

**CNHA Policy Center
Briefing on
Federal Rules & Regulations
on Hawaiian Home Lands**

Conducted in Partnership with CNHA Member - SCHHA
**Sovereign Councils
of the Hawaiian Homeland Assembly**
Formerly
**Statewide Council
of Hawaiian Homestead Associations**



About the CNHA Policy Center

- **Mission**
 - Bring CNHA Member organizations together around policy priorities and solutions to meet the challenges of Native Hawaiians
- **CNHA Policy Caucus Chairs**

Trust Lands: SCHHA	Education: KS
Healthcare: NH Consortium	Econ Dev: NHEA
Housing: HCA	Culture: Kapolei Civic Club
- **Primary Functions**
 - Annual Policy Priorities, Advocacy & Education
 - Policy Calls, Briefings, Convening & Symposiums
 - Policy Publications, Research & Data
 - Civic Engagement & Voter Initiatives

Briefing Topic

Federal Rules on Hawaiian Home Lands

Briefing Conducted by the SCHHA,
a CNHA Member dedicated to the full implementation of
the Hawaiian Homes Commission Act of 1920



Federal Laws – Then Rules/Regulations

- Federal Legislation and Laws
 - Enacted by Congress & President of United States
- Federal Rules on Enacted Laws (regulations)
 - Federal Agencies issue rules/regulations to implement the Law
 - Provides clarifications, day-to-day processes and ensures implementation is in compliance with purpose of the law
 - Established in CFR: Code of Federal Regulations
- Example: NAHASDA-Title 8
 - Federal Housing Act: \$\$ for HHCA Beneficiaries
 - Enacted in 2000, Rules/Regulations Under CFR 1000
 - All Parties Must Comply with CFR (feds, grantees, subgrantees)

Federal Rules/Regulations Never Done!

- Hawaiian Homes Commission Act of 1920
 - Prince Kuhio chief architect & advocate from 1919
 - Enacted in 1920 as amended in 1921 by Congress
 - Prince Kuhio dies in 1922
 - Federal Rules/Regs never promulgated on the HHCA
 - *Means the HHCA has had no federal guidance or clarity for 95 years, leaving the HHCA law to be interpreted by State DHHL as it pleases to implement*
 - *A 5 year analysis (2007-2012) by the SCHHA & CNHA identified the lack of federal rules and regulations as the #1 reason for a history of failure to deliver on the promise of the HHCA to beneficiaries*

Typical Rules/Regulations Process



Triggers to the Rule Making Process

- Legislation Enacted
- Congressional Hearing & Report
- Executive Order
- Court Order
- Agency Initiative to Carry Out Mission
- Petition for Rule Making from Affected Parties
- Informal Requests from Affected Parties
- Federal Advisory Body Recommendation
- Emergency Situation

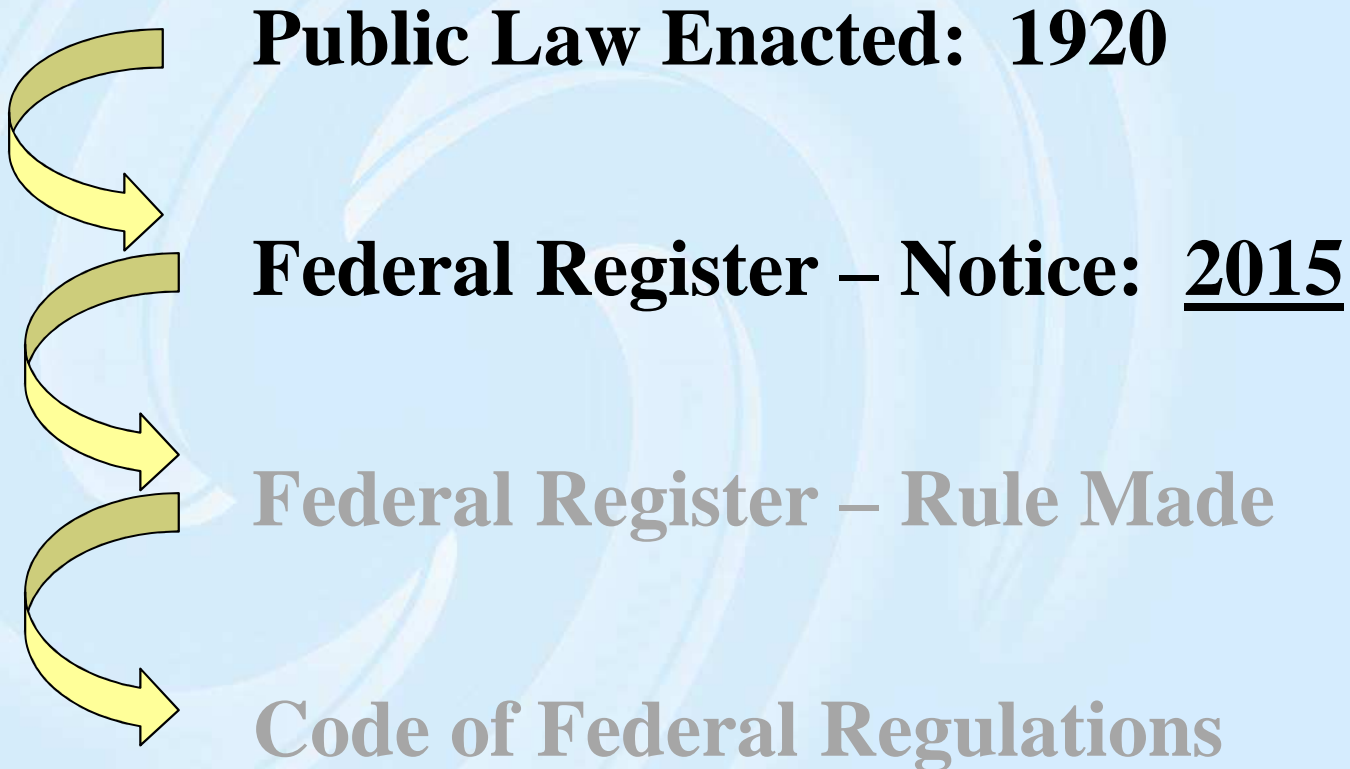
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Informal Request from Affected Parties

