

State of Hawaii
DEPARTMENT OF LAND AND NATURAL RESOURCES
Division of Forestry and Wildlife
Honolulu, Hawaii 96813

August 11, 2023

Chairperson and Members
Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Land Board Members:

SUBJECT: REQUEST FOR APPROVAL TO INITIATE RULEMAKING PROCEEDINGS, INCLUDING CONDUCTING PUBLIC HEARINGS ON PROPOSED AMENDMENTS TO AND COMPILING OF HAWAII ADMINISTRATIVE RULES TITLE 13, CHAPTER 109, REGARDING RULES FOR ESTABLISHING FOREST STEWARDSHIP

This submittal summarizes proposed amendments to Chapter 13-109 (Rules for Establishing Forest Stewardship), Hawaii Administrative Rules (HAR); discusses the reasons for the proposed changes; describes the process for amending administrative rules; requests approval from the Board of Land and Natural Resources (Board) to hold public hearings; and requests that the Board delegate authority to the Chairperson to appoint a hearing master and designate dates and times for the public hearing(s).

Chapter 13-109, HAR, was adopted January 8, 1999, to implement Chapter 195F, Hawaii Revised Statute (HRS), which authorizes the Board to establish a forest stewardship program to financially assist participants to manage, protect, and restore important natural resources on private forest or formerly forested property. The chapter has not been amended since.

BACKGROUND

The State of Hawai'i Forest Stewardship Program (FSP) provides technical advice and financial assistance on a cost-share basis to promote forest stewardship and restoration. The FSP focuses on the following objectives: forest productivity (timber and non-timber forest resources), native ecosystem health and biodiversity, watershed protection and management, wildlife habitat improvement, and recreation enhancement. The State's FSP is aligned with and supported by the National Forest Stewardship Program, which was authorized by the Cooperative Forestry Assistance Act of 1978 and is administered by the U.S. Department of Agriculture (USDA) Forest Service. These programs provide technical assistance to private forest owners to encourage and enable active long-term forest management, with a focus on the development of

comprehensive management plans that provide landowners with the information they need to manage their forests for a variety of products and services.

The FSP became effective in July 1991 following the passage of Act 327, Session Laws of Hawai'i (SLH) 1991. Act 327 authorized the Department of Land and Natural Resources (DLNR) to provide state funds to assist, technically and financially, private landowners and managers in protecting, managing, and restoring important forest resources. Act 195, SLH 1993, and Act 152, SLH 2001, established a dedicated funding source for FSP as a percentage of annual Conveyance Tax revenues that were deposited into the DLNR's Natural Area Reserve Fund then disbursed by the Department to the Forest Stewardship Fund pursuant to Section 247-7, HRS. Act 084, SLH 2015, removed this dedicated funding source but provides for allocations from the DLNR general fund to support the FSP.

The Forest Stewardship Advisory Committee (FSAC) is a thirteen-person committee consisting of professionals on forestry issues that advises the DLNR's Division of Forestry and Wildlife (Division), which administers the FSP program. FSAC members represent federal and state agencies, professional foresters and resource consultants, conservation organizations, land trusts, cultural representatives, and private landowners. The FSAC reviews and recommends eligible management practices under the program, which are described in the FSP handbook. The FSAC also serves as the State Forest Stewardship Coordinating Committee required by the USDA Forest Service under the Cooperative Forestry Assistance Act, and it advises DOFAW on federal initiatives such as the state's Forest Action Plan and on acquisition programs such as the Forest Legacy Program.

The FSAC reviews draft FSP proposals and makes approval recommendations to the Division. For landowners whose proposals are recommended for approval, FSP provides cost-share assistance for the development of a 10-year management plan. The State currently provides approximately \$15,000-\$30,000 per year of state and/or federal cost-share support to landowners for the development of FSP management plans.

