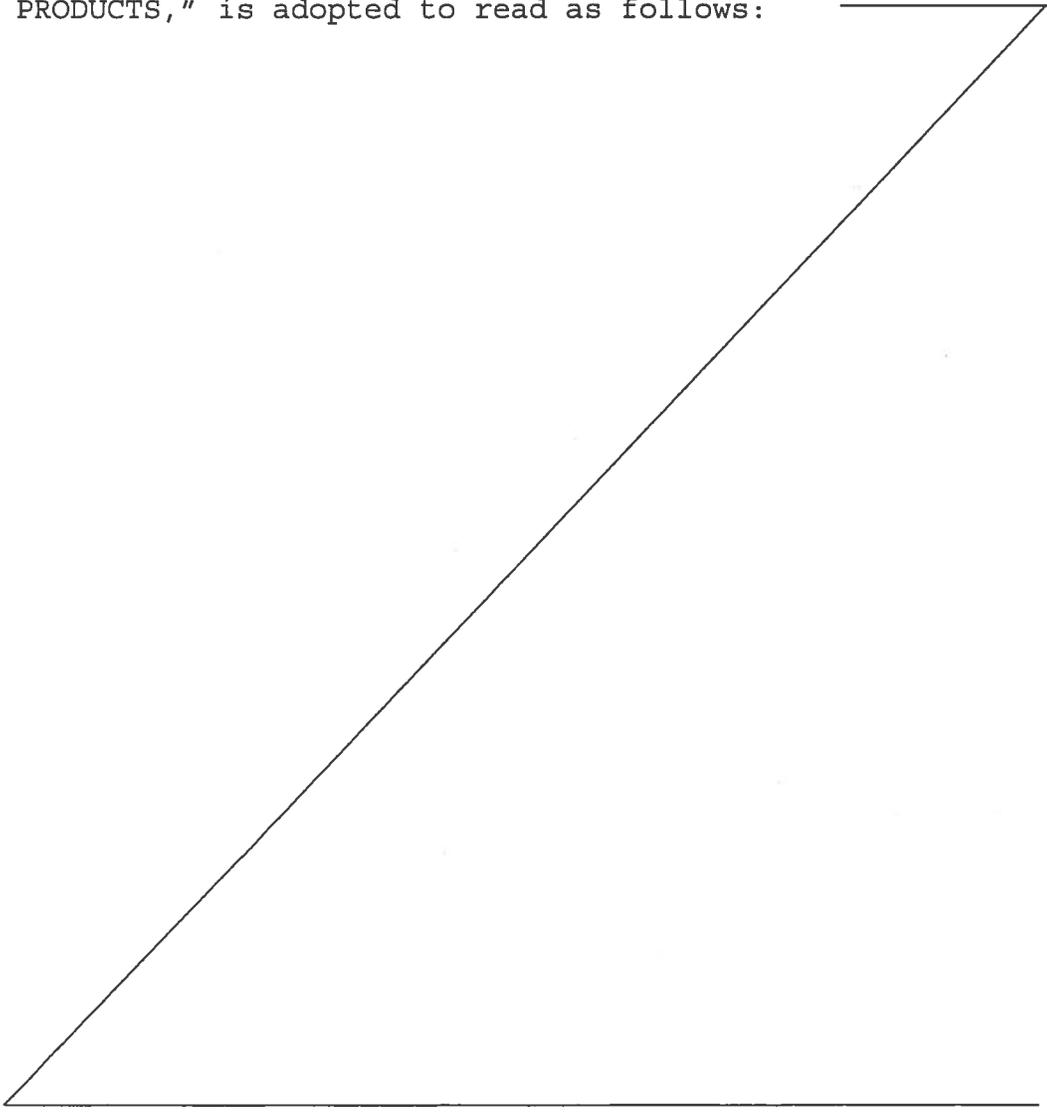


DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-138
Hawaii Administrative Rules

<Date of Adoption>

1. Chapter 4-138, Hawaii Administrative Rules,
entitled "HAWAII-GROWN CACAO AND HAWAIIAN CHOCOLATE
PRODUCTS," is adopted to read as follows:



"HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 138

HAWAII-GROWN CACAO AND HAWAIIAN CHOCOLATE PRODUCTS

§4-138-1	Definitions
§4-138-2	Labeling requirements
§4-138-3	Recordkeeping; inspection
§4-138-4	Penalties

§4-138-1 Definitions. As used in this chapter:
"Cacao" or "cacao nibs" means the roasted, cracked, winnowed pieces of the cacao beans.
"Cacao beans" means the fermented and dried seeds of the cacao plant.
"Cacao liquor" means the paste prepared by finely grinding cacao nibs.
"Chocolate" means the food prepared with cacao, and other essential ingredients such as cocoa butter, sugar, vanilla, lecithin and other flavoring.
"Department" means the department of agriculture.
"Geographic region" means the geographic areas designated as follows:
Hawaii is the State of Hawaii; Hawaii Island is the island of Hawai'i; Kauai is the island of Kaua'i; Maui is the island of Maui; Molokai is the island of Moloka'i; and Oahu is the island of Oahu.
"Hawaii cacao" or "Hawaii cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the State of Hawaii.

"Hawaii cacao beans" means cacao beans which are grown in the State of Hawaii.

"Hawaii chocolate" means chocolate prepared from Hawaii cacao.

"Hawaii cacao blend chocolate" means chocolate prepared from not less than fifty-one per cent Hawaii-grown cacao regardless of island.

