

South Carolina Home-based Food Production Law Guidance

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South Carolina Home-based Food Production Law Guidance

In Cooperation With



COOPERATIVE EXTENSION
College of Agriculture, Forestry and Life Sciences



**MEAT-POULTRY
INSPECTION**
Livestock Poultry Health



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CHAPTER I

Introduction

The South Carolina (SC) Home-based Food Production (HBFP) Law guidance document was developed to provide clear and consistent information about the law for home-based food producers to assist them in following the law and providing quality and safe food to South Carolina consumers.

Home-based Food Production or “Cottage Law” History

In 2012, a group of home bakers worked with several members of the legislature to craft a bill to expand the “Weekend Home Bakers” exemption provision of SC Department of Health and Environmental Control’s (DHEC) regulation 61-25. The bill was based on information from other states that had cottage laws. While DHEC and the SC Department of Agriculture (SCDA) had some limited input into the bill, the bill was not authored by either regulatory agency. This collaboration between industry and the legislators resulted in the first HBFP law and expanded the exemption that had previously been allowed by R. 61-25. It established

labeling and sanitation requirements for the foods allowed under the law and exempted them from regulatory oversight. The law was revised in 2018 to remove an unnecessary reference to SCDA as this law was only applicable to a limited category of non-potentially hazardous foods sold directly to the end consumer (retail sales).

On January 28, 2021, Senate bill 506 was introduced in the Senate. This bill was also a collaboration between the cottage industry and the legislators to revise and expand the foods allowed by the HBFP law and to allow these foods to be sold online and at retail stores. As before, DHEC and SCDA had some limited input into the bill while it was being debated in committee but did not author the bill. After much discussion, the bill passed and became effective on May 23rd, 2022, allowing for additional non-potentially hazardous foods to be exempted from food safety oversight by DHEC and SCDA while establishing labeling and sanitation requirements for these foods.

This guide has been created to address the concern that was presented in those

committee meetings of conflicting interpretations and information on the law. It is the result of collaboration between the regulatory agencies charged by state statutes with food safety oversight, academia, and cottage food industry groups.

Food producers who want to sell food under South Carolina’s Home-Based Food Production Law, must follow the guidelines set forth by South Carolina’s Code of Laws 44-1-143. This law is separate from DHEC’s SC Regulation 61-25 “**Retail Food Establishments.**” Home-based food operations are individuals preparing **non-potentially hazardous** food as outlined in this guidance document.

This guidance document outlines the requirements of the law, which foods are allowed and not allowed, labeling, using the SC DHEC ID number system and more. In South Carolina there are several agencies that partner together to assist our food producers. If you find that this guidance document does not answer a question that you have, please feel free to reach out to us at sccottagefood@clemson.edu.

Foods that are not covered under the SC Home-based Food Production Law must be sold under the assigned regulatory authority. *See Appendix D.*

CHAPTER 2

General Requirements of the Home-based Food Production Law

A **retail food establishment permit**, issued by SC DHEC, is not required to sell retail so long as the requirements below are met.

Similarly, a South Carolina Department of Agriculture **Registration Verification Certificate** is not required to sell wholesale if the below requirements are met.

Requirements to Sell a Home-based Food

Home-based food producers are allowed to sell food to the following:

1. Direct to the consumer (including on-line and mail order)
2. Retail stores, including grocery stores
 - a. Retail stores must clearly post a sign indicating that the home-based food products are not subject to commercial food regulations.
 - b. Home-based food may not be served

or used as an ingredient in a retail food establishment (restaurant) without a variance approved by DHEC, but may be sold in packaged and labeled form at retail food establishments. The variance is required to state how the consumer will be informed as required by the law that the food or ingredient used in a food served was prepared in a home kitchen. The consumer advisory must contain the following statement about the food, or the ingredient used to produce the food: ‘PROCESSED AND PREPARED BY A HOME-BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA’S FOOD SAFETY REGULATIONS.’

HBFP Law Section G Exemption

Section G states *“The provisions of this section do not apply to an operation with net earnings of less than fifteen hundred dollars annually but that would otherwise meet the definition of a home-based food operation provided in subsection (A)(1).”*

This allows those operations that otherwise fit the definition of a Home-based Food Production, but do not have sales more than \$1500 a year, to not have to meet the labeling or other provisions of the law & may produce and sell the same items. **However, they may not sell at retail locations without the required labeling** as labeling is necessary for the retailer to show that the food is from an approved source as required by DHEC regulations.

The producer must ensure that all food that is produced, packaged, and stored in the **home kitchen** is protected from contamination. To do so, the producer must:

1. Supervise others who are in the kitchen,
2. Prohibit all animals, including pets, from the kitchen during production and packaging and ensure that animals do not come in contact with ingredients, packaging, or prepared items,
3. Not use the kitchen for home-related activities while food is being produced or packaged for sale,
4. Exclude any person from the kitchen if they have a communicable disease that can be transmitted by food, has an infected wound, or has an acute respiratory infection related to the food being prepared or packaged for sale,
5. Ensure that all people responsible for any

part of handling, processing, or packaging food for sale knows and follows all safe food handling practices,

6. Ensure the home is **clean** and sanitary to reduce the risk of **cross contamination** during food processing and packaging.
 - a. Approved water supply
 - i. “*Department approved water source*” as specified in SC Law 44-1-143 means either a public drinking water system, or a private well that is tested at least annually for Total Coliform Bacteria by a laboratory certified for public drinking water testing in SC. The public can obtain sample bottles and private well testing through the SC DHEC Regional Environmental Affairs Offices (scdhec.gov/ea-local-offices).
 - ii. For guidance regarding “*onsite wastewater systems*” (septic tanks), contact SC DHEC at 803-896-8657. General information on the DHEC Onsite Wastewater Program can be obtained from that program’s home page (scdhec.gov/environment/septic-tanks/septic-tanks-general-information).
 - b. Separate storage for ingredients used in foods for sale
 - c. Properly working refrigeration

- d. Adequate facilities to meet the need for cleaning and sanitizing all utensils and equipment including a sink with an adequate quantity of hot water
- e. Enough sanitary storage for utensils and equipment
- f. Hand washing sink that is separate from the sink used for cleaning utensils and equipment
- g. Sanitary and working toilet
- h. No signs of rodent or pest activity
- i. Department-approved sewage disposal

Safety requirements found in the law must be followed carefully. Even commercially processed foods that are to be dehydrated or freeze dried can be re-contaminated accidentally by failing to follow proper sanitation, handling, health, and hygiene requirements. Drying the product by either method does not reliably destroy pathogens that may be accidentally introduced in handling by the cottage food producer. They are more likely to go dormant until given the opportunity to grow (consumption), and they may also become more heat resistant. It is the responsibility of the cottage food producer to produce food that is not contaminated because of failing to follow those safety requirements.

