



## **FREQUENTLY ASKED QUESTIONS: South Dakota Requirements for Sale of Baked Goods and Home-canned Processed Foods under “The Home-Processed Foods Law” South Dakota Codified Law 34-18-34 thru 37**

The following is a list of questions that growers and marketers are asking regarding the regulations that allow for the sale of baked and thermally processed foods that are prepared in the home and sold to the general public:

### **TYPES OF FOOD PRODUCTS ALLOWED FOR SALE**

#### **What value-added products that are made in my home kitchen can I sell under the “Home-Processed Foods Law”?**

Baked goods that do not require temperature control and non-temperature-controlled home-canned processed fruits and acidified (pickled/fermented) vegetables that meet the requirements of acid and acidified foods can be sold. For further information, please refer to SDSU Fact Sheet 956, “South Dakota requirements for the sale of baked goods and home-canned processed foods at Farmer’s Markets,” which can be found at [http://pubstorage.sdstate.edu/AgBio\\_Publications/articles/FS956.pdf](http://pubstorage.sdstate.edu/AgBio_Publications/articles/FS956.pdf).

#### **Can I sell a “take-n-bake” product?**

No, these products would require temperature control to prevent bacterial growth.

#### **Are dried foods allowed to be sold under the “Home-Processed Foods Law”?**

Some dried products may be sold using safe food-handling practices that reduce the risk of contamination. Please see the informational handout provided by South Dakota State University Extension Office for the safe and hygienic handling of dried foods, FS962, “Drying Fruits, Vegetables and Herbs – General Safe Food Handling Recommendations,” which can be found at [http://pubstorage.sdstate.edu/AgBio\\_Publications/articles/FS962.pdf](http://pubstorage.sdstate.edu/AgBio_Publications/articles/FS962.pdf).

#### **Are frozen foods allowed to be sold under “Home-Processed Foods Law”?**

Acid foods that are frozen only to ensure product qual-

ity and not for safety reasons will be allowed. No thermal processing or additional ingredients can be added. Please contact your local SDSU Extension educator or the South Dakota Department of Health for specific foods that are allowed to be sold in frozen form.

### **MARKETING VENUES**

#### **Where can I sell my products?**

Products can be sold at farmers markets, roadside stands, or similar venues (examples are church bazaars, community festivals, and school fundraisers).

#### **Can I sell my products at a year-round or indoor farmers market?**

Yes, as long as the products meet the requirements “Home-Processed Foods Law.”

#### **Can I sell baked goods or canned products via the Internet?**

Products are allowed to be sold at farmers markets, roadside stands, and other similar venues. The point of sale is considered the location where the buyer takes possession of the product.

#### **How many sites can I sell my products at?**

There is no limit on how many different sites you can sell your products. However, you can only sell home-processed products at approved venues.

#### **Why can’t my products be sold at retail outlets (e.g., local grocery, winery, and South Dakota Made stores)?**

The law clearly states that non-temperature-controlled home baked goods and non-temperature-controlled home-canned goods may only be sold at farmers markets, roadside stands or other similar venues (examples are church bazaars, community festivals and school fundraisers).

## PROCESS APPROVAL

### What is a processing authority?

A processing authority is a person that has expert knowledge of canning and thermal processing and can review your canning process to verify the process is in compliance with acceptable manufacturing practices and that the products have met the required pH and water activity (Aw) levels. There are two levels of processing authorities. ACID FOODS (LEVEL 1) processing authorities have taken an 8-hour course and can test acid-food items that may only need pH testing. ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) processing authorities have the ability and knowledge to approve and test items in more depth, including water activity and microbial analysis. ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) processing authorities will also be allowed to approve acid food products.

### Where do I find a processing authority?

The following is a list of known ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) processing authorities that have knowledge, ability and equipments to test and review products:

#### **South Dakota State University**

SNF Rm 425, Box 2275A  
Brookings, SD 57006  
(605) 688-5161 or (605) 688-6233  
Joan Hegerfeld-Baker  
Joan.hegerfeld-baker@sdsstate.edu

#### **University of Nebraska–Lincoln**

The Food Processing Center  
143 Food Industry Complex  
Lincoln, NE 68583  
(402) 472-2829  
Jayne Stratton, Ph.D.  
Jstratton1@unl.edu

#### **Kansas State University**

Kansas Value Added Foods Lab  
Animal Science Industry  
Room 139 Call Hall  
Manhattan, KS 66506  
(785) 532-1668  
Dr. Fadi M Aramouni  
aramouni@ksu.edu

Check with your local county Extension office, Dakota Rural Action Group, or your farmers market representative for a list of other ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) processing authorities in your area.

