

HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

SUBTITLE 5

FORESTRY AND WILDLIFE

PART 1 FORESTRY

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

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SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 Purpose and applicability. The purpose of this section is to provide rules to implement chapter 195F, HRS, which authorizes the board of land and natural resources to establish a forest stewardship program to financially assist applicants to manage, protect, and restore important natural resources on private forest or formerly forested property.
[Eff. **JAN 08 1999** Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 Definitions. As used in this chapter, unless the context requires otherwise:

"Administrator" means the administrator of the division of forestry and wildlife, department of land and natural resources.

"Agreement" means a written program management contract between the board and applicant.

"Applicant" means any person having an interest in or holding any encumbrance upon private property in the State, including any person having a leasehold interest in the real property with an unexpired term of ten or more years.

"Board" means the board of land and natural resources.

"Chairperson" means the chairperson of the board of land and natural resources.

"Department" means the department of land and natural resources.

"Division" means the division of forestry and wildlife, department of land and natural resources.

"Forest stewardship advisory committee" means a group of people representing federal, state and county resource agencies, private landowners, forest industry, consulting foresters, and environmental and conservation organizations who advise the administrator.

"Hold-down rate" means the maximum cost-share rate that the program will pay to an applicant to implement a practice.

"Management plan" means a written document for the management of a specified area identifying forest

stewardship management goals, objectives, and forestry practices necessary for the long-term management of forest resources, fire hazards, timber and wood products, soil and water resources, riparian areas, wetlands, fish and wildlife habitats, and outdoor recreation.

"Natural area partnership program" is a state program as set forth in chapter 195, HRS, and is designed to manage private lands that are of natural area quality that are permanently dedicated to conservation.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to 183C, HRS, intact native natural communities identified by the heritage program pursuant to section 195-2, HRS, and other lands or waters meeting criteria established by the natural areas reserves system pursuant to section 195-2, HRS.

"Practice" means a management action that is eligible for program cost-share assistance.

"Program" means the forest stewardship program established in section 195F-3, HRS.

[Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

\$13-109-3 Establishment and duties of the forest stewardship advisory committee. (a) The chairperson shall establish a forest stewardship advisory committee to advise and assist the division to plan, coordinate, and implement the program. The chairperson shall appoint a chairperson and members to the forest stewardship advisory committee. Members shall be volunteers, serve part-time, and shall not be compensated for duties performed.

(b) The forest stewardship advisory committee shall perform the following duties:

- (1) Review and recommend for approval to the administrator, program proposal and management plans prior to board submittal;
- (2) Establish and periodically review hold-down rates for each program practice; and
- (3) Advise the department on other program policies and guidelines.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving two-year staggered terms. The chairperson may appoint members to consecutive terms.

(d) The forest stewardship advisory committee shall maintain a record of its activities and actions.

(e) Any action taken by the forest stewardship advisory committee shall be by a simple majority of its members.

(f) Seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 Applicant eligibility. (a) In order to qualify under this program, applicants shall be private individuals, joint owners, private organizations, private associations, or corporations.

(b) Applicants are eligible to receive program assistance if private forest is:

- (1) Managed by applying approved practices as defined by chapter 195F-5(b), HRS.
- (2) Managed so as not to degrade native vegetation, as defined by section 195F-2, HRS., while applicant is implementing approved management plan as set forth in section 195F-5, HRS.

(c) Applicants are ineligible to receive program assistance, if private property is:

- (1) Leasehold for a period of less than ten years following program approval;
- (2) Managed under existing federal, state, or private financial assistance programs. Private forest lands managed under existing federal, state, or private sector financial and technical assistance programs may be eligible for assistance if the applicant agrees to comply with the requirements of the program or if forest management practices are expanded or enhanced to meet the requirements of this section; or
- (3) A potential natural area reserve as defined in this chapter.
- (d) A minimum of five contiguous acres of private

property shall be dedicated to the program. [Eff. **JAN 05 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 Applicant enrollment. (a) Applicants found eligible under section 13-109-4 shall follow these steps for program enrollment:

- (1) Applicants shall submit a program proposal to the forest stewardship advisory committee for consideration. The proposal shall describe the applicant's forest management objectives, including proposed practices, and the nature of the forest resources to be managed. The forest stewardship advisory committee shall recommend for approval to the administrator, eligible proposals that adequately address current program priorities. Program priorities include, but are not limited to:
 - (A) Enhancement and protection of key watershed areas in the public interest;
 - (B) Development or adaptation of new forestry and conservation techniques for Hawaii;
 - (C) Provision for economic diversification and rural employment;
 - (D) Preservation or restoration of especially valuable natural resources, including native plants, animals and ecosystems.
- (2) Applicants whose proposals are recommended by the forest stewardship advisory committee, may prepare and submit a program management plan pursuant to section 195F-5(a), HRS, for consideration to the forest stewardship advisory committee. The program management plan shall cover a minimum of ten years.
 - (b) Upon approval of the program management plan by the forest stewardship advisory committee, the division shall prepare and enter into an agreement pursuant to section 195F-6(c)(3), HRS, between the applicant and board for approval as provided in section 13-109-7(a). The program management plan shall be attached as an addendum to the agreement.
 - (c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the program management plan for the

duration of the approved project implementation period.
[Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp:
HRS §§ 195F-5, 195F-6)

