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Subpart A—General Provisions

§ 50.1 What is the purpose of this part?

This part sets forth the Department's administrative procedure and criteria for reestablishing a formal government-to-government relationship between the United States and the Native Hawaiian community that will allow:

(a) The Native Hawaiian community to more effectively exercise its inherent sovereignty and self-determination; and

(b) The United States to more effectively implement and administer:

(1) The special political and trust relationship that exists between the United States and the Native Hawaiian community, as recognized by Congress; and

(2) The Federal programs, services, and benefits that Congress created specifically for the Native Hawaiian community (*see, e.g.*, 12 U.S.C. 1715z-13b; 20 U.S.C. 80q *et seq.*; 20 U.S.C. 7511 *et seq.*; 25 U.S.C. 3001 *et seq.*; 25 U.S.C. 4221 *et seq.*; 42 U.S.C. 2991 *et seq.*; 42 U.S.C. 3057g *et seq.*; 42 U.S.C. 11701 *et seq.*; 54 U.S.C. 302706).

§ 50.2 How will reestablishment of this formal government-to-government relationship occur?

A Native Hawaiian government seeking to reestablish a formal government-to-government relationship with

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the United States under this part must submit to the Secretary a request as described in § 50.10. Reestablishment of a formal government-to-government relationship will occur if the Secretary grants the request as described in §§ 50.40 through 50.43.

§ 50.3 May the Native Hawaiian community reorganize itself based on island or other geographic, historical, or cultural ties?

The Secretary will reestablish a formal government-to-government relationship with only one sovereign Native Hawaiian government, which may include political subdivisions with limited powers of self-governance defined in the Native Hawaiian government's governing document.

§ 50.4 What definitions apply to terms used in this part?

As used in this part, the following terms have the meanings given in this section:

Continental United States means the contiguous 48 states and Alaska.

Department means the Department of the Interior.

DHHL means the Department of Hawaiian Home Lands, or the agency or department of the State of Hawaii that is responsible for administering the HHCA.

Federal Indian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by the United States to any Indian or Alaska Native tribe, band, nation, pueblo, village, or community in the continental United States that the Secretary of the Interior acknowledges to exist as an Indian tribe, or to its members, because of their status as Indians.

Federal Native Hawaiian programs, services, and benefits means any federally funded or authorized special program, service, or benefit provided by the United States to a Native Hawaiian government, its political subdivisions (if any), its members, the Native Hawaiian community, Native Hawaiians, or HHCA Native Hawaiians, because of their status as Native Hawaiians.

Governing document means a written document (e.g., constitution) embody-

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ing a government's fundamental and organic law.

Hawaiian home lands means all lands given the status of Hawaiian home lands under the HHCA (or corresponding provisions of the Constitution of the State of Hawaii), the HHLRA, or any other Act of Congress, and all lands acquired pursuant to the HHCA.

HHCA means the Hawaiian Homes Commission Act, 1920 (Act of July 9, 1921, 42 Stat. 108), as amended.

HHCA Native Hawaiian means a Native Hawaiian individual who meets the definition of "native Hawaiian" in HHCA sec. 201(a)(7).

HHLRA means the Hawaiian Home Lands Recovery Act (Act of November 2, 1995, 109 Stat. 357), as amended.

Native Hawaiian means any individual who is a descendant of the aboriginal people who, prior to 1778, occupied and exercised sovereignty in the area that now constitutes the State of Hawaii.

Native Hawaiian community means the distinct Native Hawaiian indigenous political community that Congress, exercising its plenary power over Native American affairs, has recognized and with which Congress has implemented a special political and trust relationship.

Native Hawaiian Governing Entity means the Native Hawaiian community's representative sovereign government with which the Secretary reestablishes a formal government-to-government relationship.

Request means an express written submission to the Secretary asking for recognition as the Native Hawaiian Governing Entity.

Requester means the government that submits to the Secretary a request seeking to be recognized as the Native Hawaiian Governing Entity.

Secretary means the Secretary of the Interior or that officer's authorized representative.

Sponsor means an individual who makes a sworn statement that another individual is:

(1) A Native Hawaiian or an HHCA Native Hawaiian; and

(2) The sponsor's parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

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State means the State of Hawaii, including its departments and agencies.

