



CHAPTER NINE

Food and Product Regulations for the Farmers Market

Where Do Food Regulations Come From?

Food safety regulations can come from the federal, state, or local government. Keeping up with or understanding food regulations can be intimidating for vendors and market managers involved with farmers markets. This chapter provides information on the regulatory topics listed below.

- Overview of Foods that Can Be Sold at the Farmers Market
- Selling Foods That Must Be Temperature Controlled
- Food Sampling
- Licensed Kitchens
- Temporary Foods Stands
- Mobile Food Stands
- Frozen Fruits and Fruit Juices
- Labeling of Prepared and Processed Foods
- Certified Organic
- Pet Food and Pet Treats
- Pets and Live Poultry

Overview of Foods That Can Be Sold at the Farmers Market

Visit the following article to get an overview of foods that can be sold at the Farmers Market along with best practices and regulations: extension.sdstate.edu/food-safety-south-dakota-farmers-market-vendors-regulations-and-best-practices

Selling Foods That Must Be Temperature Controlled

Farmers Markets offer a unique marketing opportunity to farmers market vendors. This section explores some of the regulatory aspects of licenses that a producer, vendor or market may need to apply for in order to sell a product that must be temperature controlled for safety. Farmers market vendors are exempt from licensing, unless they are selling a food that must be temperature controlled for safety.

Licensed kitchens, temporary food stands, and mobile food stands are all different types of food service licenses that are granted by the South Dakota Department of Health. The product, goals and location will all help determine which license is necessary.

For all fully licensed kitchens, temporary food stands and mobile kitchens one of the following regulatory offices are contacted based on the location. The SD Department of Health oversees the majority of the state while the Sioux Falls Department of Health is responsible for areas within city limits. If operation on land that is within the jurisdiction of Native American Lands, contact the official Tribal Office.

Contact Information: Temperature-Controlled Foods

- South Dakota Department of Health, Office of Health Protection: Phone: 605-773-4945
- Sioux Falls Department of Health, Public Health –Licensure/Permits/Registration: Phone: 605-367-8760

If operating on land that is within the jurisdiction of Native American lands, contact the official Tribal Office. A link to all Sioux Tribes in South Dakota is located at the Travel South Dakota website.

Food Sampling

In order to assist vendors in promoting their products food sampling is allowed as long as safety precautions are followed to prevent contamination and temperature abuse of food. For sampling guidelines and contact information refer to the SDSU Extension website and publication Guidelines for Serving Samples at the Farmers Market.

Licensed Kitchens

Licensed kitchens are required if preparing and/or serving food at the farmers market that must be temperature controlled for safety. These types of foods are also referred to as potentially hazardous foods. They have been implicated in food borne illness outbreaks and support the growth of foodborne pathogens. Examples would include items such as chicken pot pies, cream pies, cooked and prepared food items such as a beef or chicken, fresh apple cider, fresh cut fruits and vegetables and more. In some instances, a temporary license is all that is needed, see the next section.

The South Dakota Department of Health, Office of Health Protection serves as the regulatory body enforcing the South Dakota Foodservice Code. In the city of Sioux Falls, the Sioux Falls Department of Health is the regulatory authority for all foodservice types of establishments. In tribal areas or reservations in South Dakota, the Indian Health Service Bureau of Indian Affairs may have jurisdiction over foodservice establishments.

The South Dakota Department of Health, Office of Health Protection provides a complete food service licensure packet. The packet includes the SD Food Service code, license applications, plan review questionnaire, sample kitchen layouts and other fact sheets.

Contact Information: Licensed Kitchens

- South Dakota Department of Health, Office of Health Protection. Phone: 605-773-4945
- Sioux Falls Department of Health, Public Health –Licensure/Permits/Registration: Phone: 605-367-8760

If operating on land that is within the jurisdiction of Native American lands contact the official Tribal Office. A link to all Sioux Tribes in South Dakota is located at the Travel South Dakota website.