CHAPTER 3

Definitions

All key words that are found bolded throughout this guidance document are listed and defined in the following table.

Academic Source	Science-based and peer reviewed journal articles, books, reports, or educational resources that are written by experts in the field of the topic. <i>See Appendix B</i>
Acid Food	Foods which have a natural pH of 4.6 or below. An example of acid foods are peaches, strawberries, and blueberries.
Acidified Food	Foods are classified as acidified when the predominate ingredient(s) are low acid and the final product has been processed or prepared to have a final pH of 4.6 or lower. Examples of acidified foods are pickles, salsa, and pepper jelly.
Approved Source	A grower, producer or manufacturer that is acceptable to the Department based on a determination of conformity with principles, practices, and generally recognized standards that protect public health.
Canning	A method of food preservation using a process to seal food in an airtight can or jar.
Clean	The process of removing visible dirt and debris.
Commercially Prepared/Processed	Food that is processed and packaged in a food processing plant that maintains a written food safety plan and is inspected by the food regulatory authority that has jurisdiction over the plant.

Contamination	A term used when anything inedible is mixed with foods that will be consumed. Sources of contamination can be biological (i.e., bacteria, viruses, mold, and yeast), physical (i.e., Band-Aids, fingernail, hair, glass, plastic, etc.) or chemicals (soap, sanitizer, pesticide, paint, etc.)
Cross Contamination	A term used when pathogens are spread from one surface to another.
FDA	An acronym that stands for Food and Drug Administration, which is a federal agency under the Department of Health and Human Services and is responsible for the regulation of foods, cosmetics, drugs, medical devices, biological products, and radiological products. For more information, visit fda.gov .
Food Contact Surface	Any surface that touches food during preparation, service, holding and cooking, such as utensils, bowls, cutting boards, countertops, sinks and cooking equipment (skillets, pots, mixers, thermometers, etc.).
GRAS	Generally Recognized As Safe; An FDA label for food and food ingredients not known to cause health hazards. fda.gov/food/food-ingredients-packaging/generally-recognized-safe-gras
Home-based Food Production Operation	An individual, operating out of the individual's dwelling, who prepares, processes, packages, stores, and distributes non-potentially hazardous foods for sale directly to a person, including online and by mail order, or to retail stores, including grocery stores. 'Home-based food production operation' does not include preparing, processing, packaging, storing, or distributing aluminum canned goods or charcuterie boards.
Home Kitchen	The kitchen in your home in which you feed your family.
Jarring	A method of food preservation using a process to seal food in an airtight jar or bottle.
Low Acid Food	Foods with a pH of greater than 4.6. Vegetables and meats are common low acid foods. Low acid canned foods are at risk for the growth of clostridium botulinum if not canned properly.

Non-Potentially hazardous foods (Non-TCS Foods)	A food that does not require refrigeration for safety and does not support the growth of pathogens.																				
Pathogen	A disease-causing bacteria, virus, parasite, fungus, or mold.																				
Personal Hygiene	The level of cleanliness of a person, including their entire body, hair, clothes, aprons, hat, or head covering. Good personal hygiene is essential for those working with food. Poor personal hygiene can easily lead to contamination or cross contamination.																				
Potentially Hazardous Foods	<p>a. An animal food that is raw or heat-treated; a plant food that is heat-treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation; garlic in oil mixtures not modified to prevent microorganism growth or toxin formation;</p> <p>b. Certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged:</p> <table border="1"> <thead> <tr> <th>Aw values</th> <th colspan="3">pH values</th> </tr> <tr> <th></th> <th>4.6 or less</th> <th>>4.6</th> <th>>5.6</th> </tr> </thead> <tbody> <tr> <td>(1) <0.92</td> <td>non-PHF</td> <td>non-PHF</td> <td>non-PHF</td> </tr> <tr> <td>(2) >0.92-0.95</td> <td>non-PHF</td> <td>non-PHF</td> <td>PHF</td> </tr> <tr> <td>(3) >0.95</td> <td>non-PHF</td> <td>PHF</td> <td>PHF</td> </tr> </tbody> </table>	Aw values	pH values				4.6 or less	>4.6	>5.6	(1) <0.92	non-PHF	non-PHF	non-PHF	(2) >0.92-0.95	non-PHF	non-PHF	PHF	(3) >0.95	non-PHF	PHF	PHF
Aw values	pH values																				
	4.6 or less	>4.6	>5.6																		
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(2) >0.92-0.95	non-PHF	non-PHF	PHF																		
(3) >0.95	non-PHF	PHF	PHF																		
Process Authority	A qualified person(s) approved by the regulatory authority who has expert knowledge and adequate facilities to assess and determine safe food handling and processing requirements, including but not limited to thermal processing requirements in hermetically sealed containers, reduced oxygen packaging, shelf stable non-time/temperature control for safety foods, and cooking processes. afdo.org/directories/fpa																				
Registration Verification Certificate (RVC)	Permit issued by the South Carolina Department of Agriculture that is required to sell foods wholesale. Note: qualifying home-based foods are not required to obtain an RVC.																				