§13-109-6 Establishment of approved forest stewardship practices. (a) A list of forest stewardship management practices shall be eligible for cost-share assistance as provided in section 195F-5, HRS. They include, but are not limited to:

- (1) - Applicant forest stewardship plan development enables applicants to define their forest management objectives and the specific management practices that they will employ to achieve these objectives.
- (2) Reforestation and afforestation establishes or reestablishes diverse forest stands through natural regeneration, planting, or direct seeding for conservation purposes and sustained timber production. A list of eligible program practice components includes:
 - (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting;
 - (D) Fertilization and/or soil amendments;
 - (E) Weed and/or moisture control; and
 - (F) Tree seedling protection, including predator control.
- (3) Forest and agroforest improvement improves forest stand productivity, stand vigor, forest health, and the value and quality of wood products. A list of eligible program practice components includes:
 - (A) Release of desirable tree species;
 - (B) Noncommercial thinning;
 - (C) Control of undesirable plant species;
 - (D) Fertilization and/or soil amendments; and
 - (E) Tree seedling protection, including predator control.
- (4) Windbreak and hedgerow establishment establishes, maintains, and renovates windbreaks and hedgerows to reduce soil erosion and conserve soil and water

- resources. A list of eligible program practice components includes:
- (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting
 - (D) Fertilization and/or soil amendments;
 - (E) Weed and/or moisture control;
 - (F) Non-commercial thinning;
 - (G) Mulching; and
 - (H) Tree seedling protection, including predator control.
- (5) Soil and water protection and improvement maintains or improves water quality and soil productivity on forested land and along waterways. A list of eligible program practice components includes:
- (A) Critical area revegetation;
 - (B) Mulching;
 - (C) Water diversion; and
 - (D) Tree seedling protection, including predator control.
- (6) Riparian and wetland protection protects, restores, and improves wetlands and riparian areas to maintain water quality and enhance habitat. A list of eligible program practice components includes:
- (A) Site preparation;
 - (B) Seedling purchase and/or production;
 - (C) Seedling planting;
 - (D) Fertilization and/or soil amendments;
 - (E) Establish permanent vegetative cover;
 - (F) Streambank stabilization; and
 - (G) Tree seedling protection, including predator control.
- (7) Wildlife habitat improvement restores, improves, or establishes permanent upland and/or wetland habitat for specific game, non-game, non-native or native wildlife species. A list of eligible program practice components includes:
- (A) Control of undesirable plant species;
 - (B) Site preparation;
 - (C) Wildlife watering units;
 - (D) Seedling purchase and/or production;
 - (E) Seedling planting;
 - (F) Fertilization and/or soil amendments;

- and
- (G) Tree seedling protection, including predator control.
- (8) Forest recreation enhancement establishes and enhances forest recreation. A list of eligible program practice components includes:
- (A) Trail construction
 - (b) Harvesting practices, and practices involving Christmas tree or orchard production are not eligible for program cost-share assistance. [Eff. **JAN 08 1999**]
] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

- §13-109-7 Forest stewardship management plan. (a) The forest stewardship management plan shall include:
- (1) Cover sheet. This page lists the applicant's name and address; location of private property described in the plan; the name, address, title, and phone number of the person completing the plan; and the date the plan is completed.
 - (2) Signature page. This page shall be signed by the applicant, person preparing the plan, and by the administrator certifying that the plan meets the criteria established for the program.
 - (3) Stewardship plan preface. This form, when checked off by the person writing the program management plan, lists the natural resource values:
 - (A) Reforestation
 - (B) Soil and water quality;
 - (C) Agroforestry;
 - (D) Forest health;
 - (E) Archaeological or cultural resources;
 - (F) Wildlife enhancement;
 - (G) Threatened and Endangered species; and
 - (H) Native resources.that the applicant has considered to qualify this program plan as a stewardship project.

