

FOOD SAFETY
State and Federal Standards and Regulations

Hawaii

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HAWAII

The Food, Drug, and Cosmetic Act has been adopted in Hawaii to govern subjects relating to food safety.

Food

Food means:

1. articles used for food or drink by humans, dogs, or cats;
2. chewing gum; or
3. articles used for components of any such article.⁶⁹⁷

Adulteration

The adulteration of any food is a prohibited act, as is the manufacture, sale, delivery, holding, or offering for sale of any food that is adulterated.⁶⁹⁸ A food is not adulterated if a substance is not an added substance and the quantity of the substance in the food does not ordinarily render it injurious to health.⁶⁹⁹

A food will be deemed adulterated if:

2. it has any poisonous or deleterious substance that may be harmful to health;
3. it has any added poisonous or deleterious substance other than one which is a pesticide chemical in or on a raw agricultural commodity;
4. it is an unsafe food additive or color additive;
5. it consists in whole or in part of a diseased, contaminated, filthy, putrid, or

⁶⁹⁷ HAW. REV. STAT. § 328-1 (1993 & Supp. 1997).

⁶⁹⁸ §§ 328-6(1), (2).

⁶⁹⁹ § 328-9(1)(A).

- decomposed substance, or if it is otherwise unfit for food;
6. it is contaminated with filth, rendered diseased, unwholesome, or unhealthy due to being “produced, prepared, packed, or held under unsanitary conditions;
 7. it is the product of a diseased animal, an animal that did not die by slaughter, or an animal fed uncooked offal from a slaughterhouse;
 8. the container is made of any substance that might make the contents unhealthy;
 9. any valuable part has been in whole or in part omitted or withdrawn;
 10. any substance has been in whole or in part substituted;
 11. any damage or inferiority is concealed;
 12. anything has been added, mixed, or packed so as to increase bulk, reduce quality, reduce strength, or make it appear better or more valuable than it is;
 13. a raw agricultural commodity bears or contains a pesticide chemical which is unsafe within the meaning of § 408(a) of the Federal Act as amended. It shall not be deemed unsafe, where a pesticide chemical has been used in accordance with exceptions or tolerances under § 408 of the Federal Act and the agricultural product has undergone processing such as canning, cooking, freezing, dehydrating, or milling, provided the residue has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity.⁷⁰⁰

A confection is adulterated if:

⁷⁰⁰ § 328-9.

1. any nonnutritive objects are either partially or completely embedded in the confection. However, the Director of Health may use her or his judgement, as provided by properly promulgated rules, to not apply this clause if the nonnutritive object is of practical functional value to the confectionary product and would not render the product injurious or hazardous to health;
2. it contains any alcohol in excess of 5 percent by weight;
3. it contains any color additives which are unsafe under the Federal Act;
4. it contains any nonnutritive substance. However, this clause does not apply to a safe nonnutritive product which is used for a practical functional purpose in the manufacture, packaging, or storage of the confectionery if it is not deceptive nor results in other adulteration or misbranding. The director may issue further rules allowing or prohibiting the use of particular nonnutritive substances in order to avoid or resolve uncertainties.⁷⁰¹

Color Additives

A color additive is a dye, pigment, or anything made by synthesis or similar process, or anything that has been extracted, isolated, or derived from a vegetable, animal, mineral, or other source regardless of any change of identity. A color additive is also anything that is capable of imparting color when added or applied to a food, regardless of whether or not the color is through a reaction with another substance. Color includes black, white, and grays. The term “color additive” does not include anything exempted under the Federal Act. The definition does not apply to pesticides, soil or plant nutrients, or other agricultural chemicals

⁷⁰¹ § 328-9(3).

which may affect the natural physiological process of produce of the soil and thereby affect its color, either before or after harvest.⁷⁰²

Food Additives

The term “food additive” refers to any substance the use of which may or does result in it becoming a component of any food or affecting the characteristics of any food. This includes any substance used in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food, and any source of radiation intended for any such use.⁷⁰³

A substance is not a food additive if scientific procedures have shown it to be safe under conditions of its intended use and is recognized as such by qualified scientific experts. A substance used in food prior to January 1, 1958, may be shown not to be a food additive by using either scientific procedures or experience based on common use in food. The following are also not food additives:

- (a) a pesticide chemical in or on a raw agricultural commodity;
- (b) a pesticide chemical used in the production, storage, or transportation of any raw agricultural commodity;
- (c) a color additive;
- (d) anything granted a sanction or approval prior to the enactment of the Food Additives Amendment of 1958, the Poultry Products Inspection Act, or the Meat

⁷⁰² § 328-1.