<p>Retail Food Establishment</p>	<p>An operation that prepares, processes, packages, serves, or otherwise provides food for human consumption, either on or off the premises, regardless of whether there is a charge for the food. These establishments include, but are not limited to, restaurants, delicatessens, snack bars, catering operations, ice cream parlors, school cafeterias, independent living food service operations, licensed healthcare facilities, grocery stores, retail meat markets, fish/seafood markets, retail ice merchants, shared use operations, mobile food establishments (to include the associated commissary and mobile units).</p>
<p>Retail Food Permit</p>	<p>A permit issued by SC DHEC to operate as retail food establishment.</p>
<p>Sanitize</p>	<p>A process to reduce the quantity of pathogens to a safe level.</p>
<p>SCDHEC (SC Department of Health and Environmental Control)</p>	<p>An acronym that stands for South Carolina Department of Health and Environmental Control, which is South Carolina’s state regulatory authority for retail food establishments, all dairy products, soft drinks, and water products. For more information, visit scdhec.gov.</p>
<p>Time Temperature Control for Safety (TCS) Foods (Potentially Hazardous Foods)</p>	<p>Foods that have a natural potential for contamination due to their growing conditions and handling/processing. TCS foods have all the conditions necessary to support pathogen growth: carbohydrate or protein, near-neutral acidity, oxygen, and moisture. When given the correct temperature and adequate time, these foods can allow pathogens to multiply to a level to cause foodborne illness. Current FDA designation for potentially hazardous foods.</p>
<p>Water Activity</p>	<p>Also written as a_w. The measure of water in a product that is bound to food. Pathogens need water to grow. The more water in a product that is bound, the less likely those pathogens can grow and survive. Most pathogens cannot grow in foods with a a_w of 0.85 or less.</p>

CHAPTER 3

Allowed Foods

The following table provides a list of foods that are covered by the home-based food production law. This example list is not complete. If you do not find a product on this list or the list of foods that are not covered, then please email us at scottagefood@clemson.edu for guidance.

Category	Food	Comments
Baked goods, miscellaneous	Baklava	Made with commercially prepared honey or honey from an approved source
	Kolachke	Traditional nut filling of ground nuts, brown sugar and cinnamon is allowed. Other fillings (such as high acid fruit fillings) must be commercially prepared or home-canned using a science-based recipe
	Lamington	Allowed if following traditional recipe. Other fillings (such as high acid fruit fillings) must be commercially prepared or home-canned using a science-based recipe
	Scones	Allowed if fruit is dried either commercially or in the home kitchen.
Baking mix	Cake, cookie, or bread	May not contain any TCS ingredient. Any alternative flour (i.e., cricket flour) must come from an approved source . Proper ingredient labeling required using all common names for allergens.

Category	Food	Comments
Bread	Bagels	Plain or baked with herbs or cheese
	Cheddar bites	
	Cheese biscuits	
	Cheese bread	Cheese must be baked with the bread
	Focaccia	Vegetables are not allowed to be added in or on top of the bread.
	Jalapeño	Yeast based and made with commercially prepared pickled jalapeños
	Pretzels	
	Quick	Only if prepared with a commercially prepared flavored base mix and without the addition of a fresh, frozen, or canned fruit or vegetable
	Sourdough	Starter used to make the bread should originate from a commercial culture and should be replaced with a new commercial culture every fourth generation.
Cake	Cake pops	
	Cupcakes	Iced with buttercream, cream cheese or other icing that is either commercially prepared or made using a standard recipe and classified as non-TCS .
	Decorated/ Wedding	Iced with buttercream, cream cheese or other icing that is either commercially prepared or made using a standard recipe and classified as non-TCS .
	Funnel cake	
Candy	Candy apples	
	Carmel apples	
	Cotton candy	
	Hard candy	
	Popcorn	

Category	Food	Comments
Canned Foods	Acidic fruits	Acidic fruits include peaches, cherries, apricots, plums, apples, pears, citrus fruits, blackberries, blueberries, raspberries, and strawberries.
	Jams, jellies, preserves, and high acid fruit curds	<p>Made using a standardized science-based (See appendix B) recipe with acidic fruit, sugar, and pectin. Cannot contain low-acid ingredients (peppers, fig, elderberry, mint, etc.), no/low sugar, or sugar substitute recipes. Acidic fruits include peaches, cherries, apricots, plums, apples, pears, citrus fruits, blackberries, blueberries, raspberries, and strawberries.</p> <p>When produced under the Cottage Food Law, these products may be used as ingredients in home-baked products.</p>
Chips	Corn	
	Potato	
	Vegetable	
Chocolate	Coating	
	Fudge	
	Ganache	
	Hot cocoa bombs	
	Molded	
	Strawberries, covered	
	Tempered	
	Truffles	
Cookie Dough, Edible		Must be made with commercially heat-treated flour and not require refrigeration.
Cookies		Fruit or vegetable puree allowed if baked in with the batter (pumpkin, etc.)

Category	Food	Comments
Crackers	Cheese straws	
Dried/Dehydrated/ Roasted/Freeze- Dried	Coffee, whole or ground	Must be roasted in the home kitchen
	Fruits	Must be dried in the home kitchen
	Hard candy	Must be dried in the home kitchen
	Herbs	Must be dried in the home kitchen
	Spices	Must be dried in the home kitchen
	Teas	Must be dried in the home kitchen using GRAS (Generally Recognized as Safe) ingredients
	Vegetables	Must be dried in the home kitchen
Extracts	Dried herbs or spices	Must contain more than 20% ethanol or 35% glycerin
	Fresh herbs	Must contain more than 20% ethanol or 35% glycerin
Fillings		Commercially prepared that does not require refrigeration.
	High-acid fruit filling	Commercially prepared or home-canned using a science-based recipe
Granola	Bars	
	Mix, Trail	
Honey	Combed	Allowed if extracting, preparing, processing, packaging, storing, and distributing out of a home kitchen
	Creamed	Allowed if extracting, preparing, processing, packaging, storing, and distributing out of a home kitchen
	Infused	All infused ingredients must be GRAS and commercially dried
	Raw	Allowed if extracting, preparing, processing, packaging, storing, and distributing out of a home kitchen