The FSAC also reviews completed management plans and makes approval recommendations to the Division. The Division, with the assistance of the FSAC, may recommend certain management plans for state implementation funding through a competitive process, when funding is available. For landowners whose management plans are recommended for implementation funding, the Division then develops a *program implementation agreement* (multi-year contract) with the landowner to provide cost-share assistance for completion of approved management practices, which the Division then presents to the Board for approval. The FSP currently has implementation agreements in place with fourteen landowners, with a fiscal year (FY) 2024 budget of \$243,195 of state funds providing cost-share support. Due to budget cuts, the Division has not finalized any *new* FSP implementation agreements over the last several years, but the Division hopes that future budgets will allow it to provide state funding support for additional FSP projects on a competitive basis in FY24 and beyond.

ANALYSIS

Recent amendments to Chapter 195F, HRS, Relating to Forest Stewardship, need to be incorporated into updated rules. Act 221, SLH 2021, for example, amended FSP program requirements to allow long-term leaseholders to participate in the program, increased state cost-share support from 50% to 75% for the development of FSP management plans, allowed lands managed for non-timber forest products to qualify for the program, allowed the support of the program for portions of management plans and modernized eligibility criteria related to native forest management.

The current rules do not allow landowners to use federal or county funds for the FSP match requirement. With the removal of the dedicated state funding source for the FSP in 2015, and high costs of management (particularly associated with fencing), landowners need multiple funding sources to effectively implement approved forest management projects. This creates a barrier to landowner participation in FSP.

The proposed amendments will allow FSP applicants to match state FSP cost-share support with non-state financial assistance programs (e.g., federal, county, and/or private programs), as allowed by those programs and if total cost-share assistance does not exceed ninety percent of the total project cost. Amended rules will allow landowners participating in the FSP to better leverage state support to accomplish larger projects and increase public benefits to the state's forests and the environment. The amendments would also provide greater flexibility to, and potentially increase program participation by, underserved landowners with limited financial resources. The proposed amendments are also consistent with other state cost-share programs (e.g., the Natural Area Partnership Program), and federal landowner assistance programs commonly used by landowners participating in FSP, such as U.S. Department of Agriculture Natural Resources Conservation Service (NRCS) Environmental Quality Incentives Program and U.S. Fish and Wildlife Partner's Program. NRCS may provide up to 90% of the costs of implementing management practices to historically underserved landowners. Amendments to HAR Chapter 13-109's definitions, additional descriptions of new management practices, and updated language related to State, Federal, and County forestry incentive programs are also needed.

The FSAC reviewed and recommended approval of the proposed rule amendments attached to this submittal at a FSAC meeting on November 10, 2022. The meeting minutes can be viewed here: https://dlnr.hawaii.gov/forestry/files/2022/12/Meeting-Minutes_11-10-2022.pdf.

Following the rulemaking procedures set forth in Chapter 91, HRS, the Division proposes amendments to Chapter 13-109, HAR, for the purpose of ensuring the rules are consistent with Chapter 195F, HRS. Additional, substantive amendments, including changes to definitions and described duties of the FSAC, clarification on applicant eligibility requirements and the approval process for landowners, and modifications to eligible management practices are proposed in this latest compilation. The Division also

proposes numerous non-substantive amendments for the purposes of clarity, consistency, and style.

SUMMARY OF PROPOSED AMENDMENTS:

A compilation of the proposed amendments to Chapter 13-109, HAR, is provided as **Exhibit 1** of this submittal. **Exhibit 2** provides the current compilation of the rules for reference. A summary of the proposed amendments follows:

Non-substantive amendments for the purposes of clarity, consistency, and style are made to:

- The title page, §13-109-1, §13-109-2, §13-109-3, §13-109-4, §13-109-5, §13-109-6, §13-109-7, §13-109-8, §13-109-9, §13-109-10, and §13-109-11.

