



DEPARTMENT OF AGRICULTURE

Adoption of Chapter 4-135 Hawaii Administrative Rules

June 28, 2005

SUMMARY

1. Chapter 4-135, Hawaii Administrative Rules, entitled "Seals of Quality" is adopted.

“HAWAII ADMINISTRATIVE RULES

TITLE 4

DEPARTMENT OF AGRICULTURE

SUBTITLE 7

QUALITY ASSURANCE DIVISION

CHAPTER 135

SEALS OF QUALITY

§4-135-1	Seals of quality; descriptions
§4-135-2	Definitions
§4-135-3	Contracts with non-profit corporations
§4-135-4	Qualification requirements for use of the seals of quality
§4-135-5	Use of the seals of quality and prohibitions
§4-135-6	Application for license, renewal and review
§4-135-7	License for use of the seals of quality; fees
§4-135-8	Distribution of seals; reproduction
§4-135-9	Enforcement, penalties, and prosecution

§4-135-1 Seals of quality; descriptions. (a) There is established a standard seal of quality, the design of which is shown in exhibit 1, entitled “Standard Seal of Quality” and dated 04/01/04, white letters on green background, raised gold letters on gold background, and black letters on white background, located at the end of this chapter and which is made a part of this chapter. This seal may be applied only to:

- (1) Fresh agricultural products that have been entirely produced in the State and that meet the requirements of section 4-135-4 (1), (2) and (3);
- (2) Value-added processed agricultural and food products for which the primary agricultural product has been entirely produced in the

State and that meet the requirements of section 4-135-4 (2), (3), (4) and (5);

- (3) An exception to paragraph (2) may be granted, on a case-by-case basis, if the primary agricultural product is not readily grown in the State but is grown and readily imported without restrictions or prejudice from other locations within the United States.

(b) There is established a seal of quality for the designated islands of Kauai, Lanai, Maui, Molokai, and Oahu, the design of which is shown in exhibit 2, entitled "Island Seal of Quality" and dated 4/01/04, white letters on green background, raised gold letters on gold background, and black letters on white background, located at the end of this chapter and which is made a part of this chapter. This seal may be applied only to:

- (1) Fresh agricultural products that have been entirely produced on the specified island and that meet the requirements of section 4-135-4 (1), (2) and (3);
- (2) Value-added processed agricultural and food products for which the primary agricultural product has been entirely produced on the specified island and that meet the requirements of section 4-135-4 (2), (3), (4), and (5).

(c) There is established a seal of quality partner, the design of which is shown in exhibit 3, entitled "Partner Seal of Quality" and dated 4/01/04, white letters on green background, raised gold letters on gold background, and black letters on white background, located at the end of this chapter and which is made a part of this chapter. This seal shall not be used on a product offered for sale and may only be displayed by agriculturally-based businesses, farm associations, farms, farmer's markets, allied suppliers, organizations, associations, and businesses that show commitment to the support of the State's agriculture economy as determined by the department or by contract established under section 4-135-3. [Eff] (Auth: HRS §148-63) (Imp: HRS §§148-62; 148-63)

§4-135-2 Definitions. As used in this chapter:

"Agricultural development division" means the division within the department responsible for the licensing, marketing, and promotion of this chapter.

"Agricultural products" means fruits, vegetables, nuts, coffee, eggs, poultry and poultry products, livestock and livestock products, milk and milk products, silvicultural products, aquacultural and maricultural products, and floricultural and horticultural products.

"Applicant" means a person that applies for a license to use a seal established under this chapter and who shall be responsible for payment of license fees.

"Authorized agent" means the designated division of the department or a non-profit corporation contracted by the department authorized to administer the seal of quality program established under this chapter.

"Authorized user" means a person licensed to use a seal or an agent designated by the authorized user in the application and approved by the department or its authorized agent.

"Department" means the department of agriculture.

"Inspector" means an employee of the department or a person designated by the administrator of the quality assurance division, who is authorized to investigate, sample, inspect, and determine the quality, condition, and origin of fresh and processed agricultural products; to review business records of authorized users; and to, in any other manner, enforce the requirements of chapter 148, part V, HRS, and this chapter.