Category	Food	Comments
Icing/Frosting	Buttercream	Use standardized recipe. If eggs are used, they must be commercially pasteurized.
	Italian buttercream	Egg whites must be commercially pasteurized.
	Royal	Made with meringue powder or pasteurized egg whites. Use of non-pasteurized egg whites is not allowed.
	Swiss meringue	Egg whites must be commercially pasteurized.
Liquor	For baked in flavor	Must contain 0.5% alcohol or less.
Muffins		Without the addition of fresh, frozen, or canned fruit or vegetables
	Filled	Filled only with allowed high-acid fruit filling or jam that is either commercially prepared or made using a science-based recipe.
Nuts and Seeds	Candied	
	Roasted	
	Toasted	
Pastries/ Doughnuts	Bacon	Commercially prepared and cooked shelf-stable bacon is allowed
	Filled	Must be filled only with a commercially prepared shelf stable filling
Pie and Pie Fillings	High acid fruit	Acidic fruits include peaches, cherries, apricots, plums, apples, pears, citrus fruits, blackberries, blueberries, raspberries, and strawberries.
	High acid fruit filling	Commercially prepared or home-canned using a science-based recipe
	Nuts (pecans)	
Syrup	Fruit, high acid	Must be extracted and prepared in a home kitchen
Vinegar	Infused/ flavored	Must be infused in the home kitchen using GRAS ingredients

CHAPTER 5

Foods NOT Allowed

The following table provides a list of foods that are NOT covered by the home-based food production law. This example list is not complete. If you have any questions, please email us at sccottagefood@clermson.edu for guidance.

Category	Food	Comments
Alcoholic products		
Beverages	Beverages, bottled	Juice, smoothie mix, teas, coffees, cocktail mixes (alcoholic and non-alcoholic) or similar products
	Cold brew coffee	
	Herbal tincture	
	Kombucha	
	Kefir	
Bread	Focaccia bread	
	Pizza dough	
	Quick bread made with fresh, frozen, or canned fruits or vegetables	
	Sourdough starter	
	Sweet potato	

Category	Food	Comments
Cake	Cheesecake	All varieties
	Pumpkin	
Canned Foods	Acidic vinaigrettes or dressings	
	Acidified foods	
	Aluminum canned goods	
	BBQ sauce	
	Chow chow	
	Chutney	
	Fermented	All forms
	Fig preserves	
	Hot sauce	
	Jams, jellies, and preserves	Made from low-sugar or no sugar recipes or low acid ingredients (peppers, tomatoes, figs, mint, etc.).
	Low-acid vegetables, fruits, dressings, and sauces	
	Mustard	
	Pepper jelly	
	Pickles	All forms
Relish		
Salsa		
Casseroles		
CBD/Delta 8		CBD isolate and Delta 8 are not approved food ingredients and may not be added to food.
Charcuterie boards		

Category	Food	Comments
Fillings – pies, pastries	Cream	
	Fruit, cooked	
Freeze-Dried/ Dried	Meat	Purchased freeze-dried from store
	Melons	
	Tomatoes	
Ice Cream		See SC DHEC Dairy Regulation
Liquor	Filled candy	
	Infused fruit	
Meat or meat containing products		
Milk	Raw	Not allowed as an ingredient
Nuts and seeds	Boiled Peanuts	Packaged (<i>See Appendix C for exemption information that may apply</i>)
	Butter	
	Juice/milk	
Pet treats and animal feed		All Commercial Feed products (including pet treats) manufactured and sold in South Carolina fall under the authority of the South Carolina Department of Agriculture and are subject to the requirements of the South Carolina Commercial Feed Act. The Cottage Food Law only applies to products intended for Human consumption and does not cover the production of pet treats for dogs, cats, or other animals.
Pie	Cream	
	Custard	
	Meringue	
	Pumpkin	
	Sweet potato	
	Vegetable	
Poultry		

Category	Food	Comments
Prepared meals		
Repackaging Foods		Repackaging of purchased bulk foods is not allowed as these products were not produced in the home kitchen.
Seafood		
Sprouts	Bean	
	Seed	
	Wheat grass	
Syrup	Elderberry	
	Mango or other low acid fruit syrup	
	Simple syrup	
	Sugarcane	Not allowed, unless extracted and prepared in the home kitchen.
Vegetables	Chopped lettuce	
	Cooked	
	Salads	

CHAPTER 6

Honey

There have been many questions regarding honey production and how this relates to the HBFP law. Beekeepers currently operating under an RVC or Honey Exemption from the SCDA who wish to produce honey under the HBFP law must surrender their RVC or exemption. This is to prevent duplication of regulatory oversight.

The RVC exemption is for “honey” only — this means pure honey with no additional ingredients — and is not defined to include honey products (i.e., infused products or creamed honey that is purchased from another source and repackaged). Either you are a honey producer with an RVC Exemption, or you are exempt under the

Cottage Food regulations, you cannot be both. If a producer does not want to obtain an RVC and they want to surrender the exemption, they must send an email to notify SCDA that they wish to surrender their exemption. Once SCDA receives the email the exemption is considered voided, and they may fall under the Cottage Food regulations.

The HBFP law does not impact honey operations wishing to continue operating under an RVC using a registered and inspected honey house. The RVC allows for a wider market because the honey operation may sell without restriction (including across state lines and to distributors/manufacturers).



CHAPTER 7

Labeling

All food produced and sold under the Home-based Food Production Law must be properly labeled and comply with federal regulations. The following are required on the product's label:

1. Name and address of the home-based food operation. If you do not want to include your home address on the label, you can utilize the SC DHEC identification number system. *See appendix F*
2. The standard name of the product
3. The ingredients in the product in descending order of predominance by weight
4. A conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads:

'PROCESSED AND PREPARED BY A HOME-BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA'S FOOD SAFETY REGULATIONS.'

No health claims may be made in association with foods produced in a home-based food operation. For more information, see Dietary Supplements guidance from the **FDA** Center for Food Safety and Applied Nutrition (CFSAN) at [fda.gov/food/dietary-supplements/information-industry-dietary-supplements](https://www.fda.gov/food/dietary-supplements/information-industry-dietary-supplements).

See appendix E (Labeling guide) for an example

Nutrition Labeling

Nutrition labeling or having a Nutrition Facts panel on your label is not required for home-based food operations. Some food producers choose to include a panel for marketing purposes. If you would like to have a Nutrition Facts Panel developed for your product Clemson Extension's Food2Market program can assist you. You can visit their website for more information: [clemson.edu/extension/food2market](https://www.clemson.edu/extension/food2market)

Allergen Labeling

Allergen labeling is required for the safety of consumers.

The name of the food source for each major food allergen contained in the food or a disclaimer that any major food allergen may be contained in the food must be listed in the allergen statement.

