

TITLE 4
DEPARTMENT OF AGRICULTURE
SUBTITLE 2
AGRICULTURAL LOAN DIVISION
CHAPTER 9
THE AQUACULTURE LOAN PROGRAM

- §4-9-1 Rules
- §4-9-2 Purpose and intent
- §4-9-3 Definitions
- §4-9-4 Loan; eligibility
- §4-9-5 Restrictions
- §4-9-6 Application procedure
- §4-9-7 Conditions
- §4-9-8 Security for loans
- §4-9-9 Interest rate
- §4-9-10 Disbursements
- §4-9-11 Repayment; refinancing
- §4-9-12 Appraisals
- §4-9-13 Administration

Historical Note: This chapter is based substantially upon Regulation No. 4, entitled "Aquaculture Loan Program," of the agricultural loan division, department of agriculture [Eff 6/15/72; R 9/28/81]

§4-9-1 Rules. This chapter shall govern the procedures of the department of agriculture relative to loans and the administration of loans to qualified aquaculturalists. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5)

§4-9-2 Purpose and intent of the program. (a) The purpose of the program is to financially assist in the development of aquaculture through the making of loans to qualified applicants.

(b) The intent of the program is to further the development of aquaculture in the state. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5)

§4-9-3 Definitions. Whenever used in this chapter:

"Bank of the farm credit system" means either the production credit association of hawaii, the federal land bank association of hawaii, or the sacramento bank for cooperatives;

"Department" means the department of agriculture of the state of Hawaii;

"Division" means the agricultural loan division of the department of agriculture; and

"Private lender" includes commercial banks, credit unions, savings and loan associations, mortgage companies, and other qualified companies whose business includes the making of aquacultural loans in the state. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-2)

§4-9-4 Loan; eligibility. An applicant for an aquaculture loan shall be:

- (1) A qualified aquaculturalist;
- (2) A sound credit risk with ability to repay the money borrowed;
- (3) Willing to carry out recommended aquacultural management practices;
- (4) An adult resident of the State of Hawaii;
- (5) A corporation or aquacultural cooperative licensed to do business in Hawaii; or a partnership in which at least one partner is an adult resident of the State of Hawaii; and
- (6) Able to produce satisfactory credit references. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §§219-2, 219-6)

§4-9-5 Restrictions. (a) No loan shall be made for the production of any aquacultural product for the purpose of selling or keeping of such animals as pets.

(b) No loan shall be made unless the applicant has been unable to secure loans at reasonable rates and terms from:

- (1) A private lender; and
- (2) A respective bank of the farm credit system;
or
- (3) The farmers home administration.

(c) The aggregate amount of the state's liability, contingent or otherwise, on insured loans made to qualified aquaculturalists by private lenders, banks of the farm credit system, and the farmers home administration shall not exceed limits set by statutes.

(d) No real estate loans shall be made on unsurveyed lands. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-6)

§4-9-6 Application procedure. (a) Any qualified aquaculturalist who meets the eligibility requirements may apply for an aquaculture loan with the division.

(b) Applications shall be made on prescribed forms available at department offices.

(c) Applications for loans shall contain financial statements, projections on income and expenses, and other instruments as may be required by the division.

(d) Prior to awarding a loan, the division shall cause title to real property to be examined and have executed a note and mortgage. The applicant shall pay the necessary costs involved, including but not limited to costs for appraisal reports, preparation of security instruments, and title searches. [Eff 9/28/81]] (Auth: HRS §219-5) (Imp: HRS §219-6)

§4-9-7 Conditions. (a) Every borrower who is granted a loan shall comply with the following conditions:

- (1) Expend no portion of his loan for purposes other than those sanctioned by the department;
- (2) Carry out recommended management practices, including the keeping of proper records;

- (3) Not sell or otherwise dispose of the mortgaged property except on written consent of the department and except upon such conditions as may be prescribed in writing by the department.
- (4) Undertake to pay, when due, all taxes, liens, judgments, or assessments which may be lawfully assessed against the mortgaged property, together with the costs and expense of any foreclosure of the mortgaged property;
- (5) Keep insured to the satisfaction of the department all buildings and other insurable property covered by the mortgage. Insurance shall be made payable to the mortgagee as its interest may appear at the time of the loss. At the option of the lender, and subject to the general regulations of the department, sums so received may be used to pay for reconstruction of the buildings destroyed, or for decreasing the amount of the indebtedness; and
- (6) Keep buildings and equipment in good repair, provide proper care for improvements, stock and implements, keep land free from noxious weeds, and practice a good system of husbandry.