Sworn statement means a statement based on personal knowledge and made under oath or affirmation which, if false, is punishable under Federal or state law.

Subpart B—Criteria for Reestablishing a Formal Government-to-Government Relationship

§ 50.10 What are the required elements of a request to reestablish a formal government-to-government relationship with the United States?

A request must include the following seven elements:

(a) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community drafted the governing document, as described in § 50.11;

(b) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community determined who could participate in ratifying the governing document, consistent with § 50.12;

(c) The duly ratified governing document, as described in § 50.13;

(d) A written narrative with supporting documentation thoroughly describing how the Native Hawaiian community adopted or approved the governing document in a ratification referendum, as described in § 50.14;

(e) A written narrative with supporting documentation thoroughly describing how and when elections were conducted for government offices identified in the governing document, as described in § 50.15;

(f) A duly enacted resolution of the governing body authorizing an officer to certify and submit to the Secretary a request seeking the reestablishment of a formal government-to-government relationship with the United States; and

(g) A certification, signed and dated by the authorized officer, stating that the submission is the request of the governing body.

§ 50.11 What process is required in drafting the governing document?

The written narrative thoroughly describing the process for drafting the

governing document must describe how the process ensured that the document was based on meaningful input from representative segments of the Native Hawaiian community and reflects the will of the Native Hawaiian community.

§ 50.12 What documentation is required to demonstrate how the Native Hawaiian community determined who could participate in ratifying the governing document?

The written narrative thoroughly describing how the Native Hawaiian community determined who could participate in ratifying the governing document must explain how the Native Hawaiian community prepared its list of eligible voters consistent with paragraph (a) of this section. The narrative must explain the processes the Native Hawaiian community used to verify that the potential voters were Native Hawaiians consistent with paragraph (b) of this section, and to verify which of those potential voters were also HHCA Native Hawaiians, consistent with paragraph (c) of this section, and were therefore eligible to vote. The narrative must explain the processes, requirements, and conditions for use of any sworn statements and explain how those processes, requirements, and conditions were reasonable and reliable for verifying Native Hawaiian descent.

(a) *Preparing the voter list for the Ratification Referendum.* The Native Hawaiian community must prepare a list of Native Hawaiians eligible to vote in the ratification referendum.

(1) The list of Native Hawaiians eligible to vote in the ratification referendum must:

(i) Be based on reliable proof of Native Hawaiian descent;

(ii) Be made available for public inspection;

(iii) Be compiled in a manner that allows individuals to contest their exclusion from or inclusion on the list;

(iv) Include adults who demonstrated that they are Native Hawaiians in accordance with paragraph (b) of this section;

(v) Include adults who demonstrated that they are HHCA Native Hawaiians in accordance with paragraph (c) of this section;

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(vi) Identify voters who are HHCA Native Hawaiians;

(vii) Not include persons who will be younger than 18 years of age on the last day of the ratification referendum; and

(viii) Not include persons who requested to be removed from the list.

(2) The community must make reasonable and prudent efforts to ensure the integrity of its list.

(3) Subject to paragraphs (a)(1) and (2) of this section, the community may rely on a roll of Native Hawaiians prepared by the State under State law.

(b) *Verifying that a potential voter is a Native Hawaiian.* A potential voter may meet the definition of a Native Hawaiian by:

(1) Enumeration on a roll or other list prepared by the State under State law, where enumeration is based on documentation that verifies Native Hawaiian descent;

(2) Meeting the requirements of paragraph (c) of this section;

(3) A sworn statement by the potential voter that he or she:

(i) Is enumerated on a roll or other list prepared by the State under State law, where enumeration is based on documentation that verifies Native Hawaiian descent;

(ii) Is identified as Native Hawaiian (or some equivalent term) on a birth certificate issued by a state or territory;

(iii) Is identified as Native Hawaiian (or some equivalent term) in a Federal, state, or territorial court order determining ancestry;

(iv) Can provide records documenting current or prior enrollment as a Native Hawaiian in a Kamehameha Schools program; or

(v) Can provide records documenting generation-by-generation descent from a Native Hawaiian ancestor;

(4) A sworn statement from a sponsor who meets the requirements of paragraph (b)(1), (2), or (3) of this section that the potential voter is Native Hawaiian; or

(5) Other similarly reliable means of establishing generation-by-generation descent from a Native Hawaiian ancestor.