⁷⁰³ *Id.*

Inspection Act.⁷⁰⁴

It shall be deemed unsafe, with respect to any food, to add any poisonous or deleterious substance, food additive or color additive, or pesticide chemical in or on a raw agricultural commodity, unless there is a regulation in effect limiting the quantity of the substance and the use or intended use conforms to the terms of the regulation. The Director of Health may prescribe tolerances for any added substances, may establish conditions for use, and exceptions for experimentation and investigation.⁷⁰⁵

Misbranding

A food shall be deemed misbranded and prohibited as such if:

1. its label is false or misleading;
2. a standard of quality has been established by the Department of Health and the food quality falls below this standard, unless its label states such case;
3. a food is represented as for special dietary uses and its label does not contain information consumers would find necessary to determine its value for such use;
4. a food contains any artificial flavoring, coloring, or chemical preservative and its label does not state such fact. Butter, cheese, and ice cream are exempted from compliance with the artificial coloring component. This paragraph does not apply to a chemical pesticide when used in or on a raw agricultural commodity which is the produce of the soil;
5. a color additive does not conform with the labeling and packaging requirements of

⁷⁰⁴ § 328-1.

⁷⁰⁵ §§ 328-13(a), (b).

the Federal Act;

6. a pesticide chemical has been applied on a raw agricultural commodity after harvest and the shipping container does not state the presence and common name of the chemical in or on the commodity. No such statement is required when the commodity has been removed from the container and is being held or displayed for sale in retail in accordance with the custom of the trade.
7. a confection contains alcohol in excess of one-half of one percent by weight and it is not so labeled.⁷⁰⁶
8. Grade AA Pasteurized Milk is processed and sold in containers labeled Grade A Recombined Milk.⁷⁰⁷

Mislabeling or Labeling

Labeling means all labels and other written, printed, or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying the article.⁷⁰⁸ It is prohibited to sell or offer for sale an unlabeled or unpackaged confection containing alcohol in excess of one-half of one percent by weight, unless the consumer is notified of the alcohol by either proper labeling or conspicuous signs or conspicuous notices on menus and advertisements. It is also a prohibited act to sell any imitation food including non-dairy frozen desserts, imitation milk, simulated cream, or any other imitation food in place of the genuine product, unless the consumer is notified by either proper labeling or conspicuous signs or conspicuous notices on menus and

⁷⁰⁶ § 328-10.

⁷⁰⁷ Opinion of the Attorney General No. 67-19(1967).

⁷⁰⁸ § 328-2.

advertisements.⁷⁰⁹

Inspection

Proper agency personnel are given authority, for inspection purposes, to enter any place in which food is manufactured, processed, packed, or held for commerce and to enter any vehicle being used to transport or hold such food.⁷¹⁰ Also subject to inspection is any place a consumer commodity is made, prepared, sold, or exhibited such as a creamery, factory, restaurant, store, salesroom, storage room, or laboratory.⁷¹¹ Inspectors may inspect equipment, materials, containers, labeling, and open anything containing any food to examine its contents. Inspectors may take samples of any food after paying for the sample. Samples shall be examined to determine compliance.⁷¹² A refusal to furnish a demanded sample shall be prima facie evidence of adulteration.⁷¹³ A demand may be made to provide records or copies of records relating to the manufacture, distribution, or sale of food . . . which the director has probable cause to believe is adulterated or misbranded.⁷¹⁴

Inspectors may also have access to and a copy of all carrier records. Carriers are not subject to other provisions of this part of the statute by reason of their receipt, carriage, holding or delivery of food in the usual course of business as carriers.⁷¹⁵

⁷⁰⁹ § 328-6(17), (19).