Temporary Food Stands

Any foodservice establishment which operates in a fixed location for a temporary period of time is considered a temporary foodservice. For example, in connection with a fair, carnival, circus, public exhibition or similar transitory gathering such as a farmers market. If a farmers market, as a non-profit* organization offers a free community meal to promote their market, they do not need to obtain a temporary foodservice license.

However, if a vendor, or group of vendors, provides a meal or food item for sale or give-away that must be temperature controlled, they will need to obtain a temporary license. Vendors are not considered non-profit. However, the farmers market is often registered as a non-profit entity.

**Non-profit organizations are defined as any governmental organization, church, fraternal, social, school, youth, or other similar organization that is organized and operated for a common good and not for the specific monetary gain of any person or persons.*

Examples of situations not requiring a temporary food license at the farmers market:

- A youth organization holds a brat feed at the farmers market to raise funds for a family that has experienced a hardship or for their organization.
- A farmers market sells tickets for a community meal at the farmers market to get people to come to the market or to promote the market. The ticket sales cover the costs of the meal. Any funds generated from the meal are for the farmers market as a non-profit organization. The funds do not go directly to the vendors.
- A farmers market serves sweet corn to the people that visit the market.

These are some examples that commonly occur – certainly more exist. The farmers markets can require that anyone, including non-profit organizations, obtain a temporary foodservice license in their market rules. This pertains to foods that must be temperature controlled for safety. This practice would help to assure that the non-profit organization has connected with the department of health to address the safe handling practices that are critical to the food they are distributing in a specific setting.

The temporary foodservice applications must be submitted to the SD Department of Health 14 days prior to beginning operation. To determine compliance with all requirements set by the Department of Health, an inspection may be conducted at each stand by a state inspector with the Department of Public Safety or Department of Health. A license fee for a temporary foodservice license is \$38. The license is valid only at the event or location at which it is used for a period of two weeks. As a general rule, the Dept. of Health will only issue 3 consecutive licenses to a person or vendor. At that point, the vendor should consider a regular license or a mobile food stand license.

In summary, non-profit organizations are exempt from obtaining a temporary foodservice license. However, they are not exempt from inspection. Non-profits can be inspected to insure safe food handling practices for the general public. Farmers markets as well any other type of non-profit venue are selling or distributing foods to the general public, therefore they are not exempt from inspection even though they do not need to obtain a temporary foodservice license.

Contact Information: Temporary Food Stands

- South Dakota Department of Health, Office of Health Protection. Phone: 605-773-4945
- Sioux Falls Department of Health, Public Health –Licensure/Permits/Registration: Phone: 605-367-8760

If operating on land that is within the jurisdiction of Native American lands contact the official Tribal Office. A link to all Sioux Tribes in South Dakota is located at the Travel South Dakota website.

Mobile Food Stands

The South Dakota Department of Health regulates mobile food stands. A mobile food unit is defined as an enclosed trailer, van, pushcart, recreation vehicle or similar enclosed mobile facility that is transported from site to site for the purpose of dispensing food to the public. A mobile foodservice establishment is any mobile unit in which food or drink is prepared for sale or for service to the public with or without charge.

Requirements may vary depending upon the types of foods being prepared and served through a mobile unit. For more information on mobile units visit the South Dakota Food service licensing website at <http://doh.sd.gov/food/restaurants-lodging/licensure/food-service> and click on mobile food service plan review.

Contact Information: Mobile Food Stands

- South Dakota Department of Health, Office of Health Protection. Phone: 605-773-4945
- Sioux Falls Department of Health, Public Health –Licensure/Permits/Registration: Phone: 605-367-8760

If operating on land that is within the jurisdiction of Native American lands contact the official Tribal Office. A link to all Sioux Tribes in South Dakota is located at the Travel South Dakota website.

Preparing, Cooking, and Serving Safe Food is Good Business

When preparing and serving food for sale or free to the general public there is an added level of responsibility to your customers at the farmers market. Maintaining the safety of food that must be temperature controlled for safety is always a challenge when the conveniences of a licensed kitchen are not available to you. Therefore, it is important to first be fully knowledgeable of the safety practices that reduce the risk of contamination of food as well as the opportunity for pathogenic bacteria to grow to dangerous levels.