(c) *Verifying that a potential voter is an HHCA Native Hawaiian.* A potential

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voter may meet the definition of an HHCA Native Hawaiian by:

(1) Records of DHHL, including enumeration on a roll or other list prepared by DHHL, documenting eligibility under HHCA sec. 201(a)(7);

(2) A sworn statement by the potential voter that he or she:

(i) Is enumerated on a roll or other list prepared by DHHL, documenting eligibility under HHCA sec. 201(a)(7);

(ii) Is identified as eligible under HHCA sec. 201(a)(7) in specified State or territorial records;

(iii) Is identified as eligible under HHCA sec. 201(a)(7) in a Federal, state, or territorial court order; or

(iv) Can provide records documenting eligibility under HHCA sec. 201(a)(7) through generation-by-generation descent from a Native Hawaiian ancestor or ancestors;

(3) A sworn statement from a sponsor who meets the requirements of paragraph (c)(1) or (2) of this section that the potential voter is an HHCA Native Hawaiian; or

(4) Other similarly reliable means of establishing eligibility under HHCA sec. 201(a)(7).

§ 50.13 What must be included in the governing document?

The governing document must:

(a) State the government's official name;

(b) Prescribe the manner in which the government exercises its sovereign powers;

(c) Establish the institutions and structure of the government, and of its political subdivisions (if any) that are defined in a fair and reasonable manner;

(d) Authorize the government to negotiate with governments of the United States, the State, and political subdivisions of the State, and with non-governmental entities;

(e) Provide for periodic elections for government offices identified in the governing document;

(f) Describe the criteria for membership, which:

(1) Must permit HHCA Native Hawaiians to enroll;

(2) May permit Native Hawaiians who are not HHCA Native Hawaiians, or some defined subset of that group that

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is not contrary to Federal law, to enroll;

(3) Must exclude persons who are not Native Hawaiians;

(4) Must establish that membership is voluntary and may be relinquished voluntarily; and

(5) Must exclude persons who voluntarily relinquished membership;

(g) Protect and preserve Native Hawaiians' rights, protections, and benefits under the HHCA and the HHLRA;

(h) Protect and preserve the liberties, rights, and privileges of all persons affected by the government's exercise of its powers, *see* 25 U.S.C. 1301 *et seq.*;

(i) Describe the procedures for proposing and ratifying amendments to the governing document; and

(j) Not contain provisions contrary to Federal law.

§ 50.14 What information about the ratification referendum must be included in the request?

The written narrative thoroughly describing the ratification referendum must include the following information:

(a) A certification of the results of the ratification referendum including:

(1) The date or dates of the ratification referendum;

(2) The number of Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, who cast a vote in favor of the governing document;

(3) The total number of Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, who cast a ballot in the ratification referendum;

(4) The number of HHCA Native Hawaiians who cast a vote in favor of the governing document; and

(5) The total number of HHCA Native Hawaiians who cast a ballot in the ratification referendum.

(b) A description of how the Native Hawaiian community conducted the ratification referendum that demonstrates:

(1) How and when the Native Hawaiian community made the full text of the proposed governing document (and a brief impartial description of that document) available to Native Hawaiians prior to the ratification referendum, through the Internet, the

news media, and other means of communication;

(2) How and when the Native Hawaiian community notified Native Hawaiians about how and when it would conduct the ratification referendum;

(3) How the Native Hawaiian community accorded Native Hawaiians a reasonable opportunity to vote in the ratification referendum;

(4) How the Native Hawaiian community prevented voters from casting more than one ballot in the ratification referendum; and

(5) How the Native Hawaiian community ensured that the ratification referendum:

(i) Was free and fair;

(ii) Was held by secret ballot or equivalent voting procedures;

(iii) Was open to all persons who were verified as satisfying the definition of a Native Hawaiian (consistent with § 50.12) and were 18 years of age or older, regardless of residency;

(iv) Did not include in the vote tallies votes cast by persons who were not Native Hawaiians; and

(v) Did not include in the vote tallies for HHCA Native Hawaiians votes cast by persons who were not HHCA Native Hawaiians.