⁷¹⁰ § 328-23.

⁷¹¹ § 328-25(a)(1).

⁷¹² § 328-23(2), (4), 328-25(a)(1).

⁷¹³ § 328-24(a).

⁷¹⁴ § 328-25(a)(3).

⁷¹⁵ § 328-23(3).

Condemnation or Destruction

Any meat, seafood, poultry, vegetable, fruit, or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or may be poisonous or deleterious to health, or otherwise unsafe (being declared a nuisance) shall be condemned, destroyed, or made unsalable as human food.⁷¹⁶ Detained or embargoed items found by a court to be adulterated or misbranded shall be ordered destroyed at the expense of the claimant of the item. All court costs, fees, storage and other expenses shall be taxed against the claimant of the item. The court may order the item returned to the claimant for correction of adulteration or misbranding under supervision of the director, provided all costs, fees, and expenses are paid, and a bond executed. The expense of supervision shall be paid by the claimant.⁷¹⁷

Seizure

Anyone who refuses to comply with instructions for disposal of any adulterated or misbranded food shall be liable to seizure. Upon request of the director, the court shall order the food be seized and delivered into the custody of the court.⁷¹⁸

Penalties

Anyone who violates Hawaiian law in the above areas shall be fined not more than \$500, or imprisoned not more than one year, or both. Anyone who violates any rule shall be fined not more than \$10,000 for each separate offense.⁷¹⁹

⁷¹⁶ § 328-27.

⁷¹⁷ § 328-26.

⁷¹⁸ § 328-25(b).

⁷¹⁹ §§ 328-29(a), -30.

Meat and Meat Products

Meat and meat products are regulated under the Hawaii Meat Inspection Act⁷²⁰ which parallels the Hawaii Food, Drug, and Cosmetics Act. The definitions and rules regarding adulteration, additives, misbranding, and poisonous and deleterious substance are basically the same under both acts.

Hawaii has declared that unwholesome, adulterated, or misbranded meat or meat products are injurious to the public health and welfare.⁷²¹ Meat or meat product means any product capable of use as human food, made in whole or in part of any meat or parts of a carcass, from cattle, sheep, swine, or goats. This definition does not include products containing relatively small proportions or historically have not been considered by consumers as products of the meat food industry. Meat or meat products from exotic animals are subject to all inspections, requirements, and penalties. Exotic animal means any cloven-hoofed ruminant animal considered feral in nature, other than domesticated cattle, sheep, goats, or equines. Domestic rabbits are considered exotic animals.⁷²²

The Department of Agriculture through the Board of Agriculture may regulate, supervise, inspect, and control slaughtering of animals and the manufacture, processing, transportation, packaging, labeling, and disposal of meat or meat products involved in intrastate commerce.⁷²³ All animals shall be inspected before allowing them to enter any slaughtering, packing, canning,

⁷²⁰ §§ 159 *et. seq.* (1993 & Supp. 1997).

⁷²¹ § 159-7(1).

⁷²² § 159-3.

⁷²³ § 159-7(1).

rendering, or similar establishment where the meat or meat products are involved solely in intrastate commerce. Any animal showing signs of disease shall be set apart or disposed of and examined.⁷²⁴

There shall be post-mortem examinations and inspections of carcasses and parts capable of use as human food.⁷²⁵ All animals shall be inspected both before and after slaughtering.⁷²⁶ All slaughtering, canning, rendering, salting, and packing facilities shall be inspected for sanitary conditions. Inspectors shall prescribe sanitation maintenance.⁷²⁷ Inspectors shall have access to every part of a facility, at any time, regardless of whether the facility is open or closed. Inspectors shall mark, stamp, tag, or label all unadulterated products as “Hawaii Inspected and Passed.” All adulterated products shall be stamped, tagged, marked, or labeled as “Hawaii Inspected and Condemned” and destroyed. If a facility fails to destroy condemned meat or meat products, the Board may withdraw inspection from that facility.⁷²⁸ Inspection may be withdrawn for more than one violation for acquiring, handling, or distributing of unwholesome, mislabeled, or deceptively packaged food.⁷²⁹ A label stating “Hawaii Inspected and Passed” shall be attached under supervision of an inspector to all packaged, canned, or covered intrastate meat and meat products. Inspections are not complete until the meat or meat products have been sealed, canned, or inclosed in some receptacle under the supervision of an inspector.