Substantive amendments are made to:

- §13-109-2, “Definitions” by:
 - Adding definitions for “landowner,” “management dedication term,” “native vegetation,” and “program proposal;” and
 - Amending definitions for “agreement,” “applicant,” “forest stewardship advisory committee,” and “potential natural area reserve;” and
 - Removing definition for “natural area partnership program.”
- §13-109-3, “Establishment and duties of the forest stewardship committee” by:
 - Clarifying the duties of the committee to include review and recommend for approval to the Administrator, forest stewardship proposals, forest stewardship plans, financial assistance for implementation on forest stewardship plans, and program practices and hold-down rates; and
 - Adding review and making recommendations regarding federal forest legacy proposals, grant requests and projects; and
 - Adding review applications for membership on the committee and make recommendations for approval; and
 - Amending the term of the forest stewardship advisory committee members from two years to three years; and
 - Adding that the forest stewardship advisory committee will consist of thirteen members.
- §13-109-4. “Applicant eligibility” by:
 - Clarifying that non-forested properties are eligible for the program; and
 - Adding the requirement that a minimum of five acres be dedicated to the program; and
 - Adding changes to allow for applicants to match state forest stewardship program cost-share support with other financial assistance programs (federal, county, and private) if total cost share assistance does not exceed ninety percent.

- §13-109-5. “Applicant enrollment” by:
 - Allowing applicants to receive financial assistance for the development of their approved FSP plan without having to enter into an implementation agreement; and
 - Allowing applicants to receive cost-share assistance for management plan preparation not to exceed the limits set forth in HRS 195F-6 (a); and
 - Updating to clarify the process of recommending to the Board a program implementation agreement to provide cost share for implementation of all or portions of the management plan consistent with revisions to Chapter 195F, HRS.

- §13-109-6. “Establishment of approved forest stewardship practices” by:
 - Removing specific eligible practices components for each practice category to allow flexibility for the FSAC to recommend appropriate practices to apply for each category; and
 - Changing “wood” products to “forest” products to better reflect FSP projects that produce non-timber forest products such as food, fiber, medicine; and
 - Adding “invasive species control” as a practice category; and
 - Removing “windbreak” as a practice category; and
 - Adding that the FSAC can recommend eligible practices under the program; and
 - Removing Christmas tree production as a non-eligible practice.

- §13-109-7. “Forest stewardship management plan” by:
 - Updating the resource concerns to be addressed in the management plan in alignment with federal requirements and best practices; and
 - Updating plan information needed in executive summary, introduction and land and resource description; and
 - Updating requirements for maps.

- §13-109-8 “Agreement and conditions” by:
 - Providing for the agreement to be for all or portions of the plan; and
 - Adding requirement for a ten-year enrollment, or twenty-year enrollment if the project includes timber production; and
 - Providing for agreement to allow federal, county, or private financial assistance programs as applicants match up to ninety percent.

- §13-109-11 “Payback provision for commercial timber production” by:
 - Adding commercial forest products to this section; and
 - Removing the definition of “commercial timber harvest.”

LEGAL AUTHORITY:

Chapter 195F, HRS, Relating to Forest Stewardship, establishes a program to financially assist landowners in managing, protecting, and restoring important natural

resources in Hawaii's forested and formerly forested lands.

Section 195F-8, HRS, authorizes the Department to adopt administrative rules relating to the Forest Stewardship Program through Chapter 91, HRS, rulemaking.

RECOMMENDATIONS:

That the Board:

- 1) Authorize the Division to initiate rulemaking proceedings, including conducting state-wide public hearings, to amend and compile Hawaii Administrative Rules (HAR) Chapter 13-109; and
- 2) Delegate to the Chairperson the authority to set dates and times for the public hearing and appoint a hearing master for the public hearing.