- (4) Introduction. This portion of the plan briefly describes private property being dedicated to the program, current and historic land uses, including any commercial uses, and a concise summary of the applicant's specific forest management objectives.
- (5) Land and resource description. This portion describes the physical and ecological characteristics of the property being dedicated to the program including existing vegetation, slope, elevation, aspect, access, soil and watershed conditions, fish and wildlife habitats, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.
- (6) Recommended practices. This portion describes one or more forest stewardship practices as recommended by the person writing the applicant's program management plan as provided in section 13-109-6(a)(1) to (8).
- (7) Practice implementation schedule. This portion summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. It shall outline the program practices, approved program reimbursements, and the applicant's costs.
- (8) Budget summary. This portion estimates the annual total costs contributed by the program and applicant for the duration of the approved project implementation period.
- (9) Program map. A program map or topographic map at one inch equals twenty-four thousand feet scale shall be attached to the program management plan. The map shall delineate the area which the applicant is dedicating to the program. [Eff. **JAN 08 1999**]
 (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 Agreement and conditions. (a) The division shall develop, process, and administer an agreement with the applicant for board approval that shall include:

- (1) The scope of work and time of performance to implement program practices;
- (2) The applicant's compensation for implementing approved program practices;
- (3) Amendment procedures to the applicant's management plan;
- (4) Procedures to inspect completed program practices;
- (5) Applicant's program management plan; and
- (6) Other terms and conditions as determined by the board. The agreement shall be for a minimum of ten years.

(b) Depending upon the management objectives, goals, and schedule, the applicant can choose to accept a program management dedication term of greater than 10 years.

(c) Applicants shall:

- (1) Receive reimbursed payments from the division up to fifty per cent of the total actual costs to develop and implement applicant's approved program practices not to exceed a total amount per year per applicant as designated by the division;
- (2) Be required to spend applicant's funds before seeking reimbursement payments from the division; and
- (3) Not use other federal, state, or county government program funds for the applicant's fund matching requirements.

(d) Other conditions include:

- (1) Reimbursement payments to the applicant shall:
 - (A) Be within the hold-down rates that were established for each program practice by the forest stewardship advisory committee;
 - (B) Not be made for a management practice that is funded through another

- government program;
- (C) Not be made for any work not identified in the program management plan; and
 - (D) Not be made for program practices implemented prior to board approving the program agreement.
- [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 Reports. (a) The applicant shall submit semiannual progress reports every six months to the division for each year in which the applicant receives program funding. The reports shall detail program accomplishments, areas requiring technical advice, and any proposed modifications to the program management plan and other conditions deemed necessary by the board to implement the purposes of chapter 195F, HRS.

(b) Upon applicant's submittal of progress reports and program practice invoices, the division shall inspect and approve the work on private property after prior notice has been made to the applicant. Upon approval, the division shall reimburse the applicant an amount up to fifty per cent of the total actual cost to implement approved management practices and based on the program budget in the agreement and as provided in section 13-109-8(d)(1)(A) to (D).

(c) In the event that the applicant determines in good faith that it is unable to fulfill its financial and program management obligations, the division may renegotiate the terms of the agreement with the applicant. Terms of the agreement shall include:

- (1) Reestablishment of management priorities;
- (2) Deferral or discontinuation of the specified work; or
- (3) An extension of time to accomplish the specified work. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-10 Penalty payback provisions. (a) Failure by the applicant to comply with the management plan and agreement terms may result in the cancellation

of the forest stewardship designation by the board.

(b) In the event that the applicant defaults on the agreed terms between the board and applicant, the applicant shall promptly pay the State the following payback and penalty moneys:

- (1) If the applicant defaults in the first three years following the initial date of the agreement, the applicant shall pay back all matching funds to the State;
- (2) If the applicant defaults after the first three years following the initial date of the agreement, the applicant shall pay back matching funds received for the immediately preceding three years to the State; and
- (3) A penalty provision consisting of an interest payment as determined in the agreement between the board and applicant shall be added to the refund due to the State. Interest payment shall be calculated on an annual per cent of funds received by the applicant. [Eff. **JAN 08 1999**]
(Auth: HRS §195F-8) (Imp: HRS §195F-7)

§ 13-109-11 Payback provision for commercial timber production. If an applicant's primary management objective is commercial timber production, the board may require as a condition to receiving state matching funds a payback provision that a certain percentage of all matching state funds be paid back to the State upon each commercial timber harvest as set forth in the contract between the board and the applicant. A commercial timber harvest as used herein is defined as a certain minimum volume of timber removed per acre from a certain minimum acreage of the applicant's property as determined by the division or as set forth in the contract between the board and the applicant. [Eff. **JAN 08 1999**] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

DEPARTMENT OF LAND AND NATURAL RESOURCES

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The adoption of chapter 13-109, shall take effect ten days after filing with the Office of the Lieutenant Governor.

Michael D. Wilson, Chairperson
Board of Land and Natural
Resources

Member, Board of Land and
Natural Resources

APPROVED:

Benjamin J. Cayetano, Governor
State of Hawaii

Dated: Dec. 28, 1998

APPROVED AS TO FORM:

Deputy Attorney General

DEC 29 1998

Filed

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OFFICE

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