The major food allergens are Wheat, Soy, Milk, Egg, Finfish, Crustacean Shellfish, Peanuts, Tree Nuts, and Sesame. When a product contains tree nuts, finfish, or crustacean shellfish then the specific type must be labeled in the allergen statement (e.g., walnuts, pecans, almonds, cod, flounder, lobster, shrimp, or crab).

Appendices



APPENDIX A

Home-based Food Production Law

South Carolina General Assembly

124th Session, 2021-2022

A208, R236, S506

STATUS INFORMATION

General Bill

Sponsors: Senators Kimbrell, Rice, Garrett, Talley, M. Johnson, Fanning, Corbin, Alexander, and Gustafson

Document Path: I:\s-res\jk\004cott.kmm.jk.docx

Introduced in the Senate on January 28, 2021

Introduced in the House on March 11, 2021

Last Amended on May 12, 2022

Passed by the General Assembly on May 12, 2022

Governor's Action: May 23, 2022, Signed

Summary: Home-based food products

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action	Description with journal page number
1/28/2021	Senate	Introduced and read first time	(Senate Journal page 6)
1/28/2021	Senate	Referred to Committee on Medical Affairs	(Senate Journal page 6)
2/3/2021	Senate	Recalled from Committee on Medical Affairs	(Senate Journal page 29)
2/3/2021	Senate	Committed to Committee on Agriculture and Natural Resources	(Senate Journal page 29)
3/2/2021	Senate	Committee report: Favorable with amendment Agriculture and Natural Resources	(Senate Journal page 14)

3/3/2021		Scrivener's error corrected	
3/10/2021	Senate	Committee Amendment Adopted	(Senate Journal page 18)
3/10/2021	Senate	Amended	(Senate Journal page 18)
3/10/2021	Senate	Read second time	(Senate Journal page 18)
3/10/2021	Senate	Roll call Ayes 40 Nays 0	(Senate Journal page 18)
3/11/2021	Senate	Read third time and sent to House	(Senate Journal page 11)
3/11/2021		Scrivener's error corrected	
3/11/2021	House	Introduced and read first time	(House Journal page 46)
3/11/2021	House	Referred to Committee on Medical, Military, Public and Municipal Affairs	(House Journal page 46)
		Committee report: Favorable with amendment	
4/21/2022	House	Medical, Military, Public and Municipal Affairs	(House Journal page 82)
4/25/2022		Scrivener's error corrected	
4/26/2022	House	Amended	(House Journal page 21)
4/26/2022	House	Read second time	(House Journal page 21)
4/26/2022	House	Roll call Yeas 109 Nays 0	(House Journal page 22)
4/27/2022	House	Read third time and returned to Senate with amendments	(House Journal page 28)
5/3/2022	Senate	Non concurrence in House amendment	(Senate Journal page 66)
5/3/2022	Senate	Roll call Ayes 0 Nays 40	(Senate Journal page 66)
5/4/2022	House	Conference committee appointed Matthews, Jones, McGarry	(House Journal page 3)
5/4/2022	Senate	Conference committee appointed Climer, Fanning, Kimbrell	(Senate Journal page 17)
5/12/2022	House	Conference report received and adopted	
5/12/2022	House	Roll call Yeas 100 Nays 0	
5/12/2022	Senate	Conference report received and adopted	(Senate Journal page 97)
5/12/2022	Senate	Roll call Ayes 42 Nays 0	(Senate Journal page 97)
5/12/2022	Senate	Ordered enrolled for ratification	(Senate Journal page 102)
5/18/2022		Ratified R 236	
5/23/2022		Signed By Governor	
6/1/2022		Effective date 05/23/22	
6/1/2022		Act No. 208	

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VERSIONS OF THIS BILL

1/28/2021	3/10/2021	4/25/2022
3/2/2021	3/11/2021	4/26/2022
3/3/2021	4/21/2022	5/12/2022

(A208, R236, S506)

AN ACT TO AMEND SECTION 44 I 143, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO REQUIREMENTS FOR HOME BASED FOOD PRODUCTION OPERATIONS, SO AS TO EXPAND THE TYPES OF NONPOTENTIALLY HAZARDOUS FOODS THAT MAY BE SOLD TO INCLUDE ALL NONPOTENTIALLY HAZARDOUS FOODS, TO ALLOW FOR DIRECT SALES TO RETAIL STORES, TO ALLOW FOR ONLINE AND MAIL ORDER DIRECT TO CONSUMER SALES, AND TO ALLOW HOME BASED FOOD PRODUCTION OPERATORS TO PROVIDE ON THEIR LABELS AN IDENTIFICATION NUMBER PROVIDED BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL, AT THE OPERATOR'S REQUEST, IN LIEU OF THEIR ADDRESSES.

Be it enacted by the General Assembly of the State of South Carolina:

Home based food production

SECTION 1. Section 44 I 143 of the 1976 Code is amended to read:

“Section 44 I 143.

(A) For the purposes of this section:

(1) ‘Home-based food production operation’ means an individual, operating out of the individual’s dwelling, who prepares, processes, packages, stores, and distributes **non-potentially hazardous** foods for sale directly to a person, including online and by mail order, or to retail stores, including grocery stores. ‘**Home based food production operation**’ does not include preparing, processing, packaging, storing, or distributing aluminum canned goods or charcuterie boards.

(2) ‘**Non-potentially hazardous foods**’ are foods that are not potentially hazardous.

(3) ‘Person’ means an individual consumer.

(4) ‘**Potentially hazardous foods**’ includes:

(a) an animal food that is raw or heat-treated; a plant food that is heat-

treated or consists of raw seed sprouts; cut melons; cut leafy greens; cut tomatoes or mixtures of cut tomatoes not modified to prevent microorganism growth or toxin formation; garlic in oil mixtures not modified to prevent microorganism growth or toxin formation;

(b) certain foods that are designated as Product Assessment Required (PA) because of the interaction of the pH and Aw values in these foods. Below is a table indicating the interaction of pH and Aw for control of spores in food heat-treated to destroy vegetative cells and subsequently packaged:

Aw values	pH values		
	4.6 or less	>4.6 5.6	>5.6
(1) <0.92	non PHF	non PHF	non PHF
(2) >0.92 0.95	non PHF	non PHF	PHF
(3) >0.95	non PHF	PHF	PHF

Foods in item (2) with a pH value greater than 5.6 and foods in item (3) with a pH value greater than 4.6 are considered potentially hazardous unless a product assessment is conducted pursuant to the 2009 Federal Drug Administration Food Code.