Respectfully submitted,



DAVID G. SMITH, Administrator
Division of Forestry and Wildlife

APPROVED FOR SUBMITTAL:



DAWN N.S. CHANG, Chairperson
Board of Land and Natural Resources

Exhibit 1: Proposed Amendments to Chapter 13-109, HAR (Ramseyer)
Exhibit 2: Current Compilation of Chapter 13-109, HAR

DEPARTMENT OF LAND AND NATURAL RESOURCES
DIVISION OF FORESTRY AND WILDLIFE

Amendment and compilation of Chapter 109
Hawaii Administrative Rules

June 7, 2023

SUMMARY

1. The title of Subchapter 3 is amended.
2. §§13-109-1 through 13-109-11 are amended.
3. Chapter 109 is compiled.

Amendment and Compilation of Chapter 109
Hawaii Administrative Rules

June 7, 2023

1. Chapter 109, Hawaii Administrative Rules, entitled "Rules for Establishing Forest Stewardship", is amended and compiled to read as follows:

"HAWAII ADMINISTRATIVE RULES

TITLE 13

DEPARTMENT OF LAND AND NATURAL RESOURCES

CHAPTER 109

RULES FOR ESTABLISHING FOREST STEWARDSHIP

Subchapter 1. General Provisions

- §13-109-1 Purpose and applicability
- §13-109-2 Definitions
- §13-109-3 Establishment and duties of the forest stewardship advisory committee
- §13-109-4 Applicant eligibility
- §13-109-5 Applicant enrollment
- §13-109-6 Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

- §13-109-7 Forest stewardship management plan

Subchapter 3. Agreements with Applicant

- §13-109-8 Agreements and conditions
- §13-109-9 Reports
- §13-109-10 Penalty payback provisions
- §13-109-11 Payback provision for commercial timber production

SUBCHAPTER 1

GENERAL PROVISIONS

§13-109-1 [~~Purpose and applicability.~~] **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 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-1)

§13-109-2 [~~Definitions.~~] **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 forest stewardship management [contract] agreement between the board and applicant[-], in which the parties agree that the board will contribute some funding to cover the cost of implementing the forest stewardship management plan.

"Applicant" means any private entity or person having an interest in or holding any encumbrance upon [~~private~~] eligible property in the State, as set forth in §13-109-4, including any private entity or 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, native Hawaiian interests, and environmental and conservation organizations who advise the administrator. The forest stewardship advisory committee shall meet the requirements for a State Forest Stewardship Coordinating Committee, as set forth in the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §19 (codified at 16 U.S.C. §2113 (2018)), as amended.

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

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

"Management dedication term" means a period in which the applicant agrees to implement and maintain the project site as established under the agreement.

"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.]~~

"Native vegetation" means trees, shrubs and plants endemic or indigenous to Hawaii.

"Potential natural area reserve" means land or water areas within the protective subzone of the conservation district established pursuant to chapter 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]~~ area reserves system ~~[pursuant to section 195-2, HRS.]~~ commission.

"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.

"Program proposal" means a request from a landowner to the program for cost-share assistance for the development of a forest stewardship management plan.

[Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-2)

§13-109-3 ~~[Establishment and duties of the forest stewardship advisory committee.]~~ **Establishment and duties of the forest stewardship 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 or her designee or the authorized representative shall appoint ~~[a chairperson and]~~ members to the forest stewardship advisory committee. Members shall be

volunteers, serve part-time, and shall not be compensated by the program for duties performed.

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

- (1) Review and recommend for approval to the administrator~~[7]~~ program [proposal] proposals;
- (2) Review and recommend for approval to the administrator [and] forest stewardship management plans;
- (3) Recommend approval of financial assistance for implementation of forest stewardship management plans to the administrator, prior to board submittal;
- ~~[(2)]~~ (4) Establish and periodically review program practices and recommend hold-down rates for each program practice; [and]
- ~~[(3)]~~ (5) Advise the department on other [program] relevant policies and guidelines[-], including but not limited to local and national initiatives; and
- (6) Review and make recommendations to the administrator regarding federal Forest Legacy Program proposals, grant requests and projects pursuant to the Cooperative Forestry Assistance Act of 1978, P.L. 91-313, §7 (codified at 16 U.S.C. §2103c (2012)), as amended.
- (7) Review applications for membership on the forest stewardship advisory committee and make recommendations to the chairperson or her designee or the authorized representative for approval.

