

TITLE 11

DEPARTMENT OF HEALTH

CHAPTER 29

FOOD AND FOOD PRODUCTS

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Historical Note: Chapter 29 of Title 11 is based substantially on Public Health Regulations Chapter 4, Food and Food Products, Board of Health, Territory of Hawaii. [Eff. 9/22/50; am 7/5/51; am 4/20/54; am 11/26/54; am and ren 8/5/60; R NOV 05 1981]

§11-29-1 Purpose. The purpose of this chapter is to establish standards of identity, quality and labeling, for foods and to regulate the sale of aquatic foods in the interest of consumer protection and the public welfare. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§328-8, 328-19.1, 328-21)

§11-29-2 Definitions.
 "Aquatic food" includes all species of edible plants and animals from fresh, brackish, salt, or sea water.
 "Consumer commodity" means any food, but shall not include any meat or poultry products, except as these products are sold at retail in stores and restaurants.
 "Food" means (1) products used for food or drink for man or animal; (2) chewing gum; and (3) components of any such product. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-21) (Imp: HRS §§328-8, 328-21)

§11-29-3 Meat, meat products, poultry, poultry products, dog, and cat food. (a) Any meat or meat products or poultry or poultry products, if sold as a consumer commodity, shall conform to the identity and labeling requirements set forth by the Secretary of Agriculture, United States Department of Agriculture. As provided by the Secretary of Agriculture, raw chopped beef, raw ground beef, or raw hamburger shall not contain more than thirty per cent fat. If any claims regarding the percentage of fat are made on the labeling of raw chopped beef, raw ground beef, or raw hamburger, the percentage of fat shall be declared in five per cent increments on the labels, if packaged, or on placards or handbills in plain block letters at least three-eighth of an inch high, if offered for sale in retail bulk form. The percentage of fat may be declared as "No More Than ____ % of Fat," or "Less Than ____ % Fat," or a similar statement which is not false or misleading.

(b) Dog and cat food or any similar terms used in connection with any product shall mean a food product that is wholesome and nutritious for dogs and cats and shall comply with the following label requirements.

- (1) The label must bear in legible manner, a statement of the "Guaranteed Analysis" which shall specify the minimum percentage of crude protein and crude fat and the maximum percentage of crude fiber present in the food; except that this requirement shall not apply to meat, poultry, or fish scraps prepared at the retail establishment at which it is sold.
- (2) The label must bear a complete listing of ingredients in accordance with the provisions of 21 Code of Federal Regulations Part 101.
- (3) Misleading statements such as "Fit For Human Food" which might be construed as offering the product for human consumption are prohibited. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§328-6, 328-8, 328-10, 328-19.1)

§11-29-4 Aquatic foods. (a) It shall be unlawful to take, sell, deliver for sale, hold for sale, or offer for sale, any aquatic food from any body of fresh, brackish, or salt water which the State department of health may find and declare to be polluted to the extent that such pollution constitutes a condition whereby the aquatic food found therein may have become contaminated with filth, or rendered diseased, unwholesome or injurious to health.

(b) It shall be unlawful to bring into the State or offer for sale, any form of toxin-bearing aquatic

food, including, but not limited to balloon fishes (also known as puffers, blow fishes, globe fishes, and toad fishes), for food purposes except for a generally recognized scientific or educational use. The department of health may from time to time designate such aquatic food and the areas and periods of the year for which this prohibition shall apply. Such aquatic food may be brought into the State by a generally recognized scientific or educational user only upon the prior receipt of a permit signed by an authorized agent of the department of health. Such permit shall be immediately revoked by the department of health or its authorized agent upon the violation by the holder of any of the terms of the permit.

Every physician or other authorized personnel of any medical facility shall report promptly to the department of health all cases or suspected cases of illness caused by the ingestion of toxic aquatic food which shall come to his attention.

(c) Any article of food for use as bait shall be stored separately and away from all other food for human consumption and labeled "For Bait Use Only" in bold letters at least one inch high.

(d) It shall be unlawful to offer for sale any fish which have been bruised, torn, or otherwise rendered liable to spoilage; except as provided for in Section 185-25, HRS, which permits the sale of certain species of fish taken or killed with a spear.

