

INDUSTRY BULLETIN

for Florida's Foodservice Industry



SUBJECT: Menu Item Misrepresentation and Product Substitution

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Recent published studies show that food fraud is a food protection threat that can be a real public health risk. Food fraud encompasses the deliberate and intentional substitution, addition, tampering, or misrepresentation of food, food ingredients, or food packaging for economic gain.

Florida law prohibits misrepresentation or **undisclosed** substitution of food. Common food items involved in misrepresentation includes specifically named food brands, "fresh" fruit juice, stated non-use of MSG and fish.

In recent years, much attention has focused on seafood substitution – specifically the switching of one species for another. Undisclosed species substitution must not occur. Seafood must be sold using its correct species name as specified by the U.S. Food and Drug Administration's [Regulatory Fish Encyclopedia \(RFE\)](#). This reference assists with accurate identification of fish species by the common, market, scientific and family names.

Menus or any other manner used to promote or advertise items for sale must be accurate and truthful. Particular attention should be focused on food descriptions placed on menus, blackboards or specials flyers. It is important for operators to inform customers if the establishment runs out of an item ordered by the customer, and what, if any, food item is being substituted.

Failure to accurately and truthfully identify food items for sale, such as undisclosed substitution of one type of fish for another, is a violation of Florida law. Violators are subject to penalties of up to \$1000 per occurrence, and license suspension or revocation. DBPR sanitation and safety inspectors actively enforce the following provisions of Florida law:

Chapter 509.292, Florida Statutes, Misrepresenting food or food product; penalty.

(1) An operator may not knowingly and willfully misrepresent the identity of any food or food product to any of the patrons of such establishment. The identity of food or a food product is misrepresented if:

- (a) The description of the food or food product is false or misleading in any particular;
- (b) The food or food product is served, sold, or distributed under the name of another food or food product; or
- (c) The food or food product purports to be or is represented as a food or food product that does not conform to a definition of identity and standard of quality if such definition of identity and standard of quality has been established by custom and usage.

(2) If the food or food product is a fruit or fruit juice, its identity is misrepresented if:

- (a) The description of the fruit or fruit juice is false or misleading in any particular;
- (b) The fruit or fruit juice is served, sold, or distributed under the name of another fruit or fruit juice; or
- (c) A synthetic or flavored drink is sold purporting to be fruit juice.

The term "fresh juice" refers to a juice without additives and prepared from the original fruit within 12 hours or less of sale.

(3) Any person who violates any provision of this section is guilty of a misdemeanor of the second degree, punishable as provided in section 775.082 or section 775.083.

The penalty for conviction of a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days, and/or a fine of \$500.

For more information on seafood identification and safety visit:

FDA Seafood at <http://www.fda.gov/food/foodsafety/Product-SpecificInformation/Seafood/default.htm>

National Oceanic and Atmospheric Administration FishWatch at <http://www.nmfs.noaa.gov/fishwatch/>

FLORIDA DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION

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