(c) The forest stewardship advisory committee shall meet quarterly each year, with each member serving ~~[two-year]~~ three-year staggered terms. The chairperson or her designee or the authorized representative 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]~~ The forest stewardship advisory committee shall consist of thirteen members, and seven members of the forest stewardship advisory committee shall constitute a quorum to do business. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-3)

§13-109-4 ~~[Applicant eligibility.]~~ **Applicant eligibility.**

(a) In order to qualify under this program, ~~[applicants]~~ an applicant shall be ~~[private individuals, joint owners, private~~

~~organizations, private associations, or corporations.] a landowner, as set forth in §13-109-2.~~

(b) Applicants are eligible to receive program assistance if ~~[private forest]~~ property is:

- (1) Managed by applying approved practices, as defined by ~~[chapter]~~ section 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 forest stewardship management plan as set forth in section 195F-5, HRS[-]; and
- (3) A minimum of five contiguous acres that will be dedicated to the program.

(c) Applicants are ineligible to receive program assistance, if ~~[private]~~ otherwise eligible property is:

- (1) Leasehold for a period of less than ten years following program approval; or
- ~~[(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)]~~ (2) 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.]~~

(d) Private lands managed under existing federal, county, or private sector financial and/or technical assistance programs in conjunction with the forest stewardship program are not eligible to receive more than ninety per cent of the total cost of the forest management practices from all financial and technical assistance programs. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-5 ~~[Applicant enrollment.]~~ **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]~~ Provisions for economic diversification and rural employment; and
- (D) Preservation or restoration of especially valuable natural resources, including native plants, animals, and ecosystems.

(2) Applicants whose program proposals are recommended for approval by the forest stewardship advisory committee~~[,]~~ and approved by the administrator, may prepare and submit a ~~[program]~~ forest stewardship 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.]~~ as provided in section 13-109-7(a). Applicants are eligible to receive reimbursement payments from the division in an amount not to exceed the limits set forth in §195F-6(a), HRS, for the development of a forest stewardship management plan after the forest stewardship management plan is recommended for approval by the forest stewardship advisory committee and approved by the administrator.

(3) Reimbursement for the development of a forest stewardship plan shall be subject to approval of the forest stewardship management plan by the board, or its designee.

(b) Upon approval of the ~~[program]~~ forest stewardship management plan by the forest stewardship advisory committee~~[, the]~~ and administrator, the administrator may recommend to the board, approval of financial assistance for implementation of all or selected portions of the forest stewardship management plan, subject to availability of funding. The division shall also 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).] 13-109-8(a), for approval by the board. The [program] forest stewardship management plan shall be attached as an [addendum] exhibit to the agreement.

(c) Upon board approval of the agreement, the applicant is responsible for implementing the practices described in the agreement ~~[program management plan]~~ for the duration of the ~~[approved project implementation period.]~~ management dedication

term. [Eff 1/8/99; am and comp] (Auth: HRS
§195F-8) (Imp: HRS §§195F-5, 195F-6)

§13-109-6 [~~Establishment of approved forest stewardship practices.~~] **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,~~] 195F-5(b), HRS. [~~They~~] The eligible categories of forest stewardship practices include, but are not limited to:

- (1) Applicant forest stewardship management plan development [~~enables applicants~~] to define [~~their~~] the forest management objectives and the specific management practices that [~~they~~] will [~~employ~~] be employed to achieve these objectives.
- (2) Reforestation and afforestation [~~establishes~~] to establish or [~~reestablishes diverse~~] reestablish forest stands through natural regeneration, planting, or direct seeding for conservation purposes, windbreaks and sustained [~~timber~~] production of forest products. [~~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~~] management to improve forest stand productivity, stand vigor, forest health, aesthetic quality, fire prevention, and the value and quality of [~~wood~~] forest 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)]~~ (4) Soil and water protection and improvement [~~maintains or improves~~] to maintain or improve 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)]~~ (5) Riparian and wetland protection [~~protects, restores, and improves~~] to protect, restore, and improve 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)]~~ (6) [~~Wildlife~~] Native fish and wildlife habitat improvement [~~restores, improves, or establishes~~] and management to restore, improve, maintain or establish permanent upland and/or wetland habitat for [~~specific game, non-game, non-native or~~] native fish and 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)]~~ (7) Forest recreation enhancement [~~establishes and enhances~~] to establish and enhance forest recreation opportunities. [~~A list of eligible program practice components includes:~~

~~(A) Trail construction~~

~~(b) Harvesting practices, and practices]~~

(8) Invasive species management to control and manage incipient or established invasive species.