"Person" means any individual, partnership, corporation, or separate legal entity.

"Primary agricultural product" means the major agricultural product in a processed or value-added agricultural or food product as specified in the licensing agreement.

"Quality" means the properties or attributes of a product that determines its relative degree of excellence.

"Quality assurance division" means the division within the department responsible for the enforcement of this chapter.

"State" means the State of Hawaii.

"Seal" means the seals of quality established under this chapter.

[Eff] (Auth: HRS §148-63) (Imp: HRS §148-63)

§4-135-3 Contracts with non-profit corporations. Any contract with a non-profit corporation to implement these rules shall include, but not be limited to, the following provisions:

- (1) The required structure of the non-profit corporation;
- (2) The authority to act as an agent for the department;
- (3) The transfer of responsibility to fulfill certain requirements of this chapter to the authorized agent;
- (4) The criteria for displaying the seals as specified in section 4-135-1;
- (5) The license fees to be charged and the terms of licensure; and
- (6) The charges for seals supplied to the authorized user and other

requirements for the reproduction of seals by the authorized user.
 [Eff] (Auth: HRS §148-63) (Imp: HRS §148-62)

§4-135-4 Qualification requirements for use of the seals of quality.

General requirements for use of the seals are:

- (1) Any fresh unprocessed agricultural product shall be entirely produced in the State and its quality shall be at least Hawaii Grade A, Hawaii No. 1, U.S. No. 1, or if no grade has been established, the quality of the product shall be of the highest quality characteristic of that commodity and shall be specified in the licensing agreement;
- (2) Any fresh or processed agricultural or food products to which the seals are applied shall meet all applicable state and federal sanitation standards; and the authorized user shall within five years or more at the discretion of the Agricultural development division from the adoption of these original administrative rules obtain the appropriate certifications for GAP (Good Agricultural Practices) and GHP (Good Handling Practices), or GMP (Good Manufacturing Practices);
- (3) Any fresh or processed agricultural food products to which the seals are applied shall be in compliance with all state law(s) enacted for specified commodities;
- (4) Any value-added processed agricultural or food product shall be manufactured, assembled, fabricated, or produced within the State and shall have had at least fifty-one per cent of its wholesale value added by manufacture, assembly, fabrication, or production within the State;
- (5) The quality of any value-added processed agricultural or food product shall meet all the minimum requirements specified by the State or federal laws, rules, or regulations, or if none is §4-135-5 minimum quality standards established by the department or its authorized agent in the licensing agreement; and
- (6) Minimum quality standards established in paragraph (5) shall be applied equally to all like or similar, value-added processed agricultural or food products; and the primary agricultural product shall be entirely produced in the State, except as provided by section 4-135-1 (a) (3). [Eff] (Auth: HRS §148-63) (Imp: HRS §§148-62, 148-63)

§4-135-5 Use of the seals of quality and prohibitions. (a) The seals established by this chapter shall not be used in a manner contradictory to state or federal laws, rules, and regulations including, but not limited to, those concerning deceptive acts or practices in commerce.

(b) It shall be unlawful to use a seal in any way that identifies products, processes, or establishments not qualified to use a seal or that implies that products illegally labeled with a seal possess such an endorsement.

(c) Any seal that has been incorrectly used shall be corrected by removal or complete obliteration of the seal.

(d) All packaged products bearing a seal that are offered for sale shall be contained in new, clean packaging materials.

(e) All food products bearing a seal shall be of good flavor and possess no characteristics that clearly render it an inferior product.

(f) The seals may be used on products, product containers, in point-of purchase or other displays, and in advertising. [Eff]
(Auth: HRS §148-63) (Imp: HRS §§148-63, 148-65)

§4-135-6 Application for license, renewal and review. (a) The applicant for a license to use the seals adopted under this chapter shall submit an application on a form supplied by the department or its authorized agent.