### How can I become an ACID FOODS (LEVEL 1) processing authority?

To become an ACID FOODS (LEVEL 1) processing authority you must take a class offered by the South Dakota

Cooperative Extension Service. For more information on how to become an ACID FOODS (LEVEL 1) processing authority, please contact the South Dakota Cooperative Extension Service at (605) 688-5161 or (605) 688-6233.

### What testing is involved in the verification process?

The pH and Aw must be measured using equipment that is maintained according to the manufacturer's instructions. Litmus or pH papers are not considered adequate for accurately measuring the pH of home-processed foods; therefore, measurements taken by these methods will not be accepted. Processors are encouraged to purchase their own pH meter to do batch checking for pH and product-consistency purposes; however, this will not replace the need for the third-party processing authority verification.

All Aw measurements will be performed on equipment that is maintained according to manufacturer's instructions and checked for accuracy with a known standard. Persons conducting pH and/or Aw testing must provide documentation that all readings were performed according to equipment directions. Any additional questions about the testing process should be directed to the South Dakota Department of Health.

#### Possible Additional Testing:

The food-processing authority has the right to conduct additional testing that is needed for determining the effectiveness of a thermal-processing method. Food-processing authorities may require microbial testing of acidified foods to confirm that the processing method used adequately destroys bacteria, yeasts, and molds.

### How much does it cost to get my product approved?

Fees will vary depending upon the following:

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

Acid foods require a pH and possibly an Aw test, particularly if the pH is greater than 4.6 or slightly lower. Acidified foods (pickled and fermented) will require equilibrium pH, water activity tests, and, most likely, a microbial test. Costs for testing will vary depending on processing authority and testing facility.

### Are tomatoes considered an acid or acidified (pickled or fermented) food?

Tomatoes are a fruit with a pH that borders 4.6. Therefore, tomatoes will require a pH reading, but not a microbial analysis, unless additional low acid ingredients are added. All tomatoes that are home processed will be required to have an acid added to them. You will need to work with an ACIDIFIED (PICKLED/FERMENTED) FOODS (LEVEL 2) food processing authority to have your process reviewed, pH tested, and verification.

### **Do I need to have each product and process reviewed?**

Yes, each home-processed product would require pH and/or Aw testing and a product/process review from an approved processing authority. One sample set and written procedure for each recipe is sufficient. This only has to be conducted one time, unless the recipe or process changes.

### **If I have already had my process approved and somebody else wants to use the same recipe and process, does it need to be approved again?**

Yes, each person needs to have the process approved for each product they wish to produce and sell.

### **Do I need to have processing authority documentation at each event/place I sell my products?**

Yes, a copy of the approved process for each product sold must be present at the sale location.

### **Does my product need to be tested by a processing authority if the product was made in a commercial kitchen?**

Yes it does, commercial kitchens must adhere to the South Dakota Food Code (Administrative Rules of South Dakota 44:02:07:41), which addresses the requirements for specialized processing methods. The preservation of foods in a hermetically sealed container that are processed in a licensed food service facility (commercial kitchen) would be regulated under the South Dakota Food Code and would require the process authority review.

Commercial kitchens that meet all the requirements to process foods in a hermetically sealed container can sell their product in retail settings. Foods processed in a home kitchen have a more limited market.

## **LABEL REQUIREMENTS**

### **What information do I need on the label?**

Labels must include:

1. name of product
2. producer or manufacturer name and address
3. date product was made or canned
4. ingredient statement listing products from most to least (spices or flavorings need not be listed)
5. allergen alert
6. product disclaimer

### **What does the allergen alert and disclaimer need to say?**

The allergen alert and disclaimer must say:  
“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”.

### **Does the disclaimer need to be on the label or can it be displayed as a placard or sign at the point of sale?**

The disclaimer is required to be on each product label.