(e) Aquatic foods taken from outside the boundaries of the State and labeled by its Hawaiian name shall have the general geographical origin of the aquatic food declared immediately and conspicuously preceding or following such Hawaiian name, e.g., "Imported Mahimahi" or "Mainland Papio."

(f) Shellfish, oysters, clams, and mussels shall be regulated by Chapter 35, Title 11, Administrative Rule entitled "Shellfish Sanitation." [Eff. NOV 05 1981]

] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§328-3, 328-6, 328-8, 328-9, 328-10, 328-19.1)

§11-29-5 Crude salt. (a) Crude salt which has not been demonstrated as being safe for human consumption shall not be sold for food use. This salt, if offered for sale, shall be conspicuously and durably labeled as follows: "Crude Salt Not For Food Use." The statement "Not For Food Use" shall be in bold letters not less than one-half the size of the name of the product, but in no case shall the letters be less than one-eighth of an inch in print size. This salt shall be offered for sale separately and away from other salts or any foods intended for human consumption.

(b) Hawaiian salt is crude salt obtained by the evaporation of sea water from within the boundaries of the State that has been demonstrated to be safe and suitable for human consumption. [Eff. NOV 05 1981]
(Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§328-3, 328-6, 328-8, 328-9, 328-10)

§11-29-6 Poi. (a) Poi is the unadulterated product of the edible taro root (tubers) made into paste, which shall contain not less than twenty-eight per cent of total solids.

(b) Ready-mixed poi means poi mixed with water and containing not less than fifteen per cent of total solids. The label of this food shall bear, in print of uniform size and prominence, the words "Ready-Mixed Poi." [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§328-6, 328-8, 328-9, 328-10, 328-19.1)

§11-29-7 Definitions and standards for other foods; exceptions. The definitions and standards of identity and quality for foods, food products, and food by-products not specifically identified or standardized by this chapter shall be identical with the following regulations issued by the United States Food and Drug Administration:

21 CFR Part 103 Quality Standards for Foods With No Identity Standards;
21 CFR Part 130 Food Standards: General;
21 CFR Part 133 Cheeses and Related Cheese Products;
21 CFR Part 136 Bakery Products;
21 CFR Part 137 Cereal Flours and Related Products;
21 CFR Part 139 Macaroni and Noodle Products;
21 CFR Part 145 Canned Fruits;
21 CFR Part 146 Canned Fruit Juices;
21 CFR Part 150 Fruit Butters, Jellies, Preserves, and Related Products;
21 CFR Part 152 Fruit Pies;
21 CFR Part 155 Canned Vegetables;
21 CFR Part 156 Vegetable Juices;
21 CFR Part 158 Frozen Vegetables;
21 CFR Part 160 Eggs and Egg Products;
21 CFR Part 161 Fish and Shellfish;
21 CFR Part 163 Cacao Products;
21 CFR Part 164 Tree Nut and Peanut Products;
21 CFR Part 165 Nonalcoholic Beverages;
21 CFR Part 166 Margarine;
21 CFR Part 168 Sweeteners and Table Sirups;
21 CFR Part 169 Food Dressings and Flavorings;
provided, however, the exceptions to the provisions of §11-29-7 are:

- (1) 21 CFR Part 139 relating to the standards of identity for macaroni and noodle products shall not apply to oriental type noodle products, which include, but are not limited to "Saimin," "Udon," "Wun tun," "Chow Funn," "Japanese noodles," "Ramen noodles," "Chinese noodles," etc. Although these oriental type noodles are sometimes made without egg solids and the shape and size may resemble the products described in 21 CFR Part 139, such a product will not be considered in violation of 21 CFR Part 139 if:
- (A) Such product is not represented as a macaroni or noodle product described in 21 CFR Part 139.
 - (B) When such product is labeled as "Noodles," the word "noodles" is immediately preceded or followed by a qualifying term such as "Chinese," "Chow Mein," "Japanese," "Japanese Style," "Ramen," "Oriental," or "Oriental Style," in print of the uniform size, style, color, and background contrast as the word "noodles." Furthermore, when coloring is added, the name of the product is immediately preceded or followed by the words "Artificially Colored," "Artificial Coloring Added," or "With Artificial Coloring Added," in print of the same style, color, and background contrast as the name of the product. The size of the print of such words shall be at least one-half the size of the name of the product, provided that in no case shall the size of the print be less than one-eighth of an inch high.
 - (C) Such product bears a complete listing of ingredients in accordance with 21 CFR Part 101.
- (2) The provisions of part IV, Sections 328-71, 328-72, and 328-73, HRS, shall apply to enriched bread and flour. [Eff. NOV 05 1981
] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19.1, 328-21) (Imp: HRS §§328-6, 328-8, 328-10, 328-19.1)