(b) The department or its authorized agent shall determine whether or not the particular product or products, process, or establishment and the applicant can comply with all relevant requirements for use of the seals. The applicant shall prove to the satisfaction of the department or its authorized agent that the product or products, process, or establishment will meet all requirements for use of the seals.

(c) The department or its authorized agent may reject an application when it is determined that the applicant has not demonstrated the ability to consistently comply with the requirements for use of the seals. If an application is rejected, the department or its authorized agent shall inform the applicant of the rejection. An applicant whose application has been rejected may request a review by the department or a hearing before the department within thirty days after the mailing date of a notice of rejection.

(d) If the application is approved, a license authorizing the use of the seals on the product or products, process, or establishment named on the application shall be issued and shall include the applicable quality standards that must be met. The license is non-transferable.

(e) An application form for renewal along with the applicable fee shall be submitted for renewal of an existing license at least thirty days prior to the expiration of the existing license.

(f) The department or its authorized agent, upon receipt of an application for a new license or for renewal of an existing license, shall issue either of the following to the applicant, no later than ninety working days after the date of receipt:

- (1) The appropriate license, if the application for the license is properly completed, the appropriate fees are paid, and the applicant meets all requirements for the license; or
- (2) A written statement that the application is denied and an explanation of the reason for the denial. [Eff (Auth: HRS §148-63) (Imp: HRS §§148-62, 148-63)]

§4-135-7 License for use of the seals of quality; fees. (a) The license period and license fees shall be as established under a licensing agreement with the authorized agent of the department, or as established by the department in subsection (b).

(b) In the absence of a contract with an authorized agent, the department may issue licensing agreements to use the seals until such time that a contract with an authorized agent is established. Any license fees collected by the department under this subsection shall be as set forth in section 4-135-8 (h) and shall be deposited into the general fund or into a designated special fund if applicable. [Eff (Auth: HRS §148-63) (Imp: HRS §§148-62, 148-63)]

§4-135-8 Distribution of seals; reproduction. (a) Upon request from an authorized user, the authorized agent or the department may make seals available at a reasonable cost and in such form as deemed most appropriate for the needs of the user.

(b) Seals shall not be transferred to, nor used by, any party other than the authorized user who requests and purchases these seals.

(c) An authorized user of a seal of quality may have the seal reproduced for use on the authorized user's own packages or advertisements only after receiving written permission from the department or its authorized agent.

(d) When requesting written permission to reproduce a seal, the authorized user of the seal shall submit plans, drawings, or samples of the manner

in which the seal is to be used to the department or its authorized agent for approval.

(e) Permission to reproduce a seal is not transferable and any persons reproducing the seal may do so only to the extent specified in the written permission.

(f) The seals shall be reproduced exactly as shown in exhibits 1, 2, or 3 located at the end of this chapter. The size of the seals may be expanded or reduced to appropriately fit the use, but in no case may the size be so small that the lettering is not legible.

(g) In the absence of written permission to reproduce a seal, the department or its authorized agent shall have the exclusive right to the reproduction and distribution of the seal.

(h) In the absence of a contract with an authorized agent, the department shall charge a reasonable fee for the distribution of seals for use by authorized users of the seals. These fees shall offset the costs of administering and enforcing the seal of quality program and promoting the seals, and any fees collected shall be deposited into the general fund or into a designated special fund if applicable.

(i) Program Fees

Application fee (processing):	\$50 per application (non-refundable)
Year 1, 2, and 3	
Utilizing stickers	105 per cent of the printing cost
Utilizing print images (imprints)	½ cent per impression for product packaging
Year 4 and beyond	
Utilizing stickers	110 per cent of the printing cost
Utilizing print images (imprints)	1 cent per impression for product packaging.

[Eff] (Auth: HRS §148-63) (Imp: HRS §148-63)

§4-135-9 Enforcement, penalties, and prosecution. (a) During normal business hours, any authorized inspector of the department may enter any public or private premises, including any vehicle of transport, to enforce the licensing, labeling, and record keeping requirements of this chapter. This may include: inspection of products, processes, facilities, methods of operation, or

establishments; auditing any records pertaining to products or processes or use of the seal; and to otherwise monitor compliance with this chapter.