## **FOOD PROCESSING**

### **Can I use two-part lids for canning?**

For home-processed techniques, two-part lids are recommended when processing in your home and selling products at farmers markets and similar venues.

### **Why is it necessary to heat process home-canned foods?**

Processing or thermal processing of home-canned foods is necessary to destroy all the microorganisms that could cause food spoilage or illness and to vent air from the jar in order for a vacuum seal to form. Processing filled jars for the correct length of time following approved guidelines will substantially reduce the food-safety risks associated with home-processed foods.

### **Where can I obtain home-processed recipes that have been tested for safety?**

Several South Dakota Cooperative Extension Service county offices can provide the home food processor with recipes, procedures for home processing, and answer home food processing questions. The USDA's National Center for Home Food Processing website (<http://www.uga.edu/nchfp>) has a wealth of information for the home food processor. The Ball Corporation is also a credible source for tested home-processed recipes. Products using these recipes and procedures still must be submitted to a processing authority.

### **Can low-acid foods that are processed at home be sold at farmers markets?**

No. Low-acid food is defined as any food, other than alcoholic beverage, with a finished equilibrium pH greater than 4.6 and Aw greater than .85. Low-acid foods are not allowed for sale at farmers markets and similar venues under the “Home-Processed Foods Law.”

### **Where can I learn more about safe home-food canning methods?**

If you would like more information about safe canning processes or a class for producer/vendors, contact your county Extension office or the South Dakota Cooperative Extension Service at (605) 688-5161 or (605) 688-6233.

## **PROCESSING SITES AND FACILITY REGISTRATION**

### **Do I have to register my facility with the FDA?**

No, home kitchens that process food to be sold at farmers markets, roadside stands, or similar venues under the “Home-Processed Foods Law” do not need to be registered with the FDA.

### **How can my home kitchen be approved for a food service license?**

South Dakota Department of Health regulations

prohibit a domestic kitchen to be licensed as a food-service facility. Please contact the Department of Health at 605-773-4945 for licensing information and questions.

## OTHER QUESTIONS

### Can I use wild fruits and berries?

Yes. Wild fruits and berries may be used if they are determined to be edible.

### Can I use products that are grown by my neighbor or out of state?

Yes. You are allowed to use products that are not grown in South Dakota or that are grown by other people in South Dakota. You must make sure that the products are edible and are free of filth and any pesticides.

### Do I need to comply with requirements for selling products by weight or volume?

There is no weight or volume limit under the "Home-Processed Food Law"; however, all products that are sold by weight of the product or volume of the product must meet requirements set forth by the Department of Public Safety, Office of Weights and Measures. Specific information can be obtained by calling (605) 773-3697.

### Can I give samples of my products at a farmers market?

Samples of your product may be given at the farmers market. Refer to the South Dakota Department of Health brochure, "Food Sampling Requirements at Farmer's Markets." To obtain the brochure, go to <http://doh.sd.gov/PDF/FoodSamplingRequirements9-8-10.pdf> or call (605) 773-4945.

### At farmers markets and other retail locations, can I sell the chickens that I raise and slaughter?

The sale of chickens does not fall under the "Home-Processed Foods Law." Producers wishing to slaughter and

sell chickens can contact the USDA by calling 1-877-374-7435.

### At farmers markets, can I sell eggs that came from the laying hens I raise?

The sale of eggs does not fall under the "Home-Processed Foods Law." Producers wishing to sell eggs can contact the Agricultural Services Office at (605) 773-3724 or at [http://sdda.sd.gov/Ag\\_Services/Dairy/Eggs.apx](http://sdda.sd.gov/Ag_Services/Dairy/Eggs.apx).

### Can I sell raw, unpasteurized milk that is from the animals that I raise?

The sale of raw, unpasteurized milk does not fall under the "Home-Processed Foods Law." Producers wishing to sell raw, unpasteurized milk must contact the South Dakota Department of Agricultural at (605) 773-3375.

### Can I sell homemade beef jerky and other processed meats at farmers markets?

The sale of meat does not fall under the "Home-Processed Foods Law." Producers wishing to sell meat can contact the South Dakota Animal Industry Board at (605) 773-3321.

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