(b) The forest stewardship advisory committee shall recommend to the board eligible practices for use under the program.

~~[(b)]~~ (c) [~~Harvesting practices and practices]~~ Practices involving [~~Christmas tree or~~] orchard production are not eligible for program cost-share assistance. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-5)

SUBCHAPTER 2

MANAGEMENT PLAN

§13-109-7 [~~Forest stewardship management plan.~~] **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.~~] Executive summary. This [~~form, when checked off by the person writing the program management plan,~~] section summarizes the property description, past and current land uses, current forest conditions (e.g., forest type, vegetation, wildlife, forest health, threats, and other resource concerns), landowner vision and goals, and management objectives. [~~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~~] section briefly describes [~~private~~] the property being dedicated to the program, current and historic land uses, including any commercial uses, elevation, rainfall, topography, the applicant's overall vision and goals, and a concise summary of the applicant's specific forest management objectives.
- (5) Land and resource description. This [~~portion~~] section describes the physical and ecological characteristics of the property being dedicated to the program, including existing vegetation, [~~slope, elevation, aspect,~~] existing infrastructure, access, soil and watershed conditions, fish and wildlife habitats, threats to forest health and function, forest products, recreational and aesthetic values, historic or cultural resources, and threatened and endangered species pursuant to chapter 195D, HRS.
- (6) [~~Recommended~~] Management objectives and recommended practices. This [~~portion~~] section describes the specific forest management objectives and 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~~] section summarizes the annual practices and estimates corresponding annual costs for the duration of the approved project implementation period in a table format. [~~It~~] The schedule shall outline the program practices, approved program reimbursements, and the applicant's costs.
- (8) Budget summary. This [~~portion~~] section estimates the annual total costs contributed by the program, any other contributing financial assistance 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~~] Project maps. Maps, such as a location map, project attribute map, and soil map, shall be attached to the [~~program~~] forest stewardship management plan. The [~~map~~] maps shall delineate the area which the applicant is dedicating to the program. [Eff 1/8/99; am and

comp
§195F-5)

] (Auth: HRS §195F-8) (Imp: HRS

SUBCHAPTER 3

AGREEMENT WITH APPLICANT

§13-109-8 [~~Agreement and conditions.~~] **Agreements and conditions.** (a) The division [shall] may recommend an agreement, as set forth in 13-109-2, for the applicant's implementation for all or portions of a forest stewardship management plan, pursuant to section 13-109-5(b).

(b) The division may 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 forest stewardship 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)]~~ (c) The agreement, as set forth section 13-109-2, shall be for a minimum of ten years. Depending upon the management objectives, goals, and schedule, the applicant [can choose to accept a] and division may agree to a longer program management dedication term [of greater than 10 years]. An agreement, as set forth in section 13-109-2, that includes management practices associated with timber production shall require a management dedication term of a minimum of twenty years.

~~[(e)]~~ (d) Applicants with a board approved forest stewardship management plan and agreement, as set forth in section 13-109-2, subject to availability of funds, shall:

- (1) Receive [~~reimbursed~~] reimbursement payments from the division [up to fifty per cent of the total actual costs] in an amount not to exceed the limits set forth in §195F-6(a), HRS, to [~~develop and~~] implement practices in the applicant's approved [~~program practices~~] forest stewardship management plan not to exceed a total amount per year per applicant as [~~designated~~] approved by the [~~division,~~] board;