(b) If the borrower is in default in respect to the above conditions, or any other conditions, or any other condition or covenant of the mortgage, the whole of the loan shall, at the option of the lender become due and payable forthwith. The lender may, with or without notice, take possession of the mortgaged property pending a foreclosure and may carry on aquacultural pursuits upon the mortgaged premises, expending all reasonable sums therefor. Such sums shall be a lien on the mortgaged premises and be recoverable in any foreclosure proceedings or otherwise. The lender may foreclose the mortgage by any method provided for by law. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5, 6, 7, 8; HRS §219-6)

§4-9-8 Security for loans. (a) For purposes of class "A" and class "C" facility loans, no loan shall exceed eighty five per cent of the value of the security offered; for purposes of class "B" loans and class "C" operating loans, the ratio of loan to the value of the security offered shall be discretionary with the department.

(b) All security instruments for the purposes of direct loans shall be executed to and by the department; for purposes of insured loans all security instruments shall be executed to and by the private lenders; for purposes of participating loans all security instruments shall be executed to and by the department and the private lender jointly.

(c) In case of the sale or transfer of mortgaged land or other collateral, the department may permit the item to be assumed under the following conditions:

- (1) Where the purchaser is a qualified aquaculturalist; or
- (2) Where the purchaser may not be a qualified aquaculturalist when the sale has been advertised for a reasonable period of time and no qualified aquaculturalist is willing to purchase the farm or item; or
- (3) Where the purchaser continues aquaculture operations and complies with conditions as set forth in chapter 219, HRS, and rules as prescribed herein.

(d) In case of the death of the borrower, a legal heir or legal representative shall have the option within six months of the death to assume the mortgage of the deceased. The department or its agents may, pending the exercise of the option and pending possession being taken by the heirs or representatives, take possession of all mortgaged property and carry on the aquacultural operation connected therewith, and the expense of the same shall be added to the principal due on the mortgage to bear interest at the applicable rate.

(e) If a loan is approved by the board, the division shall cause the title to real property to be examined and a mortgage drawn and recorded. The applicant shall pay the actual costs involved.

Mortgages, title insurance, notes, security and financing statements shall be used as security instruments as applicable collateral. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5, 7, 8)

§4-9-9 Interest rate. (a) The interest rate charged by the state shall be at five per cent simple interest per annum.

(b) All loans shall bear simple interest on the unpaid principal balance, charged on the actual amount disbursed to the borrower. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5, 7, 8)

§4-9-10 Disbursements. (a) Disbursement shall be made only after proper documentation, recordation, and filing at the bureau of conveyances is completed.

(b) Disbursement of loan funds shall require approval of the division.

(c) Loan funds shall be disbursed through deposit in a special supervised account, in the borrower's bank of account, or the bank of his choice except in special single disbursement or through escrow. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-4, 5, 7, 8)

§4-9-11 Repayment; refinancing. (a) Loans made under this chapter shall be repaid in accordance with terms of the note and payments shall be applied first to interest and then to principal.

(b) Additional payments in any sum, or the payment of the entire principal may be made at any date within the time period of the loan.

(c) The board may, for satisfactory cause and at its discretion, extend the time within which the installments of principal may be paid for a period not to exceed five years subject to the following conditions:

- (1) Payments may be waived by the chairman, upon written request showing good cause;
- (2) Interest payments shall be kept current; and
- (3) For loans used for products requiring eighteen months or more before first harvest, the department may defer the first

payment of principal until the first harvest or for a period not to exceed two years, whichever occurs first.

(d) The borrower shall refinance the balance owed on any loan as soon as he is able to obtain credit from other sources at reasonable rates and terms.

(e) All payments due the state shall be remitted to the State of Hawaii, and can be paid at any agricultural loan division office in the state. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §210-4, 5, 7, 8)

§4-9-12 Appraisals. (a) The administration of the loan appraisal shall be the responsibility of the division:

(1) Whenever practicable, independent appraisers shall be utilized; and

(2) The applicant shall order and pay for all costs made by independent appraisers.

(b) Appraisals made by bank, farmers home administration, and other mortgage lenders may be accepted. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-5, 6, 7, 8)

§4-9-13 Administration. (a) Responsibility for the administration of the aquaculture loan program shall be placed within the agricultural loan division.

(b) Each borrower shall submit to the department an annual financial statement during the life of the loan and such interim statements and reports as may be requested by the department. [Eff 9/28/81] (Auth: HRS §219-5) (Imp: HRS §219-3)