§11-29-8 Other food rules. The following food regulations of the United States Food and Drug Administration shall be adopted insofar as they do not conflict with the provisions of this chapter or any other rule enforced by the Department of Health:

21 CFR Part 1 General Regulations for the Enforcement-

§11-29-8 Other food rules. (a) The following food regulations of the United States Food and Drug Administration shall be adopted insofar as they do not conflict with the provisions of this chapter or any other rule enforced by the department of health:

- 21 CFR Part 1 General Regulations for the Enforcement of the Federal Food, Drug, and Cosmetic Act and the Fair Packaging and Labeling Act, Subparts A and B;
- 21 CFR Part 70 Color Additives; provided that only the provisions of this part which are applicable to foods shall be adopted;
- 21 CFR Part 73 Listing of Color Additives Exempt from Certification, Subpart A;
- 21 CFR Part 74 Listing of Color Additives Subject to Certification, Subpart A;
- 21 CFR Part 81 General Specifications and General Restrictions for Provisional Color Additives for Use in Food, Drugs, and Cosmetics; provided that only the provisions of this part which are applicable to foods shall be adopted;
- 21 CFR Part 82 Listing of Certified Provisionally Listed Colors and Specifications, Subparts A and B; provided that only the provisions of this part which are applicable to foods shall be adopted;
- 21 CFR Part 100 General, Subpart G, §§100.130, 100.140, and 100.155;
- 21 CFR Part 101 Food labeling;
- 21 CFR Part 102 Common or Usual Name for Non-standardized Foods;
- 21 CFR Part 105 Foods for Special Dietary Use;
- 21 CFR Part 109 Unavoidable Contaminants in Food for Human Consumption and Food-Packaging Material;
- 21 CFR Part 110 Current Good Manufacturing Practice in Manufacturing, Processing, Packing, or Holding Human Food;

21 CFR Part 113	Thermally Processed Low-Acid Foods Packaged in Hermetically Sealed Containers;
21 CFR Part 114	Acidified Foods;
21 CFR Part 122	Smoked and Smoke-Flavored Fish;
21 CFR Part 123	Frozen Raw Breaded Shrimp;
21 CFR Part 129	Processing and Bottling of Bottled Drinking Water;
21 CFR Part 170	Food Additives;
21 CFR Part 172	Food Additives Permitted for Direct Addition to Food for Human Consumption;
21 CFR Part 173	Secondary Direct Food Additives Permitted in Food for Human Consumption;
21 CFR Part 174	Indirect Food Additives: General;
21 CFR Part 175	Indirect Food Additives: Adhesive Coatings and components;
21 CFR Part 176	Indirect Food Additives: Paper and Paperboard Components;
21 CFR Part 177	Indirect Food Additives: Polymers;
21 CFR Part 178	Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers;
21 CFR Part 179	Irradiation in the Production, Processing and Handling of Food;
21 CFR Part 180	Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study;
21 CFR Part 181	Prior-Sanctioned Food Ingredients;
21 CFR Part 182	Substances Generally Recognized as Safe;
21 CFR Part 184	Direct Food Substances Affirmed as Generally Recognized as Safe;
21 CFR Part 186	Indirect Food Substances Affirmed as Generally Recognized as Safe;

- 21 CFR Part 189 Substances Prohibited from Use
in Human Food;
21 CFR Part 193 Tolerances for Pesticides in
Food Administered by the
Environmental Protection
Agency.

