

## South Dakota Requirements for the Sale of Home-Canned Processed Foods at Farmers Markets

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Fresh, whole raw fruits and vegetables grown in South Dakota can currently be sold without regulatory requirements. However, once a raw fruit or vegetable is processed, South Dakota law requires that certain regulations must be followed in order to ensure the safety of the product. The “Home-Processed Foods Law,”<sup>1</sup> which exempted home-processed foods sold at farmers markets, roadside stands, and similar venues from some of these licensure requirements. This law specifically lifts the requirements that food processing be conducted in a state-licensed (and inspected) facility or “commercial kitchen,” as long as the food is sold at a farmers market, roadside stand, or similar venue. However, as part of this new law, specific alternative requirements must still be met to ensure food safety. This fact sheet will explain the requirements of the exemption in regards to home-canned processed foods.

### **The “home-processed foods law” allows the following home-processed food to be sold at a farmers market, roadside stand, or similar venue:**

- Home-canned foods having an equilibrium pH value below 4.6 and meeting standards that destroy bacteria, yeast, and molds to a required level. Examples may include but are not limited to:
  - acid foods—jams, jellies, fruit syrups and most fruits
  - acidified foods (pickled/fermented) that also have a water activity greater than 0.85—pickled/fermented vegetables, salsas, chutneys, flavored vinegars
  - tomatoes having a pH that borderlines between low-acid and acid due to growing conditions and

- variety; therefore, acidification would be necessary
- fermented foods—sauerkraut and pickles
- All products must have official verification from a third-party processing authority in writing.
- All products must be properly labeled.
- Dried herbs, fruits and some vegetables are allowed for sale. They do not require approval from a third party processor. Contact an SDSU Extension Food Safety Specialist or other recommended sources listed below for recommendation on safely dehydrating foods.
- Home-baked foods can be sold directly to the consumer. Refer to SDSU Extension iGrow publication: “South Dakota Requirements for the Sale of Baked Goods Made within Your Home”. <http://igrow.org/up/resources/04-1004-2012.pdf>

### **Who does this law pertain to?**

- Similar venues refer to community events and bazaars, CSA (Community Supported Agriculture), farmers markets (indoor or outdoor), and other venues where the exchange is from the grower/processor directly to the consumer. This can be an employee of the grower/processor.
- The organizers of community events, schools, churches and other organizations may have specific rules that do not allow the sale of home-processed foods.
- This does not apply to food brokers, wholesalers, distributors, food co-ops or similar food distributors.
- Retail food establishments must adhere to the South Dakota Food Service Code. <http://doh.sd.gov/HealthProtection/Food.aspx>

<sup>1</sup>South Dakota Codified Law (SDCL) 34-18, 34 thru 38; commonly referred to “Home-Processed Foods Law”

**Examples of products that do not pertain to the “home-processed foods law”:**

- Home-canned, low-acid foods that do not meet the pH level of 4.6 or below, including but not limited to foods such as peas, green beans, beets, corn, carrots, squash or soups (that are not acidified [pickled/fermented])
- Whole eggs in the shell, fish, dairy or meat products such as smoked fish, butter, raw milk, or jerky—these products fall under regulatory jurisdiction of the South Dakota Department of Agriculture, FDA and or USDA (dependent upon the food that is being marketed).
- Home-processed apple cider and other fruit juices (all juices must meet FDA requirements)
- Foods that require refrigeration (such as fresh salsa and pesto) and many food products containing milk or eggs (such as kuchen, pumpkin pie, flan)
- Garlic and oil mixtures or flavored oils
- Vegetables packed and frozen for preservation (Some exceptions apply. See FAQ sheet.)
- Honey
- Refrigerator pickles

**Marketing venues for sale of home-processed canned foods that meet the requirements of the “home-processed foods law”:**

- Food products covered by this statute can only be sold at farmers markets, roadside stands, and similar venues such as church and community bazaars or festivals.
- Food products produced at home as allowed by this legislation are NOT allowed to be sold in establishments such as retail and grocery stores, restaurants, bed and breakfasts, wholesalers, or directly out of the home.

- The owner of the products can hire an employee to work at the farmers markets or roadside stands. The person hired to represent the stand shall be an employee of the producer, not of the marketing company or other vendor.
- The point of sale, which is defined by the Department of Revenue as the location where the purchaser takes possession of the product, must meet the requirements of the “Home-Processed Foods Law.”

**Labeling requirements:**

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

- Name of product
- Name of producer and contact information
- Date the product was made or canned
- Ingredients (list ingredients in the product from the largest to the smallest in net weight or volume; actual weight or volume of ingredients do not need to be listed)
- Disclaimer that states 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.”
- SDSU (South Dakota State University) CANNOT be on your label. A statement regarding tested for safety is NOT allowed. SDSU (and other processing authorities) only verify your process for safety. They do not deem that a specific food is safe. SDSU or other processing authorities do not have daily control over the food produced in your kitchen (home or licensed).

For labeling, use a font size that is prominent, conspicuous, and easy to read.