⁷²⁴ § 159-2(a).

⁷²⁵ § 159-22.

⁷²⁶ § 159-46.

⁷²⁷ § 159-24.

⁷²⁸ § 159-22.

⁷²⁹ § 159-48.

All slaughtering, transportation, and selling of meat or meat products must comply with the Act.⁷³⁰ There are inspection exemptions for (1) personal slaughter for personal use; (2) custom slaughter when delivered by the owner for personal use, nonpaying guest use, or employee use; (3) custom preparation derived from the owners own raising or from exotic animals delivered by the owner for personal use, nonpaying guest use, or employee use; (4) to custom operations, provided all items involved are separated at all times from carcasses and products for sale and all packaging is marked “not for sale.”⁷³¹

The Board may prescribe conditions for storage or handling of meat or meat products by anyone engaged in the business of buying, selling, freezing, storing, or transporting such products in order to assure they will not be adulterated or misbranded.⁷³² Anyone who engages in the business of slaughtering, preparing, freezing, packaging, labeling, transporting, buying or selling as brokers or wholesalers, storing, rendering, or custom slaughtering any meat or meat product for use as human or animal food must keep records, allow access for inspection of any business, inventory, records, and facilities, and allow copying of records and the taking of samples of inventory by any authorized representative of the Secretary of Agriculture. The same applies to anyone dealing in any way with dead, dying, disabled, or diseased cattle, sheep, swine, goats, or equines.⁷³³

Meat or meat products and dead, dying, disabled, or diseased cattle, sheep, swine, goats,

⁷³⁰ § 159-25.

⁷³¹ § 159-29.

⁷³² § 159-30.

⁷³³ § 159-37.

or equines being transported or held for sale shall be liable to be detained, seized, condemned, or destroyed in any court, if there is reason to believe they are adulterated or misbranded.⁷³⁴

Inspectors have the power to detain, impound, issue citations, and serve and execute warrants in all matters relating to meat inspection laws.⁷³⁵

Dairies and Dairy Products

There is no mention of adulterated, additives, or misbranding in the Milk Control Act.⁷³⁶

It is unlawful for any producer or distributor to produce, sell, process, or distribute milk in a milk shed unless the person is duly licensed.⁷³⁷

The Department of Agriculture is vested with the power to regulate, supervise, and investigate the production, transportation, processing, storage, distribution, and delivery of milk.⁷³⁸ For the purpose of enforcement, the Board or its authorized employees may enter any place where milk is being sold, stored, processed, or containerized, or where any documents relating to such transactions are kept and copy and inspect the same.⁷³⁹

All dairy and breeding cattle must be tuberculin tested and marked as such.⁷⁴⁰ Owners will be compensated for the slaughter of tuberculin cattle. Compensation will not exceed \$25 per head for cattle with lesions and \$50 per head for cattle with no lesions. There is no

⁷³⁴ § 159-52.

⁷³⁵ § 159-54.

⁷³⁶ § 157 *et seq.* (1993 & Supp. 1997).

⁷³⁷ § 157-21.

⁷³⁸ § 157-13.

⁷³⁹ § 157-14.

⁷⁴⁰ § 142-16.

compensation for the slaughter of steers or unregistered bulls. No compensation will be paid to uncooperative owners, nor for animals placed in herds known to be infected, any imported animal condemned on retest while still in quarantine, any animal introduced into a herd under supervision within six months prior to condemnation, nor if animals under supervision are allowed to come in contact with animals not under supervision.⁷⁴¹

Poultry and Poultry Products

Poultry and poultry products are regulated under the Hawaii Poultry Inspection Act⁷⁴² which is basically identical to the Hawaii Meat Inspection Act.

