**01-001 DEPARTMENT OF AGRICULTURE, CONSERVATION AND FORESTRY**

 **DIVISION OF QUALITY ASSURANCE AND REGULATIONS**

**Chapter 144: STANDARDS FOR THE USE OF THE STATE OF MAINE QUALITY TRADEMARK ON MOLLUSCAN SHELLFISH**

**Summary**: Title 7 M.R.S. §443 and §443-B authorize the Commissioner of Agriculture, Conservation and Forestry to establish standards and requirements for the use of the State of Maine Quality Trademark on non-agricultural products. This chapter establishes standards and minimum requirements for the use of the trademark on molluscan shellfish.

**I. Definitions**

For the purpose of this Chapter, and unless the context otherwise indicates, the following words shall have the following meanings:

1. **Analysis** means the results of official tests performed by a certified laboratory.
2. **Certified laboratory** means a laboratory approved by the Maine Department of Marine Resources (DMR) or the U.S. Food and Drug Administration (FDA) to analyze molluscan shellfish and processing facility water supply.
3. **Applicant** means a person or business dealing with molluscan shellfish operating under a DMR Shellfish Sanitation Certificate, who has applied for an initial license to use the State of Maine Quality Trademark for molluscan shellfish products or a licensed user seeking to renew a license.
4. **Commissioner** means the Commissioner of the Maine Department of Agriculture, Conservation and Forestry.
5. **Department** means the Maine Department of Agriculture, Conservation and Forestry (DACF), Division of Quality Assurance and Regulations.
6. **Licensed user** means anyone who has been issued a license granting permission to use the official State of Maine Quality Trademark for molluscan shellfish on packages or advertisements in compliance with 01-001 Chapter 135, *Official Use of the State of Maine Quality Trademark*.
7. **Harvested within the State of Maine** means 100% of the shellfish in any package must have actually been harvested within established State of Maine boundaries.
8. **Molluscan shellfish** means any edible species of fresh or frozen oysters, clams, mussels, and scallops, or edible portions thereof, except when the scallop product consists only of the shucked adductor muscle.

I. **Permit number** means an assigned lot designation appearing on the tag or label identifying the licensed user.

J. **Shellfish Sanitation Certificate** means a numbered certificate issued to a shellfish dealer who has completed a comprehensive onsite inspection by a certified state inspector and found compliant with the requirements of the National Shellfish Sanitation Program (NSSP), and Maine statutes and regulations.

K. **State of Maine Quality Trademark** means the official quality trademark consisting of a silhouette of the State of Maine divided into three horizontal sections, as further described in DACF Rules, 01-001 Chapter 135, *Official Use of the State of Maine Quality Trademark*.

**II. State of Maine Quality Trademark**

 The State of Maine Quality Trademark may only be used when a license has been applied for and has been issued by DACF in accordance with these rules and with the requirements of DACF Rules, 01-001 Chapter 135.

**III. Licensing Requirements**

The following requirements must be met in order to obtain a license for use of the State of Maine Quality Trademark license on molluscan shellfish products:

1. An applicant for a license to use the State of Maine Quality Trademark on molluscan shellfish must provide DACF with an affidavit attesting to the fact that molluscan shellfish offered for sale to the public in containers bearing the State of Maine Quality Trademark will consist entirely of molluscan shellfish harvested within the State of Maine. Affidavits must be submitted on forms and in a format as prescribed and/or furnished by the Commissioner and, in addition to the above attestation, contain at a minimum, the applicant’s full name and address and the DMR Shellfish Sanitation Certificate number.
2. An applicant shall develop and maintain a procedure for product recall and shall implement the recall procedure for any product for which the licensed user knows or has reason to believe circumstances exist that may adversely affect its safety for the consumer. The product recall procedure must be submitted for approval to DACF’s Division of Quality Assurance & Regulations with the application to use the State of Maine Quality Trademark.
3. An applicant must be in compliance with all applicable federal and DMR rules relating to shellfish sanitation and must provide DACF with a copy of a current and valid Shellfish Sanitation Certificate issued by DMR.
4. An applicant who has previously held a license under these rules or is a licensed user who is applying for a renewal of an existing license must have substantially complied with the requirements of this rule while exercising the privileges of the license.

**IV. Responsibilities of Licensed Users**

A. Licensed users must demonstrate compliance at all times with all applicable federal and state laws and regulations relating to shellfish sanitation.

B. Licensed users may affix the State of Maine Quality Trademark only to packages containing 100% molluscan shellfish harvested within the State of Maine.

C. The licensed user’s permit number shall appear on the label or container directly beneath the trademark or immediately following the licensed user’s name and address.

D. Health inspection records of the licensed user issued by DMR shall be available for official review upon request and records of all inspections, testing and production shall be maintained.

E. DACF employees must be given free access, ingress and egress at all reasonable hours to any licensed user’s facility, place of business or building wherein molluscan shellfish is packed, stored, transported, sold, offered or exposed for sale or transportation for the purposes of inspection. DACF employees may open any container of molluscan shellfish bearing the State of Maine Quality Trademark designation and may, upon tendering the market price, take samples therefrom for analysis.

**V. Notification of Nonconformance**

Licensed users must provide DACF Division of Quality Assurance and Regulations with copies of any notices of non-compliance, negative reports or citations issued pursuant to inspections performed by DMR.

**VI. Suspension of License/Permit**

 Any failure to comply with the requirements of the State of Maine Quality Trademark on Molluscan Shellfish rule shall be sufficient cause for the denial, suspension or revocation of this license. Any denial, suspension or revocation of this license shall be in accordance with the applicable provisions of the *Maine Administrative Procedure Act*.

**VII. Retention of Records**

All records required to be maintained by licensed users must be kept and be readily available for inspection by DACF employees for a minimum of three years.

**VIII.** **Penalties**

In addition to denial, revocation or suspension of a license to use the State of Maine Quality Trademark on molluscan shellfish, any person who violates any of the provisions of the State of Maine Quality Trademark on Molluscan Shellfish rule, or any other law or rule pertaining to the use of the trademark, will be subject to the penalty provisions set forth by DACF Rules, 01-001 Chapter 135.

STATUTORY AUTHORITY: 7 MRS Part 2 chapter 101 subchapter 2 §§ 443, 443-B

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