**Recognized acidified (pickled/fermented) foods food processing authorities:**

<p>UNL - The Food Processing Center                  143 Food Industry Complex                  Lincoln, NE 68583                  (402) 472-2829                  Jayne Stratton, PhD.                  jstratton1@unl.edu</p>	<p>Kansas Value Added Foods Lab                  Animal Sciences Industry                  Room 139 Call Hall                  Manhattan, KS 66506                  (785) 532-1668                  Dr. Fadi M Aramouni                  aramouni@ksu.edu</p>
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Check with an SDSU Extension Regional office or with Dakota Rural Action for a list of additional approved processing authorities in your area.

*\*Works with processors selling in the state of South Dakota.*

### Letter of verification:

The individual selling home-processed (canned) foods under this exemption must have the letter of verification from the third-party processing authority approving the method of processing and documentation that the pH and/or water activity standards are met. A copy of the letter of verification for all products must be at each location where products are sold.

The letter of verification will include the following:

- Name of the food processor
- Food item as it appears on the jar label
- Size of the food container
- Testing results
- Approval of the thermal processing method
- Results of microbial analysis (if conducted)
- Date tests were completed
- Date letter of verification is issued
- Signature and contact information of the food-processing authority

### Costs of verification and testing:

Fees will vary depending upon the following:

1. The type of testing required for the products (analytical services)–pH, water activity, and/or microbial testing
2. Third-party processing authority–review of processing method and letter of verification

Some acid foods require a pH test and possibly a water-activity test, particularly if the pH is either greater than 4.6 or just slightly lower. Acidified foods will require equilibrium pH testing and a microbial analysis. In some instances a water activity test may have to be conducted.

Because cost of verification and testing will vary depending on the processing authority and testing (analytical) services, it is suggested that processors contact processing authorities directly for specific prices.

### How to submit product samples for testing:

The processing authority will need samples and a written explanation of method used for each product to be tested. Contact a processing authority for specific information on submitting samples.

### Additional definition of terms:

**Thermal processing** is the application of heat to a food, either before or after sealing in a hermetically sealed container, for a period of time and at a temperature scientifically determined to achieve a condition of commercial sterility (i.e., the destruction of microorganisms of public health significance as well as those capable of reproducing in the food under normal non-refrigerated conditions).

A **hermetically sealed** container is a container that is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing. For home-processing purposes, a hermetically sealed container will consist of a two-piece lid and glass jar.

**pH** measures the amount of acidity or alkalinity, using a numerical scale between 0 and 14. A pH value of 1 is most acidic, while a pH value of 14 is most basic or alkaline.

An **acid food** is a food that has a natural pH of 4.6 or below.

A **low-acid food** is any food (other than alcoholic beverages) with a finished equilibrium pH greater than 4.6, excluding tomatoes and tomato products having a finished equilibrium pH less than 4.7.

An **acidified food** (pickled/fermented) is a low-acid food to which acid(s) or acid food(s) are added and which has a finished equilibrium pH less than 4.6 or below and a water activity greater than 0.85.

**Equilibrium pH** is the final pH of a food product after the acidulant (food acid) reaches equilibrium

Recommended Food Preservation Resources – home canned and dehydrated products	
National Center for Home Food Preservation	<a href="http://nchfp.uga.edu/">http://nchfp.uga.edu/</a>
South Dakota State University Dairy and Food Science Department	<a href="http://www.sdstate.edu/dairy-and-food-science">http://www.sdstate.edu/dairy-and-food-science</a>
North Dakota State University Extension	<a href="http://www.ag.ndsu.edu/pubs/preservation.html">http://www.ag.ndsu.edu/pubs/preservation.html</a>
SDSU Extension iGrow – Healthy Families	<a href="http://igrow.org/healthy-families/foods-and-nutrition/">http://igrow.org/healthy-families/foods-and-nutrition/</a>
AnswerLine	1-888-393-6336

(i.e., has the same pH value) with the food itself. (For example, fresh cucumbers in vinegar will not have the same pH as the vinegar until equilibrium has been obtained.) Acidified foods that are 2 months past the processing date will have reached equilibrium, and the brine should have the same pH as the primary food ingredients.

**Water activity** is a measure of the free moisture in a product. This moisture is available for microbial growth. Water activity values range from 0 to 1 (0 is considered bone-dry, and 1 is pure water).

Pickled and fermented foods are classified by ingredients and method of preparation into four general classes:

1. Brined or fermented go through a curing process in a brine (salt and water) solution for one or more weeks. Curing changes the color, flavor and texture of the product. If the product is fermented, the lactic acid produced during the fermentation helps preserve the product. In brined products that are cured but not completely fermented, acid in the form of vinegar is added later to preserve the food.

2. Fresh Pack or Quick Process Pickles are covered with boiling hot vinegar, spices and seasonings. Sometimes, the product may be brined for several hours and then drained, before being covered with the pickling liquid. These are easy to prepare and have a tart flavor. Fresh pack or quick pickles have a better flavor if allowed to stand for several weeks after they are sealed.
3. Fruits Pickles are prepared from whole or sliced fruits and simmered in spicy, sweet-sour syrup.
4. Relishes are made from chopped fruits and vegetables cooked to desired consistency in a spicy vinegar solution.

The level of acidity (pH less than 4.6) in a pickled product is as important to its safety as to its taste and texture. Never alter the proportion of vinegar (or other acidulant), food or water in a recipe and use only tested recipes to prevent the growth of *Clostridium botulinum*.