- **2007-2012** CNHA/SCHHA Analysis on Solutions
- **2012** CNHA/SCHHA Advocates Obama Admin
 - In December 2012, DoI AS makes trip to Hawaii
- **2013** CNHA Works with National Partners
 - In May 2013, Direct Ask Made of President Obama
 - In Sept 2013 DoI Secretary Jewell Announces Approval
 - State of Hawaii Opposes
- **2014** Advocacy on What & Where to Start
 - In Sept 2014, DoI AS issues formal letter to SCHHA
- **2015** CNHA/SCHHA Advocates Obama Admin
 - In May 2015, DoI Publishes Draft Rules

Where Are We in the Process?



After 95 Years - We Begin! Federal Rule Making Process

- May 7, 2015
 - DoI Announces Intent to Publish Draft Rules for HHCA
 - 2 Subjects to Tackle First
- May 12, 2015
 - DoI Publishes Draft Rules on 2 Subjects in Federal Register
- July 13, 2015
 - Deadline for Public Comment to DoI

*As Beneficiaries of the HHCA, We MUST Have Federal Rules for
the State of Hawaii DHHL to Follow!*

Why These First 2 Topics?

- Two Topics to Start Off With
 - Rule 47 on any *Trust Land Exchanges*
 - Rule 48 on any *Amendments to the HHCA*
- Why We Advocated for these Two Topics
 - Rules have never been done in 95 Years!
 - Want the first rules to engage Beneficiaries to gain experience in the rule making process.
 - Many more rules, more difficult rules, will be necessary to be done in the years to come – we have 95 years to make up ground on!

Why Is This Work Important?

- Why is this Initial Step on rules SO IMPORTANT?
 - Besides the primary goal ofof solutions for us
- Even Bigger Picture
 - Opponents of all things Hawaiian, want ties between the federal government cut, particularly the HHCA
 - The federal relationship between HHCA Hawaiians is the strongest defense against attacks on all Hawaiian programs – take it out, and weaken all Hawaiian programs funded by the feds
 - Federal rules strengthen the trust relationship for all Hawaiians that we are NOT JUST a racial class of people! Therefore we have rights to federal resources similar to Alaska Natives and American Indians.

Why Is This Work Important?

- Even Bigger Picture
 - Some in Congress & the State want the HHCA to be the SOLE responsibility of the State of Hawaii.....for us to be at the mercy of the State of Hawaii with no Federal Oversight
 - Preamble language lays out the historical context of the HHCA
 - Lays out the historical context of State & Federal Roles
 - Lays out the content of the **Hawaiian Home Land Recovery Act** -
Wherein the DoI Secretary is charged with ensuring the HHCA “is administered in a manner that advances the interests of beneficiaries”
- Let’s Get to the Review of Rule 47 & 48!

Topic #1 – Land Exchanges

- Rule 47
 - *Rule would remove ambiguities the State of Hawaii faces in administration of the HHCA. The rule clarifies the land exchange process, the documents required and the responsibilities of the federal Department of Interior, the state DHHL and any others engaged in land exchanges.*
- Federal Register Suggested Language for the Rule
 - Start on Page 27136 of the Federal Register Attachment
 - Formatted to be Questions, Answered by the Rule Language

Topic #1 – Land Exchanges

- The Basic Questions We Are Being Asked.....
 - We Want the Federal Government to Establish Standard Regulations that DHHL Must Follow **WHEN DHHL WANTS TO EXCHANGE OUR TRUST LANDS?** No matter who is Governor or who works at DHHL.....rules stay the same.
 - **Then....Say YES to Federal Rules.**
 - We Want the DHHL to Continue to **EXCHANGE OUR TRUST LANDS HOW** and **WHEN DHHL WANTS TO?**
 - **Say NO to Federal Rules.**