(c) A description of how the Native Hawaiian community verified whether a potential voter in the ratification referendum was a Native Hawaiian and whether that potential voter was also an HHCA Native Hawaiian, consistent with § 50.12.

§ 50.15 What information about the elections for government offices must be included in the request?

The written narrative thoroughly describing how and when elections were conducted for government offices identified in the governing document, including members of the governing body, must show that the elections were:

(a) Free and fair;

(b) Held by secret ballot or equivalent voting procedures; and

(c) Open to all eligible Native Hawaiian members as defined in the governing document.

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§ 50.16 What criteria will the Secretary apply when deciding whether to re-establish the formal government-to-government relationship?

The Secretary will grant a request if the Secretary determines that each criterion on the following list of eight criteria has been met:

(a) The request includes the seven required elements described in § 50.10;

(b) The process by which the Native Hawaiian community drafted the governing document met the requirements of § 50.11;

(c) The process by which the Native Hawaiian community determined who could participate in ratifying the governing document met the requirements of § 50.12;

(d) The duly ratified governing document, submitted as part of the request, meets the requirements of § 50.13;

(e) The ratification referendum for the governing document met the requirements of § 50.14(b) and (c) and was conducted in a manner not contrary to Federal law;

(f) The elections for the government offices identified in the governing document, including members of the governing body, were consistent with § 50.15 and were conducted in a manner not contrary to Federal law;

(g) The number of votes that Native Hawaiians, regardless of whether they were HHCA Native Hawaiians, cast in favor of the governing document exceeded half of the total number of ballots that Native Hawaiians cast in the ratification referendum: *Provided*, that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among Native Hawaiians; *and Provided Further*, that, if fewer than 30,000 Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further*, that, if more than 50,000 Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a presumption that this criterion is satisfied; and

(h) The number of votes that HHCA Native Hawaiians cast in favor of the governing document exceeded half of the total number of ballots that HHCA Native Hawaiians cast in the ratifica-

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tion referendum: *Provided*, that the number of votes cast in favor of the governing document in the ratification referendum was sufficiently large to demonstrate broad-based community support among HHCA Native Hawaiians; *and Provided Further*, that, if fewer than 9,000 HHCA Native Hawaiians cast votes in favor of the governing document, this criterion is not satisfied; *and Provided Further*, that, if more than 15,000 HHCA Native Hawaiians cast votes in favor of the governing document, the Secretary shall apply a presumption that this criterion is satisfied.

Subpart C—Process for Reestablishing a Formal Government-to-Government Relationship

SUBMITTING A REQUEST

§ 50.20 How may a request be submitted?

If the Native Hawaiian community seeks to reestablish a formal government-to-government relationship with the United States, the request under this part must be submitted to the Secretary, Department of the Interior, 1849 C Street NW., Washington, DC 20240.

§ 50.21 Is the Department available to provide technical assistance?

Yes. The Department may provide technical assistance to facilitate compliance with this part and with other Federal law, upon request for assistance.

PUBLIC COMMENTS AND RESPONSES TO PUBLIC COMMENTS

§ 50.30 What opportunity will the public have to comment on a request?

(a) Within 20 days after receiving a request that appears to the Department to be consistent with §§ 50.10 and 50.16(g) and (h), the Department will:

(1) Publish in the FEDERAL REGISTER notice of receipt of the request and notice of the opportunity for the public, within 60 days following publication of the FEDERAL REGISTER notice, to submit comment and evidence on whether the request meets the criteria described in § 50.16; and

(2) Post on the Department Web site:

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- (i) The request, including the governing document;
- (ii) The name and mailing address of the requester;
- (iii) The date of receipt; and
- (iv) Notice of the opportunity for the public, within 60 days following publication of the FEDERAL REGISTER notice, to submit comment and evidence on whether the request meets the criteria described in § 50.16.

(b) Within 20 days after the close of the comment period, the Department will post on its Web site any comment or notice of evidence relating to the request that was timely submitted to the Department in accordance with paragraphs (a)(1) and (a)(2)(iv) of this section.

§ 50.31 What opportunity will the requester have to respond to comments?