- (2) Be required to [~~spend~~] expend the 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].~~ The applicant may use funds provided by federal, county, or private sector financial and technical assistance programs to fulfill the applicant's cost-share requirement; provided that the funds supplied from all financial and technical assistance programs do not cover more than ninety per cent of the actual cost of forest management practices;
- ~~[(d) Other conditions include:~~
- (1) ~~Reimbursement payments to the applicant shall:]~~
- ~~[(A) Be]~~ (3) Receive reimbursement payments within the hold-down rates that were established for each program practice [~~by~~] based on recommendation of the forest stewardship advisory committee;
- ~~[(B) Not be made for a management practice that is funded through another government program;]~~
- ~~[(C) Not be made]~~ (4) Receive reimbursement payments only for [any] work [not] identified in the [program] forest stewardship management plan; and
- ~~[(D) Not be made]~~ (5) Receive reimbursement payments for program practices implemented [prior] subsequent to the board approving the [program] agreement. [Eff 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-6)

§13-109-9 [~~Reports.~~] **Reports.** (a) The applicant shall submit [~~semiannual~~] semi-annual 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,~~] Before making any reimbursement payments, the division shall have the right to inspect and approve the work on [private] the property after prior notice has been [made] given 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]~~ implement the agreement, the ~~[division]~~ chairperson or her designee or the authorized representative 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 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §1925F-6)

§13-109-10 ~~[Penalty payback provisions.]~~ **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.]~~ agreement.

(b) In the event that the agreement is cancelled ~~[between the board and applicant]~~, the applicant shall promptly pay the State the following payback and penalty moneys:

- (1) If ~~[the applicant defaults]~~ cancelled 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]~~ cancelled 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]~~ payment due to the State. ~~[Interest payment shall be calculated on an annual per cent of funds received by the applicant.]~~ [Eff 1/8/99; am and comp]
(Auth: HRS §195F-8) (Imp: HRS §195F-7)

§13-109-11 ~~[Payback provision for commercial timber production.]~~ **Payback provision for commercial production of timber or other forest products.** If an applicant's primary management objective is commercial ~~[timber]~~ production of timber or other forest products, 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~~] agreement 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 1/8/99; am and comp] (Auth: HRS §195F-8) (Imp: HRS §195F-4)

2. Material, except source notes and other notes, to be repealed is bracketed and stricken. New material is underscored.

3. Additions to update source notes and other notes to reflect these amendments and compilation are not underscored.

4. These amendments to and compilation of Chapter 109, 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 _____ and filed with the Office of the Lieutenant Governor.

DAWN N. S. CHANG
Director of Department
of Land and Natural
Resources

APPROVED AS TO FORM:

Deputy Attorney General

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

Subchapter 1. General Provisions

- §13-109-1 Purpose and applicability
- §13-109-2 Definitions
- §13-109-3 Establishment and duties of the forest stewardship advisory committee
- §13-109-4 Applicant eligibility
- §13-109-5 Applicant enrollment
- §13-109-6 Establishment of approved forest stewardship practices

Subchapter 2. Management Plan

- §13-109-7 Forest stewardship management plan

Subchapter 3. Agreement with Applicant

- §13-109-8 Agreement and conditions
- §13-109-9 Reports
- §13-109-10 Penalty payback provisions
- §13-109-11 Payback provision

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

Chapter 13-109, Hawaii Administrative Rules on the Summary Page dated October 9, 1998, was adopted on October 9, 1998, following public hearings held at Honolulu, Oahu on July 6, 1998; Kahului, Maui on July 9, 1998; Kaunakakai, Molokai on July 13, 1998; Lihue, Kauai on July 16, 1998; Hilo, Hawaii on July 21, 1998; Kona, Hawaii on July 22, 1998 and Lanai City, Lanai on July 27, 1998. Public notice of the hearings was given in the Honolulu Advertiser; on June 6, 1998; Hawaii Tribune Herald, West Hawaii Today, Maui News and Garden Island News on June 7, 1998.

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

LIEUTENANT GOVERNOR
OFFICE

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