(b) The inspector may take, at no charge, representative samples of products labeled with the seal established by this chapter for inspection.

(c) A refusal on the part of an authorized user to cooperate with the department with regard to subsections (a) and (b) shall be sufficient grounds for suspension or revocation of the license to use the seal.

(d) The department may suspend or revoke the license to use the seal when an authorized user violates this chapter.

(e) Should a person be found in violation of this chapter based upon the investigation conducted in subsection (a), the costs of the investigation shall be paid by that person based on the number of hours spent in conducting the investigation multiplied by the hourly charge established by rule under section 147-7, HRS, and the actual costs of travel, per diem, automobile mileage, and any other expenses accrued due to the investigation.

(f) Any authorized inspector, upon determining that this chapter or part V of chapter 148, HRS, is being violated, may place a stop sale notice upon or near the product that is in violation. When a stop sale notice is issued:

- (1) The product shall not be sold, offered for sale, transferred, moved off the premises, or otherwise disposed of until an authorized inspector has removed the stop sale notice or written permission is received from the department;
- (2) No person shall remove, deface, or otherwise tamper with any stop sale notice except upon approval of an authorized inspector; and
- (3) A non-compliance notice issued by the department indicating the violation and corrective action required shall accompany the stop sale notice.

(g) Any person aggrieved by a decision of the department may request a review by the department or a hearing before the department within thirty days after non-compliance notice is received.

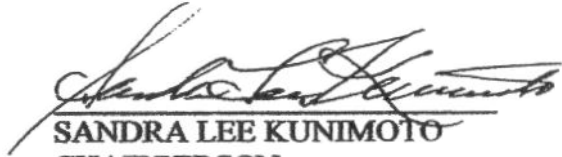
(h) Any person who violates any provision of this chapter may be subject to the actions, procedures, and penalties provided in section 148-66, HRS." [Eff _____] (Auth: HRS §§148-63) (Imp: HRS §§148-63 to 148-66)

2. The adoption of chapter 4-135, Hawaii Administrative Rules, shall take effect ten days after filing with the Office of the Lieutenant Governor.

DEPARTMENT OF AGRICULTURE

The adoption of chapter 4-135, Hawaii Administrative Rules, on the Summary Page dated June 28, 2005, were adopted on June 28, 2005 following public hearings held in Kahului, Maui on May 16, 2005; in Honolulu, Oahu on May 16, 2005; in Lihue, Kauai on May 17, 2005; in Kealahakua, Hawaii on May 17, 2005; and in Hilo, Hawaii, on May 18, 2005, after public notice was given, respectively, in the Honolulu Star-Bulletin on April 16, 2005, The Maui News on April 19, 2005, and The Garden Island and West Hawaii on April 21, 2005.

The adoption of chapter 4-135 shall take effect ten days after filing with the Office of the Lieutenant Governor.


SANDRA LEE KUNIMOTO
CHAIRPERSON
BOARD OF AGRICULTURE

APPROVED AS TO FORM:


Deputy Attorney General

APPROVED:


LINDA LINGLE
GOVERNOR
STATE OF HAWAII

Dated: **AUG 24 2005**

Filed

Exhibit 1
Standard Seal of Quality
April 1, 2004

Green Label



Gold Label



Black/White Label



Exhibit 2
Island Seal of Quality
April 1, 2004

Green Label

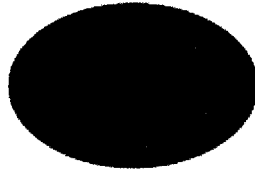
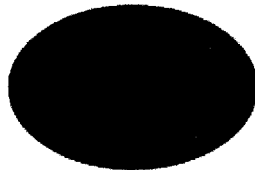
Hawaii Seal of Quality

Green/Gold label—
Pantone 348 Green + Shiny Gold foil
on white decal



Gold Label

Gold label—
Pantone 871 Gold
on shiny gold foil



Black/White Label

Black/White label—
Black on white decal



Exhibit 3
Partner Seal of Quality
April 1, 2004

Green Label



Gold Label



Black/White Label