(b) The rules, compliance policy guides and
action levels of the United States referenced in
Attachment "A" are adopted as they become effective
at any time or from time to time. [Eff. 11/5/81; am
6/26/84; am MAR 23 1992 (Auth: HRS §§321-9, 321-10,
321-11, 328-8, 328-13, 328-19.1, 328-21) (Imp: HRS
§§328-6, 328-8, 328-9, 328-10, 328-13, 328-19.1)]

- 21 CFR Part 175 Indirect Food Additives: Adhesive Coatings and Components;
- 21 CFR Part 176 Indirect Food Additives: Paper and Paperboard Components;
- 21 CFR Part 177 Indirect Food Additives: Polymers;
- 21 CFR Part 178 Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers;
- 21 CFR Part 179 Irradiation in the Production, Processing and Handling of Food;
- 21 CFR Part 180 Food Additives Permitted in Food on an Interim Basis or in Contact with Food Pending Additional Study;
- 21 CFR Part 181 Prior-Sanctioned Food Ingredients;
- 21 CFR Part 182 Substances Generally Recognized as Safe;
- 21 CFR Part 184 Direct Food Substances Affirmed as Generally Recognized as Safe;
- 21 CFR Part 185 Indirect Food Substances Affirmed as Generally Recognized as Safe;
- 21 CFR Part 189 Substances Prohibited from Use in Human Food;
- 21 CFR Part 193 Tolerances for Pesticides in Food Administered by the Environmental Protection Agency;
- 21 CFR Part 180 Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities, Subparts A and C [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-8, 328-19, 328-21) (Imp: HRS §§328-6, 328-8, 328-10, 328-19.)

§11-29-9 False or misleading representation of geographical origin. Any representation that expresses or implies that a food product or any ingredient of a food product has its geographical origin in the State may render such food product misbranded except when such representation is either:

- (1) A truthful representation of geographical origin;
- (2) A trademark or trade name; provided that as applied to the food product in question, its use is not deceptively misrepresented. A trademark or trade name composed in whole or in-part of geographical words shall not be considered deceptively misrepresentative if:
 - (A) Such product or trade name has been long and exclusively used by the manufacturer or distributor and is generally understood by the consumer to mean the product

- of a particular manufacturer or distributor; or
- (B) Is so arbitrary or fanciful that it is not generally understood by the consumer to suggest geographic origin; or
 - (C) Is a part of the name required by applicable state or federal law or regulation; or
 - (D) Is a name whose market significance is generally understood by the consumer to connote a particular class, kind, type, or style of food rather than to indicate geographical origin. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§328-19.1, 328-22, 328-29)

§11-29-10 Penalty; exception. Any person who shall violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than \$500 or by imprisonment for not more than one year or by both such fine and such imprisonment as provided in Section 321-18, HRS, as amended. Each and every violation of the provisions of these rules shall constitute a separate offense; except that no person shall be subject to the penalties prescribed by this section if such person:

- (1) Establishes a guarantee or undertaking with the manufacturer or distributor of a food product stating that the food product does not violate any provision of this chapter. Such guarantee or undertaking shall be made in good faith and shall be signed by and contain the name and address of the person residing in the United States with whom such guarantee was made.
- (2) Furnishes on request of the director the name and address of the person with whom such guarantee was made and copies of all documents pertaining to the delivery of the product. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§321-18, 328-22, 328-29)

§11-29-11 Severability. Should any section, paragraph, sentence, clause, phrase or application of this chapter be declared unconstitutional or invalid for any reason, the remainder or any other application of said chapter shall not be affected thereby. [Eff. NOV 05 1981] (Auth: HRS §§321-9, 321-10, 321-11, 328-21) (Imp: HRS §§321-9, 321-10, 321-11, 328-21)

Attachment A

The following regulations of the United States are adopted:

40 CFR Part 180 Tolerances and Exemptions from
Tolerances for Pesticide
Chemicals in or on Raw
Agricultural Commodities,
Subparts A, C, and D;

40 CFR Part 185 Tolerances for Pesticides in
Food.

The following United States Food and Drug
Administration Compliance Policy Guides are adopted
insofar as they apply to "food" as defined in this
chapter:

Compliance Policy Guide 7106.10
Compliance Policy Guide 7107.02
Compliance Policy Guide 7108.07
Compliance Policy Guide 7108.20
Compliance Policy Guide 7108.24
Compliance Policy Guide 7111.03
Compliance Policy Guide 7112.02
Compliance Policy Guide 7117.05
Compliance Policy Guide 7117.06
Compliance Policy Guide 7117.07
Compliance Policy Guide 7120.26
Compliance Policy Guide 7141.01 including
Attachments A
through B.12