"Hawaii Island cacao" or "Hawaii Island cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Hawai'i.

"Hawaii Island cacao beans" means cacao beans which are grown in the island of Hawai'i.

"Hawaii Island chocolate" means chocolate prepared from one hundred per cent Hawaii Island cacao.

"Kauai cacao" or "Kauai cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Kaua'i.

"Kauai cacao beans" means cacao beans which are grown in the island of Kaua'i.

"Kauai chocolate" means chocolate prepared from one hundred per cent Kauai cacao.

"Maui cacao" or "Maui cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Maui.

"Maui cacao beans" means cacao beans which are grown in the island of Maui.

"Maui chocolate" means chocolate prepared from one hundred per cent Maui cacao.

"Molokai cacao" or "Molokai cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Moloka'i.

"Molokai cacao beans" means cacao beans which are grown in the island of Moloka'i.

"Molokai chocolate" means chocolate prepared from one hundred per cent Molokai cacao.

"Oahu cacao" or "Oahu cacao nibs" means roasted, cracked, and winnowed pieces of the cacao beans which are grown in the island of Oahu.

"Oahu cacao beans" means cacao beans which are grown in the island of Oahu.

"Oahu chocolate" means chocolate prepared from one hundred per cent Oahu cacao. [Eff]
(Auth: HRS §486-118) (Imp: HRS §486-118)

§4-138-2 Labeling requirements. (a) In addition to all other labeling requirements, no identity statement used for labeling or advertising cacao, chocolate, or other products produced in whole or in part from Hawaii cacao, shall contain the phrase "Hawaii cacao", "Hawaiian cacao", "Hawaii chocolate", or "Hawaiian chocolate", unless:

(1) The product contains cacao ingredients made from one or more various geographic regions mentioned above and from no other cacao or chocolate flavoring. The phrases "Hawaii cacao", "Hawaiian cacao", "Hawaii chocolate" or "Hawaiian chocolate" may be followed by the phrase "made with" or "contains", and list each geographic region identified in descending order of per cent by weight and expressed as a number followed by a per cent and ends with the word "cacao".

(b) Each word or character in the identity statement shall be of the same type size and shall be contiguous. The smallest letter or character of the identity statement on packages of sixteen ounces or less net weight shall be at least one and one-half times the type size required by federal law for the statement of net weight or three-sixteenths of an inch in height, whichever is smaller. The smallest letter or character of the identity statement on packages of greater than sixteen ounces net weight shall be at least one and one-half times the type size required under federal law for the statement of net weight.

(c) It shall be a violation of this section to:

(1) Use a geographic region as defined in this chapter in labeling or advertising of a cacao or chocolate product if the product

contains less than one hundred per cent cacao by weight from that geographic region, except that if the product contains one hundred per cent Hawaii cacao from more than one geographic region, a list of the geographic regions may be shown if it is preceded by the words "contains", or "made with", and each geographic region is identified in descending order of per cent by weight and expressed as a number followed by a per cent sign and ends with the word "cacao".

- (2) Misrepresent on a label or in advertising of a cacao or chocolate product, the per cent cacao by weight of any cacao from a geographic region defined in this chapter.
- (3) Use a geographic region on the front label or any panel of a package or in the identity statement of a cacao or chocolate product, other than in a trademark or trade name as provided in this section or as authorized in subsections (a) and (b), unless one hundred per cent of the cacao contained in the product is grown in that geographic region.
- (4) Use the term "Hawaii cacao blend", "Hawaii cacao blend chocolate" or similar language on a cacao or chocolate product if the product contains more than forty-nine per cent cacao produced or grown outside of Hawaii.
- (5) Use more than one trademark or trade name on a cacao or chocolate product unless one hundred per cent of the cacao used in that product is grown in the geographic region specified by the trademark or trade name.
- (6) Use a trademark or trade name that begins with the name of a geographic region on a cacao or chocolate product unless one hundred per cent of the cacao used in the product is grown in that geographic region or the trademark or trade name ends with words that indicate a business entity; or

- (7) Print the identity statement required in this chapter in a smaller font size than that used for a trademark or trade name that includes the name of a geographic region and in a location other than the front label of a package of a cacao or chocolate product. [Eff _____] (Auth: HRS §486-118)
(Imp: HRS §486-118)

§4-138-3 Recordkeeping; inspection.

Manufacturers and other persons who package cacao or chocolate products covered in this chapter shall maintain and make available to the department for inspection or copying, for a period of two years, records on the weight and geographic origins of cacao beans purchased and sold and any other record required by the department for the purposes of enforcing this chapter. Authorized employees of the department shall be allowed access to these records upon request during normal business hours. [Eff _____] (Auth: HRS §486-118) (Imp: HRS §486-118)

§4-138-4 Penalties. Any person who violates any provision of this chapter may be subject to the actions, procedures, and penalties provided in section 486-32, Hawaii Revised Statutes." [Eff _____] (Auth: HRS §486-118) (Imp: HRS §§486-32, 486-118)

2. The adoption of chapter 4-138, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

I certify that the foregoing are copies of the rules, drafted in the Ramseyer format pursuant to the requirements of section 91-4.1, Hawaii Revised Statutes, which were adopted on Month xx, XXXX, and filed with the Office of the Lieutenant Governor.



Scott E. Enright
Chairperson
Board of Agriculture

APPROVED AS TO FORM:



Deputy Attorney General