The state of Hawaii has declared that unwholesome, adulterated, or misbranded meat or meat products are injurious to the public health and welfare.⁷⁴³ Poultry means any domesticated bird, whether alive or dead. Poultry product means any poultry carcass, part of a carcass, or any food product made from any whole or partial carcass. This definition does not include “products containing relatively small proportions or historically have not been considered by consumers as products of the poultry food industry.”⁷⁴⁴

Eggs

“Eggs” means chicken eggs which are: (1) uncooked in the shell; or (2) liquid, frozen, or dried whole egg meats, whites of eggs or egg yolks. An egg is not fit for human food if it is addled or moldy, contains a black spot, black rot, white rot, or blood ring, has an adherent yolk,

⁷⁴¹ § 161-3.

⁷⁴² § 161 *et seq.* (1993 & Supp. 1997).

⁷⁴³ § 161-2.

⁷⁴⁴ § 161-3.

or a bloody or green white, or consists in whole or in part of a filthy, decomposed or putrid substance. Addled or white rot means putrid or rotten and an adherent yolk is when the yolk has settled to one side and attached to the shell. Black rot is when the whole interior of an egg appears black when held before a candle. Blood ring means an egg that contains blood. No eggs shall be sold that are not fit for use as human food, unless they are broken in shell and then denatured so that they cannot be used for human food.⁷⁴⁵

Seafood

There is no specific statute dealing with seafood. Cold storage of fish is regulated under the Food, Drugs, and Cosmetics Act.⁷⁴⁶ The following fish must be marketed as soon as they are brought to shore: weke, ahuluhulu, kumu, uhu, pelu, oama, manini, moi, amaama, papiopio, ulua, awa, akule, oio, nehu, maomao, iao, omaka, lauhau, laenihi, puhikii, akilolo, hahalau, iheihe, opae, piha, laipala, aholehole, uiui, malolo, kole, paoo, puhi, auau, ohua aliko, ohua, palemo, alaihi, upapalu, uu, ahaaha, puili, alalauwa, aweoweo, maikoiko, kala, aloiloi, maiii, aalaheo, pakii, oopu nopili, oopu nakea, mamamo, oopukai, hinalea, hinana, goldfish, catfish, and mudfish, and all other smaller fishes of any species caught after twelve o'clock noon. No fish may be placed in cold storage later than twelve hours from being caught, unless they were artificially chilled as soon as caught. Also, any fish that is bruised, torn, or liable to spoil may not be placed in cold storage.⁷⁴⁷ Cold storage means a place artificially cooled to forty degrees

⁷⁴⁵ §§ 147-71, 72 (1993).

⁷⁴⁶ § 328-49.

⁷⁴⁷ *Id.*

Fahrenheit. This term does not include places in private homes, hotels, or restaurants.⁷⁴⁸

Commercial fishing vessels may place fish on ice or otherwise chill them. These fish may be sold on shore or placed in cold storage as long as they are not spoiled or unfit for human food.⁷⁴⁹

Federal and State Cooperation

The Meat Inspection and the Poultry Inspection statutes direct the Boards to cooperate with the U.S. Secretary of Agriculture in helping to develop the Hawaii food safety programs and to ensure that the Hawaii statutes are at least equal to those under the Federal Acts. The Boards are directed to administer the state programs in a manner that will effectuate the purposes under Hawaiian law and the Federal Act. The Boards may accept advisory, administrative, technical, training, laboratory and financial assistance from the U.S. Secretary of Agriculture.⁷⁵⁰

The Board of Agriculture may also confer with other states and the federal government in subject of milk handling and control. It may join with other states of the federal government in investigations, hearings, issuing joint or concurrent orders or supplementary orders and employ or designate a joint agent or agencies to carry out and enforce such orders.⁷⁵¹

The State of Hawaii Director of Health may also establish tolerance levels and regulatory or action levels by reference to the guidelines of the United States.⁷⁵²

⁷⁴⁸ § 328-41.

⁷⁴⁹ § 328-50.

⁷⁵⁰ §§ 159-51(a)-(b); 161-46(a)-(b).

⁷⁵¹ § 157-42.

⁷⁵² § 328-8(c).