(B) The operator of the home-based food production operation must take all reasonable steps to protect food items intended for sale from **contamination** while preparing, processing, packaging, storing, and distributing the items including, but not limited to:

- (1) maintaining direct supervision of any person, other than the operator, engaged in the processing, preparing, packaging, or handling of food intended for sale;
- (2) prohibiting all animals, including pets, from entering the area in the dwelling in which the **home-based food production operation** is located while food items are being prepared, processed, or packaged and prohibiting these animals from having access to or coming in contact with stored food items and food items being assembled for distribution;
- (3) prohibiting all domestic activities in the kitchen while the **home-based food production operation** is processing, preparing, packaging, or handling food intended for sale;
- (4) prohibiting any person who is infected with a communicable disease that can be transmitted by food, who is a carrier of organisms that can cause a communicable disease that can be transmitted by food, who has an infected wound, or who has an acute respiratory infection from processing, preparing, packaging, or handling food intended for sale by the **home-based food production operation**; and
- (5) ensuring that all people engaged in processing, preparing, packaging, or handling food intended for sale by the **home-based food production operation** are knowledgeable of and follow safe food handling practices.

(C) Each home-based food production operation shall maintain a clean and sanitary facility to produce **non-potentially hazardous** foods including, but not limited to:

- (1) department approved water supply;
- (2) a separate storage place for ingredients used in foods intended for sale;
- (3) a properly functioning refrigeration unit;
- (4) adequate facilities, including a sink with an adequate hot water supply to meet the demand for the cleaning and sanitization of all utensils and equipment;
- (5) adequate facilities for the storage of utensils and equipment;
- (6) adequate hand washing facilities separate from the utensil and equipment cleaning facilities;
- (7) a properly functioning toilet facility;
- (8) no evidence of insect or rodent activity; and
- (9) department approved sewage disposal, either onsite treatment or publicly provided.

(D) All food items packaged at the operation for sale must be properly labeled. The label must comply with federal laws and regulations and must include:

- (1) the name and address of the home-based food production operation. If a home-based food production operator does not want to include his address on the label, then the department shall provide an identification number to the operator, upon the operator's request, that can be used on the label instead;
- (2) the name of the product being sold;
- (3) the ingredients used to make the product in descending order of predominance by weight; and
- (4) a conspicuous statement printed in all capital letters and in a color that provides a clear contrast to the background that reads: 'PROCESSED AND PREPARED BY A **HOME-BASED FOOD PRODUCTION OPERATION** THAT IS NOT SUBJECT TO SOUTH CAROLINA'S FOOD SAFETY REGULATIONS.'

(E) **Home based food operations** only may sell, or offer to sell, food items directly to a person, including online and by mail order, or to retail stores, including grocery stores. Food produced from a **home-based food production operation** shall be considered to be from an approved source, as required of a **retail food establishment** pursuant to Regulation 61.25. Any retail stores, including grocery stores, that sell or offer to sell home-based food products must post clearly visible signage indicating that home-based food products are not subject to commercial food regulations.

(F) A **home-based food production operation** is not a **retail food establishment** and is not subject to regulation by the department pursuant to Regulation 61.25.

(G) The provisions of this section do not apply to an operation with net earnings of less than fifteen hundred dollars annually but that would otherwise meet the definition of a home-based food operation provided in subsection (A)(i).

(H) [Deleted]

(I) The provisions of this section apply in the absence of a local ordinance to the contrary.”

Time effective

SECTION 2. This act takes effect upon approval by the Governor.

Ratified on the 18th day of May, 2022.

Approved on the 23rd day of May, 2022.

APPENDIX B

Science-based (Academic) Resources and Processes

There are many resources and cookbooks that are available that provide science-based or academic information related to preparing **non-potentially hazardous foods**. It is important to ensure that resources that you choose to use are science-based, meaning that they have undergone appropriate testing or research to ensure that the product is safe if the recipe is *prepared exactly as written*.

Recipes for jams, jellies, and preserves must come from science-based recipes. Recipes found on social media, websites or passed along from other people should not be used unless you can verify that the recipe is from a science-based resource. The following is an example list of science-based resources.

- The National Center for Home Food Preservation
nchfp.uga.edu
- So Easy to Preserve
setp.uga.edu

- USDA Complete Guide to Home Canning, 2015
nchfp.uga.edu/publications/publications_usda.html#gsc.tab=0
- Lime and Lemon Curd
digitalcommons.usu.edu/cgi/viewcontent.cgi?article=1192&context=extension_curall

Standards of Identity

The **FDA** has developed standards of identity (SOI) for many prepared foods such as milk chocolate, various breads, and jams. The SOI provides information on what ingredients must be in the product, what proportion of ingredients are required and processing methods. Foods labeled as a product that has a standard of identity must meet the **FDA** defined SOI for that product. More information on SOI and to look up the SOI for specific foods can be found on the following website: fda.gov/food/food-labeling-nutrition/standards-identity-food.

Other Foods and Types of Food Sales that are Exempt from Retail Food Establishment Permits

There are other foods and food sales that are exempt from the requirement to have a **Retail Food Establishment** permit by SC Reg. 61-25, Section 8-301.12(A). These other types of food sales are NOT COTTAGE FOOD and may be prepared somewhere other than a home kitchen and sold onsite directly to the end consumer. *These exemptions only apply to retail sales (direct to the end consumer) and do not apply to foods prepared and sold at a retail location by someone else (wholesale).*

- Personal chefs . . . employed to cook for the owner and occupants of a private residence and their guests. A personal chef may purchase the food and shall prepare, cook, and serve the food at the private residence only.
- Cooking schools or classes where registered students are active participants in preparing the food and are the exclusive consumers of the foods prepared. Food prepared by participants may not be sold!
- Bake sales operated by churches or charitable organizations where homemade

cakes, breads, and cookies may be offered for sale only if they are not time/temperature control for safety foods.