Following the Web site posting described in § 50.30(b), the requester will have 60 days to respond to any comment or evidence that was timely submitted to the Department in accordance with § 50.30(a)(1) and (a)(2)(iv).

§ 50.32 May the deadlines in this part be extended?

Yes. Upon a finding of good cause, the Secretary may extend any deadline in § 50.30 or § 50.31 by a maximum of 90 days and post on the Department Web site the length of and the reasons for the extension: *Provided*, that any request for an extension of time is in writing and sets forth good cause.

THE SECRETARY'S DECISION

§ 50.40 When will the Secretary issue a decision?

The Secretary will apply the criteria described in § 50.16 and endeavor to either grant or deny a request within 120 days of determining that the requester's submission is complete and after receiving all the information described in §§ 50.30 and 50.31. The Secretary may request additional documentation and explanation from the requester or the public with respect to the material submitted, including whether the request is consistent with this part. If the Secretary is unable to act within 120 days, the Secretary will provide notice to the requester, and include an

explanation of the need for more time and an estimate of when the decision will issue.

§ 50.41 What will the Secretary's decision include?

The decision will respond to significant public comments and summarize the evidence, reasoning, and analyses that are the basis for the Secretary's determination regarding whether the request meets the criteria described in § 50.16 and is consistent with this part.

§ 50.42 When will the Secretary's decision take effect?

The Secretary's decision will take effect 30 days after the publication of notice in the FEDERAL REGISTER.

§ 50.43 What does it mean for the Secretary to grant a request?

When a decision granting a request takes effect, the requester will immediately be identified as the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), the special political and trust relationship between the United States and the Native Hawaiian community will be reaffirmed, and a formal government-to-government relationship will be reestablished with the Native Hawaiian Governing Entity as the sole representative sovereign government of the Native Hawaiian community.

§ 50.44 How will the formal government-to-government relationship between the United States Government and the Native Hawaiian Governing Entity be implemented?

(a) Upon reestablishment of the formal government-to-government relationship, the Native Hawaiian Governing Entity will have the same formal government-to-government relationship under the United States Constitution and Federal law as the formal government-to-government relationship between the United States and a federally-recognized tribe in the continental United States, in recognition of the existence of the same inherent sovereign governmental authorities, subject to the limitation set forth in paragraph (d) of this section.

(b) The Native Hawaiian Governing Entity will be subject to the plenary

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authority of Congress to the same extent as are federally-recognized tribes in the continental United States.

(c) Absent Federal law to the contrary, any member of the Native Hawaiian Governing Entity presumptively will be eligible for current Federal Native Hawaiian programs, services, and benefits.

(d) The Native Hawaiian Governing Entity, its political subdivisions (if any), and its members will not be eligible for Federal Indian programs, services, and benefits unless Congress expressly and specifically has declared the Native Hawaiian community, the Native Hawaiian Governing Entity (or the official name stated in that entity's governing document), its political subdivisions (if any), its members, Native Hawaiians, or HHCA Native Hawaiians to be eligible.

(e) Reestablishment of the formal government-to-government relationship will not authorize the Native Hawaiian Governing Entity to sell, dispose of, lease, tax, or otherwise encumber Hawaiian home lands or interests in those lands, or to diminish any Native Hawaiian's rights, protections, or benefits, including any immunity from State or local taxation, granted by:

- (1) The HHCA;
- (2) The HHLRA;
- (3) The Act of March 18, 1959, 73 Stat. 4; or
- (4) The Act of November 11, 1993, secs. 10001–10004, 107 Stat. 1418, 1480–84.

(f) Reestablishment of the formal government-to-government relationship does not affect the title, jurisdiction, or status of Federal lands and property in Hawaii.

(g) Nothing in this part impliedly amends, repeals, supersedes, abrogates, or overrules any applicable Federal law, including case law, affecting the privileges, immunities, rights, protections, responsibilities, powers, limitations, obligations, authorities, or jurisdiction of any federally-recognized tribe in the continental United States.

PARTS 51–99 [RESERVED]

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PART 100—WAIVING DEPARTMENTAL REVIEW OF APPRAISALS AND VALUATIONS OF INDIAN PROPERTY

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Subpart A—General Provisions

§ 100.100 What terms I should know for this part?

Appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a