The South Dakota Department of Health, USDA and SDSU Extension have several free educational resources available to assist those in preparing and serving food to be fully knowledgeable of the food handling practices that are critical to the safety of the food served. Below is a list of several resources that are available for educating yourself and those that are serving foods at the farmers market.

- Fact Sheets designed by the SD Department of Health to provide basic information about food safety issues for foodservice establishments.
- The USDA Food Safety Inspection Service “Cooking for Groups” a Volunteer’s Guide to Food Safety” is a free brochure to assist volunteers with grasping the safe food handling practices associated with cooking and serving larger

- quantities of food. Go to the www.fsis.usda.gov website and conduct a search with the title of the brochure. This is also available in Spanish.
- The SDSU Extension Food Safety Website / has several publications and articles that assist foodservice type operations address critical safe food handling practices:
 - SD Requirements for the Sale of Home-Canned Processed Foods at Farmers Markets
 - SD Requirements for the sale of Home-Baked Foods at Farmers Markets
 - Date Marking Ready-to-Eat Refrigerated Foods from Licensed Kitchens
 - Food Package Labeling

These are simply a sampling of the many publications and articles that have been made available on the SDSU Extension Food Safety Website.

Fruit Juices and Frozen Fruits

There are many situations that federal regulations can apply to fruit juices and frozen fruits. For regulatory guidelines, scenarios and contact information on these products refer to SDSU Extension website Direct Marketing of Fruit and Processed Fruit Products by Growers and Food Processors at Farmers Markets within the state of South Dakota (Intrastate).

Labeling of Prepared and Processed Foods

A food package label serves the primary purpose of communicating to the consumer key elements of the product. The labeling requirements vary in accordance with the type of food that is being sold and in several instances how or where it was prepared or processed. Below are several situations that pertain to prepared and processed foods sold at the farmers market:

Home processed canned goods must have labels on each container that is to be sold with the following (in accordance with the South Home Processed Food Law):

- Name of product – identify what it actually is. For example, “Cucumber Relish” cannot be called “Hot Dog Sauce”
- 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 does 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.”
- The font size should be prominent, conspicuous, and easy to read.
- 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).

Home baked or prepared foods that do not have to be temperature controlled for

safety and sold at the farmers market must contain the same information as listed above for home canned products. If selling from a display case at the farmers market the information may be on the display case or made available in written format to the customer when purchased rather than having to wrap and label each individual item. For example, a tray of cookies or sliced quick breads in a display case.

Foods that processed/canned or prepared/baked in a licensed kitchen or commercial operation and packaged for resale must adhere to labeling requirements of the South Dakota Department of Public Safety which often refer to the FDA Labeling Guidelines. The following must be on the label:

- Statement of identity (name of the product).
- Net Quantity in U.S. Customary System (ounces, pounds, fluid ounces) followed by metric in parenthesis:
Net wt ____ oz. (____ g)
Net wt ____ lb. ____ oz (____ g)

This is the weight of the food only. To determine the Net wt., weigh the package empty and subtract from the package when full. Jams, jellies, and acidified foods should be in Net Weight, (not fluid ounces).

- Ingredient statements should include all the ingredients in the recipe in order of predominance, by weight. The ingredient statement must include common names. The sub-ingredients of a food that is an ingredient in another food may be declared parenthetically following the name of the ingredient. For example, Partially Hydrogenated Vegetable Oil (Cottonseed, Soybean).
- Major food allergens must be listed directly below the ingredient statement. The term “Contains:” must be listed first followed by the allergens present in the food. The major allergens are milk, egg, fish, crustacean shellfish, tree nuts (list the specific nut), wheat, peanuts, and soybeans.
- Name and address of the manufacturer, packer or distributor. If not the manufacturer, the qualifying phrases may be “distributed by”, “packaged by” or “manufactured for.”
- A nutrition facts panel is required on prepared packaged foods.