- Coffee or coffee-based beverages served with pasteurized milk or cream *prepared and served* either heated or cold.
- Beverages *individually prepared upon consumer's request* from a commercially pre-packaged powdered mix with no additional ingredients that are time/temperature control for safety foods and served in a single service cup.
- **Commercially** pre-packaged, pre-cut frozen french fries.
- Salt boiled peanuts boiled or grilled corn. *(For immediate consumption, not packaged)*
- Snow cones or shaved ice served with pasteurized cold milk or cream from a non-reusable container.
- Waffle or pancake mix that is **commercially** pre-packaged and

dispensed from self-serve units *for service not to exceed four (4) hours in duration.*

Leftover portions of these products shall be discarded at the end of service.

- Funnel cakes, mini-donuts, or similar type products prepared from a single unit having no more than three fryers. Mixed batters shall not be held out of temperature for more than four (4) hours. Leftover portions of these products shall be discarded at the end of service. *(For immediate consumption, not packaged)*

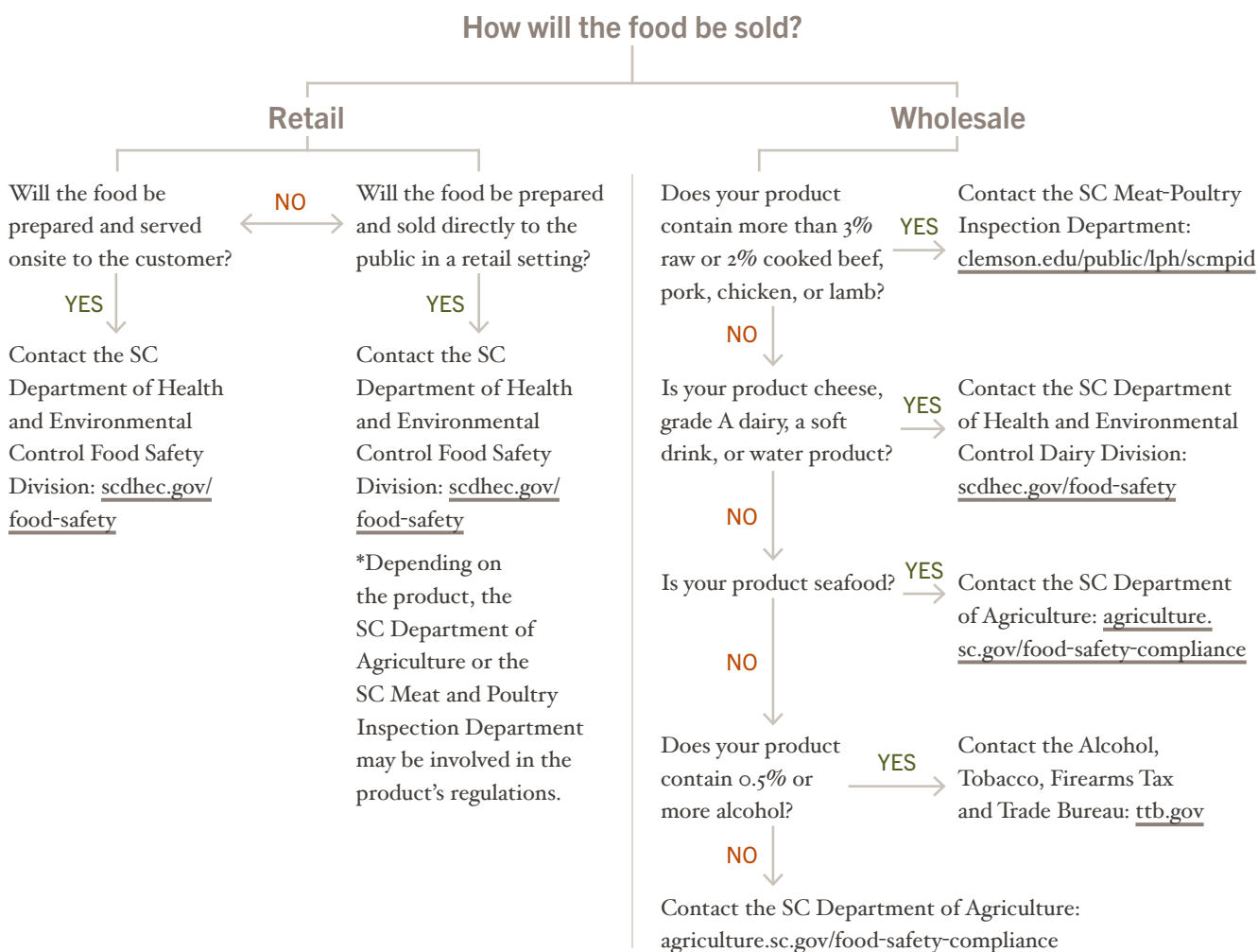
All these foods may be prepared onsite and sold by a business or vendor directly to the end consumer without a Retail permit:

- Popcorn, cotton candy, candy apples;
- Soft drinks or beverages;
- Nachos served with heated cheese product;
- **Commercially** dehydrated pre-packaged pork skins;
- Pre-formed or prepared pretzels that require baking or warming only.

Regulatory Decision Tree

If you no longer produce in a **home kitchen**, produce **TCS** foods, or require a permit from a regulatory authority to sell, then this decision tree will help to guide you to determine which regulatory authority will regulate your product.

Who Regulates My Food Products?



Label Guide



REQUIRED STATEMENT

The statement "PROCESSED AND PREPARED BY A HOME-BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA'S FOOD SAFETY REGULATIONS." is **required** to appear on home-based food labels in all capital letters with a sufficiently contrasting background.

