the website <https://sdsos.gov/business-services/default.aspx> or by calling at 605-773-4845. Filing as a business entity may not be required depending on the type of business entity you are (e.g. sole proprietorships, general partnerships, etc.)
* Mobile or temporary food services and food trucks. The South Dakota Department of Health will provide further guidance on requirements for these entities.

**What are the labeling requirements for packaged food products?**
There is a requirement for labeling canned goods and baked goods according to South Dakota law 34-18-37. Note that depending on the type of product that you are selling such as meat, poultry, eggs, etc., you may be subject to different labeling laws.

South Dakota law 34-18-37 requires the following for canned and baked goods:
1. Name of the product
2. Producer and contact information
3. Date the product was made or processed;
4. Ingredients
5. Disclaimer. The disclaimer shall state: “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.”

If you are selling a product that is not a canned good, baked good or requires more stringent labeling requirements, it would be a best practice to label the product according to 34-18-37.

How are these regulations enforced?
The South Dakota Department of Health is responsible for enforcing the regulations at the farmers market. Farmers market managers, extension personnel, and other related individuals should provide information on regulations and could make suggestions on how vendors can comply with regulations. However, they are not regulators or enforcers of government regulations. Farmers market managers should enforce any requirements specific to their market.

**General steps to food safety for all farmers market vendors**

* Vendors selling perishable foods must have a suitable thermometer with them at the market
	+ Hot prepared foods must be held at 140°F or higher. This would apply for vendors with a temporary food or a mobile food license.
	+ Cold perishable foods must be ≤41°F
	+ Frozen foods such as frozen meats and ice cream must be maintained frozen (below 0°F is the best practice).
	+ Coolers and ice packs or ice surrounding the product can be used to transport and hold cold foods. Check the temperature occasionally (about once/hour) with a stem food thermometer.
* Reduce possible cross-contamination that can transfer bacteria from one food to another.
	+ Ensure that raw meat or poultry does not contact ready-to-eat food or fresh produce
	+ If re-using bags for selling products, make sure they are clean and weren’t previously used for meat.
	+ Wash, rinse, and sanitize food contact surfaces, equipment, and utensils between uses (unless using one time or disposable equipment and utensils)
* Practice good personal hygiene (clean clothes, clean hands) to prevent transferring bacteria to your food.
	+ Shaking hands, touching money, animals, soiled vegetables or utensils can transfer bacteria to your hands
	+ Wash hands as needed and do not touch prepared foods and baked goods with your bare hands (use gloves or tongs or other method).
	+ Hand sanitizer is not a substitute for handwashing; however, it can be used after washing your hands.
* Ensure that any ingredients you use to prepare food for market are from safe sources
	+ For example, use inspected meat, milk from a licensed producer, ingredients from reputable suppliers, etc.

**Selling fresh produce**

* Unprocessed whole fruits and vegetables do not require a license or licensing fees.
* Produce growers selling at markets are encouraged to know, understand and apply the principles of the FSMA Produce Safety Rule, even if they are exempt from FSMA coverage. For more information, you can contact the SDSU Produce Food Safety Specialist, Rhoda Burrows at 605-394-2236 or Rhoda.Burrows@sdstate.edu.
* Vendors using a scale to sell products by weight must have a licensed service company test their scales. Be sure to check before buying a new scale to ensure that the scale can be certified.
* Produce must be stored and displayed so it is protected from contamination.

Table 1. Method of Retail Sale for Fresh Fruits and Vegetables Specific Commodity

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Commodity | Weight | Count | Head or Bunch | Dry Measure (any size) | Dry Measure (1 dry qt or larger) |
| Artichokes | X | X |  |  |  |
| Asparagus | X |  | X |  |  |
| Avocados |  | X |  |  |  |
| Banans | X | X |  |  |  |
| Beans (green, yellow, etc.) | X |  |  |  | X |
| Brussels Sprouts (loose) | X |  |  |  |  |
| Brussels Sprouts (on stalk) |  |  | X |  |  |
| Cherries | X |  |  | X | X |
| Coconuts | X | X |  |  |  |
| Corn on the Cob |  | X |  |  | X |
| Dates | X |  |  |  |  |
| Eggplant | X | X |  |  |  |
| Figs | X |  |  |  |  |
| Grapes | X |  |  |  |  |
| Melons (cut in pieces) | X |  |  |  |  |
| Mushrooms (small) | X |  |  | X | X |
| Mushrooms (Portobello, large) | X | X |  |  |  |
| Okra | X |  |  |  |  |
| Peas | X |  |  |  | X |
| Peppers (bell and other varieties) | X | X |  |  | X |
| Pineapples | X | X |  |  |  |
| Rhubarb | X |  | X |  |  |
| Tomatoes (except cherry/grape) | X | X |  |  | X |

Table 2. Method of Retail Sale for Fresh Fruits and Vegetables General Commodity Groups

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Commodity | Weight | Count | Head or Bunch | Dry Measure (any size) | Dry Measure (1 dry qt or larger) |
| Berries and Cherry/Grape Tomatoes | X |  |  | x |  |
| Citrus Fruits (oranges, grapefruits, lemons, etc.) | X | X |  |  | X |
| Edible Bulbs (onions [spring or green], garlic, leeks, etc) | X | X | X |  | X |
| Edible Tubers (Irish potatoes, sweet potatoes, ginger, horseradish, etc.) | X |  |  |  | X |
| Flower Vegetables (broccoli, cauliflower, brussels sprouts, etc.) | X |  | X |  |  |
| Gourd Vegetables (cucumbers, squash, melons, etc.) | X | X |  |  | X |
| Leaf Vegetables (lettuce, cabbage, celery, etc.) | X |  | X |  |  |
| Leaf Vegetables (parsley, herbs, loose greens) | X |  | X | X |  |
| Pitted Fruits (peaches, plums, prunes, etc.) | X | X |  |  | X |
| Pome Fruits (apples, pears, mangoes, etc.) | X | X |  |  | X |
| Root Vegetables (turnips, carrots, radishes, etc.) | X |  | x |  |  |

References and other resources:

* Food Safety for Kansas Farmers Market Vendors: Regulations and Best Practices. K State Research and Extension. <https://www.bookstore.ksre.ksu.edu/pubs/MF3138.pdf>
* South Dakota Legislature Research Council: <https://sdlegislature.gov/Statutes/Codified_Laws/DisplayStatute.aspx?Type=Statute&Statute=34-18>
* South Dakota Animal Industry Board website: <https://sdlegislature.gov/Rules/DisplayRule.aspx?Rule=12:68>
* South Dakota Department of Agriculture website: <https://sdda.sd.gov/ag-services/>
* South Dakota Department of Game, Fish & Parks website: <https://gfp.sd.gov/fish/>
* South Dakota State University Extension Food Safety website, including numerous publications and resources to farmers market vendors and food safety: <https://extension.sdstate.edu/tags/food-safety>

Prepared by
Curtis Braun, South Dakota State University Extension Food Safety Specialist