The following items and situations are exempt from a nutrition facts panel:

- fresh produce
- egg cartons
- small businesses, less than or equal to \$500,000 in total sales, or \$50,000 in product sales
- food packaged and sold directly to consumers where prepared

For assistance with labeling of packaged foods refer to the Food and Drug Administration Food Labeling Guide. Go to fda.gov and search for “food labeling guide.” Or contact the SDSU Extension Food Safety Specialists Office at 605-782-3290. Food Labeling to meet the regulations at the FDA level can be a complex and time-consuming task. Each product and situation will have different needs. Addressing all of the labeling issues in this guide would not be practical, however if producers or vendors are interested in meeting the FDA labeling guidelines for a product, contact an SDSU Extension Food Safety Specialist.

Certified Organic

According to the United States Department of Agriculture National Organic Program, “Organic is a labeling term that specifies that the food or other agricultural product has been produced through accepted methods using cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.” It is illegal to use the term “certified organic” unless it has undergone certification by a 3rd party; and that “organic” cannot be used unless all organic standards (including required organic plan and records) have been followed.

Under the National Organic Program, the following practices are not approved for organic-certified products:

- Synthetic Fertilizers
- Sewage Sludge
- Irradiation
- Genetic Engineering

The cost of certification and fees varies widely depending on the certifying agent and the size, type, and complexity of the operation. The cost may range from a few hundred to several thousand dollars. The USDA provides cost share program that can reimburse up to 75 percent of the certification.

What Products Can Vendors Market as Certified Organic?

The USDA organic regulations recognize four categories of organic products:

- Crops: A plant that is grown to be harvested as food, livestock feed, fiber, or used to add nutrients to the field.
- Livestock: Animals that can be used for food or in the production of food, fiber, or feed.
- Processed products: Items that have been handled and packaged such as carrots. Or items that have been combined, processed, and packaged such as soup.
- Wild crops: Plants from a growing site that is not cultivated.

How Do I Become Certified?

To become certified, growers must apply with a USDA-accredited certifying agent. The agent will request the following information:

- A detailed description of the operation to be certified.
- A history of substances applied to land during the previous three years.
- The organic products grown, raised, or processed.
- A written Organic System Plan describing the practices and substances to be used.

Organic Certification Process:

- Producer or handler adopts organic practices; submits application and fees to certifying agent
- Certifying agent reviews applications to verify that practices comply with USDA organic regulations
- Inspector conducts an on-site inspection of the applicant’s operation
- Certifying agent reviews the application and the inspector’s report to determine if the applicant complies with the USDA organic regulations
- Certifying agent issues organic certificate

Annual Recertification Process:

- Producer or handler provides annual update to certifying agent
- Inspector conducts an on-site inspection of the applicant's operation
- Certifying agent reviews the application and the inspector's report to determine if the applicant still complies with the USDA organic regulations
- Certifying agent issues organic certificate

Pet Food and Pet Treats

South Dakota Feed & Animal Remedy Program

In South Dakota the Department of Agriculture and Natural Resources (DANR) Feed & Animal Remedy Program is the agency that oversees the manufacturing, licensing, and labeling of animal feeds and remedies. Local foods producers interested in selling pet foods or pet treats need to be in compliance with this program. Therefore, these regulations apply to pet food makers selling their product at the farmers market.

Local food producers interested in manufacturing and selling pet foods and pet treats should contact the SD DANR for assistance. If they are included at the beginning of the product creation process, the SD DANR can help provide guidance on formulas and labeling. This can make the process of adjusting and approving recipes or labels easier.

Anyone who manufactures a commercial feed within the state must have a Commercial Feed License. This includes pet foods and pet treats. The fee for a license is \$50 per in-state location or per manufacturer name and location listed on a commercial feed label. The license must be renewed biennially. The application form is available on the SD DANR website.

If products are sold exclusively in packages that weigh less than ten pounds, they are charged using a small package fee in lieu of a tonnage fee. For more information on fees see the South Dakota Feed Tonnage & Inspection Fee Report, available on the SD DANR website. Additional fees are assessed based on packaging weight

Ingredients must be defined by the Association of American Feed Control Officials (AAFCO), accepted as GRAS (generally regarded as safe) or common food ingredients. When selecting ingredients, keep in mind that just because an ingredient is used in human food does not mean it is acceptable for pet food. As a general rule if the AAFCO guidelines (<http://www.aafco.org>) for labeling and ingredients are followed, the product will be acceptable.