Topic #2 – HHCA Amendments

- Rule 48
 - *Rule would remove ambiguities the State of Hawaii faces in administration of the HHCA. The rule clarifies the HHCA amendment process, the documents required and the responsibilities of the federal Department of Interior in the approval process of proposed amendments by the state of Hawaii to the HHCA.*
- Federal Register Suggested Language for the Rule
 - Start on Page 27139 of the Federal Register Attachment
 - Formatted to be Questions, Answered by the Rule Language

Topic #2 – Amendments to HHCA

- The Basic Questions We Are Being Asked.....
 - We Want the Federal Government to Establish Standard Regulations that DHHL Must Follow WHEN the STATE WANTS to MAKE CHANGES to the HHCA LAW? No matter who is Governor or who works at DHHL.....rules stay the same.
 - **Then....Say YES to Federal Rules.**
 - We Want the STATE to Continue to MAKE CHANGES to the HHCA without SPECIFIC STEPS for FEDERAL REVIEW?
 - **Say NO to Federal Rules.**

Lets Look Beyond Rule 47 & 48

- Federal Laws on the HHCA & Us as Beneficiaries
 - **1921: Hawaiian Homes Commission Act**
 - 27 Sections....
 - **1959: Hawaii Admissions Act**
 - 2 Relevant Sections....
 - **1995: Hawaiian Home Land Recovery Act**
 - 9 Sections.....
- Any of these sections need regulations?

What Other Rules Do We Want?

- If We get Past first 2 Rules.....What Others?
 - Regs for Hawaiians if need request DoJ File a Breach of Trust
 - HHCA Section 223 & Admissions Section 5(f)
 - Regs for State to follow before can give land to the public
 - HHCA Section 204
 - Regs for State to follow to issue farm/ranch homesteads
 - HHCA Section 207
 - Regs for State to follow to issue mercantile lands to Hawaiians
 - HHCA Section 207
 - Regs for State to follow to issue community pastures
 - HHCA Section 211

What Other Rules Do We Want?

- If We get Past These Rules.....What Others?
 - Regs requiring foreclosure prevention steps before eviction
 - HHCA Section 216 & 217
 - Regs for State to establish loans (farms, ranches, mercantile)
 - HHCA Section 214
 - Regs on conducting audits of our trust accounts
 - HHCA Section 213
 - Regs defining “associations controlled by native Hawaiians”
 - HHCA Section 203, 204 & 207 among others
 - Regs for State to follow to protect our water rights
 - HHCA Section 221

Its Pretty Basic Stuff.....

- Has State/DHHL Done a Good Job? Y/N
 - If NO.....then:
- Should Feds Do Something About It? Y/N
 - If YES.....then:
- Should State Have to Follow Standard Regs? Y/N
 - If YES.....then:
- If DHHL Fails, File a Breach of Trust? Y/N
 - If YES....then we need regulations to follow to do so!!

Quick Timeline – 95 Years Waiting

- 1919 – Territorial Resolution
- 1921 – HHCA Enacted by Congress
- 1922 – Kuhio Dies
- 1959 – U.S./State Compact on Administration
- 2011 – Homesteaders Realize No Federal Rules
- 2013 – Homesteaders Make Request to Feds
- 2015 – Obama Administration Starts Rules
- 2015.....Feds will Do It, or Not Do It
 - We will either have a new future, or the same past

Why 95 YEARS without Rules?

- Our champion, Kuhio wasn't alive to follow up
- But why didn't our political leaders in Congress or the State follow up?
- Why would a Governor or DHHL Director not want rules?

Bottom Line?

Do We Want Federal Regulations Over the State of Hawaii and its Agency (DHHL) in Managing Our Trust Lands?

Yes = Do Rules

No = Don't Do Rules – Stay the Same

Responses Due by August 2015

You can submit comments online:

<http://www.regulations.gov>

Or via mail:

DoI - Office of Native Hawaiian Relations

1849 C Street, Washington DC 20240

Kaiini_kaloi@ios.doi.gov

202-208-7462

Reference 1090-AA98 on Your Comments

Sample Email or Message

Aloha Director,

I am a beneficiary of the HHCA. I believe that federal rules for the State of Hawaii and DHHL to follow is very important and will help protect beneficiaries. Thank you.

Land Exchanges Topic – changes or additions I would make on this topic are
xxxxxxx.

HHCA Amendments Topic – changes or additions I would make on this topic
are xxxxx.

Aloha, name and city, state where resident

See 2 examples already submitted.

End Briefing on Federal Rules

If you are interested in the work of the CNHA Policy Center and the SCHHA on Trust Land Issues, sign up to the Homestead Working Group by sending us an Email policy@hawaiiancouncil.org

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