SAMPLE LABEL

<p style="text-align: center;">Wheat Bread</p> <p>INGREDIENTS: ENRICHED FLOUR (WHEAT, NIACIN, THIAMINE, RIBOFLAVIN, FOLIC ACID), HIGH FRUCTOSE CORN SYRUP, CORN SYRUP, HONEY, MOLASSES, SOYBEAN OIL, SUGAR, CORN FLOUR, MALT SYRUP, WHEY (MILK), EGG WHITES, SOY LECITHIN, YELLOW #5 AND RED #40. CONTAINS WHEAT, SOY, MILK, EGGS.</p> <p style="text-align: center;">Sample Bread Company 123 Residential Street Columbia, SC 29555</p> <p style="text-align: center;">PROCESSED AND PREPARED BY A HOME-BASED FOOD PRODUCTION OPERATION THAT IS NOT SUBJECT TO SOUTH CAROLINA'S FOOD SAFETY REGULATIONS.</p> <p style="text-align: center;">16 OZ (453 G)</p>	<div style="border: 1px solid gray; padding: 5px; margin-bottom: 10px;"> <p>Include a Statement of Identity. This is the common name of the food. "Bread" is the Statement of Identity.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-bottom: 10px;"> <p>Complete ingredient list in descending order of predominance by weight. Expand sub-ingredients using parentheses.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-bottom: 10px;"> <p>Major food allergens must be declared by their common name. See the next page for detailed information.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-bottom: 10px;"> <p>The producer's business name and physical address (including street address, city, state, and zip code) <u>or</u> DHEC ID number.</p> </div> <div style="border: 1px solid gray; padding: 5px; margin-bottom: 10px;"> <p>This statement is required to appear on foods produced under the Home-based Food Law. The statement must be in all caps with sufficient contrast.</p> </div> <div style="border: 1px solid gray; padding: 5px;"> <p>The net contents are placed in the lower 1/3 of the front panel in both customary and metric units.</p> </div>
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ALLERGEN LABELING

Allergen labeling is required for the safety of consumers. The current 8 major allergens are **Wheat, Soy, Milk, Eggs, Fin Fish (species), Crustacean Shellfish (species), Peanut and Tree Nut (species)**. **Sesame** will become the 9th major allergen effective January 1, 2023.

The allergen declaration is made one of two ways, as shown below. *The major food allergens have been underlined for ease of viewing.*

WITHIN THE INGREDIENT LIST

Within the ingredient list, followed by the common name of the major allergen in parentheses.

The whey ingredient indicates it is a milk allergen by listing "Whey (Milk)". The remaining major allergens are identified by their common name: Wheat, Soy, Egg, Pecan.

INGREDIENTS: ENRICHED FLOUR (WHEAT, NIACIN, THIAMINE, RIBOFLAVIN, FOLIC ACID), HIGH FRUCTOSE CORN SYRUP, CORN SYRUP, HONEY, MOLASSES, SOYBEAN OIL, SUGAR, CORN FLOUR, MALT SYRUP, WHEY (MILK), EGG WHITES, PECANS, SOY LECITHIN, YELLOW #5, AND RED #40.

CONTAINS STATEMENT

A Contains Statement immediately after the ingredient list.

In this instance, the Milk allergen is disclosed in a Contains Statement. If a Contains Statement is used, it **must** list all major allergens present in the product.

A Contains Statement is not required if all allergens are disclosed in ingredient list.

INGREDIENTS: ENRICHED FLOUR (WHEAT, NIACIN, THIAMINE, RIBOFLAVIN, FOLIC ACID), HIGH FRUCTOSE CORN SYRUP, CORN SYRUP, HONEY, MOLASSES, SOYBEAN OIL, SUGAR, CORN FLOUR, MALT SYRUP, WHEY, EGG WHITES, PECANS, SOY LECITHIN, YELLOW #5, AND RED #40. **CONTAINS WHEAT, SOY, MILK, EGGS, PECANS.**

Nutrition Facts panels will generally not be required for Home-based foods. If the food label makes any nutrient content or health claims, then a Nutrition Facts Panel is required. Additionally, these claims, if used, must be in compliance with 21 CFR 101.13 or 21 CFR 101.14.

Where can I find more information on labeling?
[fda.gov/media/81606/download](https://www.fda.gov/media/81606/download)



South Carolina
DEPARTMENT OF AGRICULTURE
AGRICULTURE.SC.GOV

Application for Home-Based Food Instructions for Completing DHEC 4357

Purpose: Instructions and Application for people that are selling under the home based food production law (without a DHEC permit) to receive a DHEC issued identifier number to put on their required label, as per the law, instead of putting their home address.

Instructions:

1. Provide the date.
2. Provide the name of the Home-Based Food applicant.
3. Provide the applicant's physical address to include the city and zip code.
4. Provide mailing address (if different from physical address above), including city and zip code.
5. Provide primary and secondary contact telephone numbers including the area code.
6. Provide the contact email address.
7. Provide the owner's name, primary and secondary contact telephone numbers including the area code and contact email address, if different from above.
8. Form should be signed and dated by the person in charge (owner).
9. Submit form to the email or mailing address or the fax number provided on this form.

Office Mechanics and Filing:

Retention schedule for this form is: 11701- Retail Food Establishments.

Frequently Asked Questions

Can I sell my “cottage food” from a food truck?

The food must be prepared and packaged in the home kitchen. No preparation or modification may be done in the mobile unit such as icing cupcakes, etc. The product sold from the mobile unit must have been pre-packaged.

Will vacuum packaging of non-TCS products be allowed?

Vacuum packaging is only allowed for non-TCS foods that have a low water activity, such as dry spice blends, baking mixes, and nut meats.

Will scales used to provide ingredient weights (requirement to list all ingredients in decreasing order by weight) be required to be calibrated by SCDA?

No.

Can individuals render lard from a home kitchen for direct-to-consumer sale?

No. Lard is considered a meat product and cannot be produced for sale unless produced

in either a DHEC kitchen for direct-to-consumer sales or it must be inspected at a fully inspected facility (USDA or SCMPID) for wholesale to large distributors.

Can I advertise my cottage food business?

Yes, as long as the law is followed.

Is soap allowed to be made and sold under the cottage law?

Soap is a cosmetic and not a food, so it is not covered under the Home-based Food Production Law. Registration to make and sell soap is voluntary.

Can I sell fruits and vegetables grown at my home (or on my farm) under the cottage law?

Produce that is only cut for harvest and not further cut or processed after harvest can be sold but is not covered under the Home-based Food Production Law.

Can I sell have online sales to other states?

No, online sales of cottage foods only applies to South Carolina.

Still have questions?

Email us at scottagefood@clemsun.edu



South Carolina Home-based Food Production Law Guidance

PUBLISHED FALL 2022