Net weight, guaranteed analysis for crude protein crude fat, crude fiber and max moisture should all be recorded on the product label. To collect this information, make a few small batches and send them to a commercial laboratory. The business or individual's name and address should be included on the label as well. Contact the SD DANR with additional questions.

Contact Information: Pet Food and Pet Treats

- South Dakota Department of Agriculture and Natural Resources
 - Phone: 605-773-4432
 - Fax: 605-773-3481

Selling Pets and Live Poultry at the Farmers Market

Small pets and live poultry may be sold or distributed at the farmers market. In some instances a license or permit must be obtained from a government agency. Information

specific to poultry and small pets is provided below.

Any animals coming from out-of-state to be sold in South Dakota must have a Certificate of Veterinary Inspection (CVI). The CVI is issued before it leaves the state of origin. Requirements for importing livestock and animals, including pets and poultry into South Dakota can be found on the South Dakota Animal Industry Board (SDAIB) website.

Poultry and Hatching Eggs

Vendors distributing (selling or giving away) live poultry under five months of age and hatching eggs must acquire a permit through the SDAIB. To have your questions answered or to obtain the forms contact the SDAIB.

Contact Information South Dakota Animal Industry Board

- Phone 605-773-3321
- email (aibmail@state.sd.us).
- Application forms can be found on the SDAIB website.

Poultry must originate from a Pullorum-free flock or be individually tested negative for Pullorum disease before being sold, regardless of the marketing venue and number of birds sold. Live birds being sold for immediate slaughter are exempt from the testing requirement.

Selling of Pets

The United States Department of Agriculture regulates pet sales in South Dakota. According to the USDA anyone selling domestic pets directly to pet owners is exempt from obtaining a license to sell pets, regardless of the sales volume. If vendors or market directors have specific questions, they can review the USDA document “Licensing and Registration Under the Animal Welfare Act – Guidelines for Dealers, Exhibitors, Transporters, and Researchers.” This publication can be obtained by searching for the document title at the USDA Animal and Health Pet Inspection Website: <https://www.aphis.usda.gov/aphis/ourfocus/animalwelfare>.

Market Rules

There are food safety risks to consider when live animals are sold or given away in a location where food is also sold. Since live animals (with the exception of service animals) are not allowed in locations where food is prepared and sold, the farmers market rules must identify this issue. Therefore, specific rules regarding the sale of live animals (i.e. pets and poultry) must be addressed. The farmers market should either have rules that do not allow the sale of live animals or have specific guidelines that must be followed to reduce the risk of foodborne illness. Examples of guidelines for the farmers market to include in their rules are listed below:

- A separate location for all live animals from all foods that are sold at the market.
- Hand washing station (temporary or permanent) should be located close to live animals along with signs posted to remind people to wash their hands after handling pets or poultry.
- Require that all poultry and/or pets be placed in a cage that does not allow for the handling of the animals by customers until they are purchased and ready to leave the market. This will avoid the problem of a customer purchasing a

little chicken, puppy, cat, or rabbit and then carrying it around the market with them in the food area.

- If live poultry is sold or given away, the vendor must provide a copy of their certificate from the SD Animal Industry Board permitting the distribution of poultry from their flock.
- If animals from out of state are sold, they must satisfy import requirements.

Markets may simply not allow live animals to be sold at the market. Encourage vendors to have pictures and contact information for their live animals.

Customers' Pets

Several farmers markets have put in place a rule that does not allow for customers to bring their pets into the market, with the exception of service animals. Vendors have recognized that the animal's behavior may increase the risk for contamination of food with pet hair, saliva, and fecal material. This is truly an example of markets recognizing the need for offering a safe food to their customers. Other markets have created a pet-sitting area for pets to enjoy while their owners are then free to shop.